



SANGER

★ TEXAS

POLICE DEPARTMENT

To: Sergeant Cole Thompson
From: Chief Waylan Rhodes
Date: December 9, 2022
Ref: Notice of Final Determination

As you are aware, an investigation into the use of force complaint has been completed by Assistant Chief Jonathan Perkins, following which I reviewed Assistant Chief Perkins' completed internal affairs investigation findings and recommendations and additionally reviewed the statements submitted by Sergeant Reese Dunn, Detective Justin Lewis, Officer Deleese Allen and Officer Matthew Pease; SPD Event Report, and all associated Use of Force Reports and all videos associated with this incident/complaint. I further listened to the Denton County 911 call and read the DCSO Dispatch call notes related to this incident. Finally, after providing you with a notice of pre-determination, on December 8, 2022, Asst. Chief Perkins and I met with you and you were provided an opportunity to and did present any and all evidence and argument you believed was relevant in response to the notice of pre-determination. In reaching this final determination, I have considered all of the above along with the evidence and arguments presented by you at our December 8, 2022 meeting.

It is my conclusion that Assistant Chief Perkins completed a thorough and detailed investigation based on evidence and facts. Some excerpts taken from Assistant Chief Perkins investigation that are particularly pertinent to this final determination are provided below:

Conclusion by Assistant Chief Perkins:

"Based on my investigation and review of all the evidence and further based on my recommended findings set forth above, it is my conclusion that the force used against [REDACTED] by Sgt. Cole Thompson was not reasonable or necessary to effect an arrest or detention and that use of that force was a violation of the above-identified policies. The evidence established that [REDACTED] was compliant and only became what could possibly be viewed as somewhat combative upon being thrown to the ground. At the time of the stop, there was clearly need for further investigation; however, at the time of the stop, there was no clear need to immediately place handcuffs on [REDACTED] as he was complying with Sgt. Thompson's instruction. [REDACTED] was not actively resisting in a manner that may lead another officer to believe force would be necessary to effect an arrest. [REDACTED] was compliant with all direction that was given to him, up to the point of Sgt. Thompson's attempt to place him in handcuffs. Thus, a review of the evidence established that at the time Sgt. Thompson opted to use force against [REDACTED] there was no immediate threat to officers or civilians. It is the conclusion of this investigator that Sgt. Thompson needlessly and unreasonably escalated this

incident and should have conducted an initial investigation into the allegations that led to the stop and should have communicated his actions with [REDACTED] before attempting to place him in handcuffs.

Further, based on the evidence reviewed, it is my conclusion that Sgt. Thompson has been trained in the use of a Taser device and is also an instructor. These facts would suggest he was familiar with the proper use and notification. No verbal warning was given to [REDACTED] and no communication was made to advise Officer Pease that a conducted energy device (Taser) was about to be deployed. There was no clear indication that the warning would have endangered officers or was not practicable. While Sgt. Thompson argues that the verbal warning is discretionary, the Sanger PD policies, read as a whole, clearly indicate that while further display of the Taser electrical arc (as a visual warning) is not required, the verbal warning should be given unless it is not practical under the circumstances."

In addition, it is my conclusion that the evidence (primarily the video recordings and 911 call recording) does not support and, in fact, contradicts the following statements made by you:

- 1. Thompson Statement:** You stated that you asked [REDACTED] to keep his hands out of his pockets, as is standard for officer safety. [REDACTED] continued to attempt to put his hands in his pocket, so you had him place his hands up and that you moved behind him to handcuff him as he was now detained for investigations of the offenses mentioned above.

The Evidence Showed: Videos do confirm that you told [REDACTED] not to put his hands in his pockets. Video also clearly shows that at no time did [REDACTED] place his hands in his pockets. Furthermore, videos show that at no time did [REDACTED] continue to attempt to put his hands in his pockets.

- 2. Thompson Statement:** My numerous successful DWI investigations have taught me indicators to look for during initial contacts with suspected drivers who are impaired.

The Evidence Showed: Considering your experience with numerous DWI investigations you did not attempt to perform the basic fundamental interview/investigation normally done during a suspected DWI encounter to establish probable cause to arrest. Instead, you immediately attempted to place [REDACTED] under arrest without asking any questions related to the disturbance, his alcohol consumption, nor did you attempt to administer the SFST or a field sobriety test; all of which are standard protocol when investigating suspected DWI cases.

- 3. Thompson Statement:** You stated in your report that four times [REDACTED] pulled away from you, resisting arrest, search, or detention.

The Evidence Showed: At no time does any video show that [REDACTED] pulled away or attempted to pull away from you or use force against you while attempting to place him in handcuffs. In fact, you never told [REDACTED] that he was under arrest. In fact, when [REDACTED] exited his vehicle, he walked to the rear of his vehicle complying with officer's instructions. The video shows that [REDACTED] initially places his hands behind his back in a manner that any person would do who anticipated having

handcuffs put on, before placing his hands on his head as you instructed him to do. There are no actions that bear a resemblance to [REDACTED] being non-compliance or making any efforts to pull away or use force against you in an attempt to resist arrest.

Additionally, the Texas Penal Code, at section 38.03, regarding "Resisting Arrest, Search, or Transportation provides as follows: "(a)A person commits an offense if he intentionally prevents or obstructs a person, he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest, search, or transportation of the actor or another by using force against the peace officer or another" (emphasis added).

4. **Thompson Statement:** [REDACTED] then pulled away and turned as I attempted to place handcuffs on his wrist turning his head back towards me.

The Evidence Showed: The video clearly shows [REDACTED] off balance (possibly from being intoxicated or because of the way you maneuvered him backward) did turn his head back towards you. You then threw [REDACTED] to the ground and got on top of him and immediately began striking him in his head and face with a closed fist. The video clearly shows at no time did [REDACTED] physically attempt to assault you.

5. **Thompson Statement:** You stated that you stopped striking [REDACTED] once Officer Pease joined in.

The Evidence Showed: The video clearly shows once Officer Pease assisted you, you then struck [REDACTED] two additional times as well as tased him. The video also shows that once [REDACTED] was turned over and on his stomach that two more times you told him to turn over while also striking him in the head/face area two more times.

6. **Thompson Statement:** You stated that Sgt. Dunn agreed that the use of force was not excessive and did not violate department policy.

The Evidence Showed: On November 3, 2022, I had a conversation with Sergeant Dunn in my office concerning his findings on your use of force. I told Sergeant Dunn that when I watched the video that at no time did, I see [REDACTED] pull away from you (Thompson). Sergeant Dunn stated to me that he mentioned to you that he didn't observe [REDACTED] pull away from you and that you responded saying, he, [REDACTED] tensed up. There is a significant difference between pulling/resisting away as opposed to tensing up. I also asked Sergeant Dunn would he have taken the same actions as you considering the totality of the circumstances and he replied, "No sir".

7. **Thompson Statement:** You stated, in conclusion these allegations are false and insulting, coming from a chief that was not present at the time and only saw what he deems relevant to his personal agenda in protecting Officer Allen from being terminated for a larger officer safety violation.

The Evidence Showed: The internal investigation was initiated based on facts from watching the videos concerning your use of force incident. Sergeant Thompson, you have stated that you have filed numerous successful DWI cases. In addition to that as Chief of Police I have personal

knowledge that you have filed other criminal cases as well. Some of these cases involved using video evidence to build those cases where no officers or other witnesses were present at the time of the incident or offense. Furthermore, one of the roles of law enforcement administration is to use review of video and use of force reports for oversight and accountability. The same applies in this situation.

Further, in your written response you referenced the policies, shown below in **NON-BOLD TYPE**, that are covered in Policy 300.3.3 and stated your position that you met the requirements of each of these policies as defined. The fact that you did not defend and/or present any explanation for your actions concerning the **BOLDED TYPED** policies set out below, is deemed an admission by you that you have no defensible response and did in fact violate those policies. During your December 8, 2022 meeting with Asst. Chief Perkins and me, you maintained the same position and provided no additional evidence or argument on the following factors of Policy 300.3.3.

- (a) **Immediacy and severity of the threat to officers or others.**
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) **Officer/subject factors (e.g., age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).**
- (d) **The effects of suspected drug or alcohol use.**
- (e) The individual's mental state or capacity.
- (f) **The individual's ability to understand and comply with officer commands.**
- (g) **Proximity of weapons or dangerous improvised devices.**
- (h) The degree to which the individual has been effectively restrained and his/her ability to resist despite being restrained.
- (i) The availability of other reasonable and feasible options and their possible effectiveness.
- (j) **Seriousness of the suspected offense or reason for contact with the individual.**
- (k) Training and experience of the officer.
- (l) **Potential for injury to officers, suspects, and others.**
- (m) **Whether the individual appears to be resisting, attempting to evade arrest by flight, or is attacking the officer.**
- (n) **The risk and reasonably foreseeable consequences of escape.**
- (o) The apparent need for immediate control of the individual or a prompt resolution of the situation.
- (p) **Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.**
- (q) **Prior contacts with the individual or awareness of any propensity for violence.**
- (r) Any other exigent circumstances.

I have also determined that your actions did not follow standard practice for this type of incident. Specifically, Officer Allen was in her last shift riding with you before moving next to ghost phase with Officer Loftin. Your responsibilities as her FTO were to evaluate her during the performance of her training. On this particular incident once the vehicle [REDACTED] was driving was stopped Officer Allen approached the vehicle to make contact with the driver however, you immediately

intervened and took over the call not allowing Officer Allen to perform her job. As a standard practice police officers when called to a domestic disturbance when practical separate both parties to interview and get each person's side of the story. The alleged offenses by [REDACTED] wife were just that, allegations and not yet confirmed. You did no investigation whatsoever to try and determine if a crime had occurred. You have offered no explanation as to why you felt the need to take over the call and not allow Officer Allen to investigate the incident during her last shift training phase with you.

It is concerning that on two separate occasions prior to the incident in question you told me that Officer Allen had yet to be on a call where she had to engage in a physical confrontation with anyone, so you did not know what she was capable of in a fight. I asked if that was a requirement of the training program, and has every other police officer trainee that you have been the FTO for been in a fight. Upon review of the evidence relating to this use of force incident I have concerns that it may be possible that you purposely initiated the physical confrontation with [REDACTED] for the sole purpose of observing Officer Allen's reaction to such a situation. In fact, on your body worn camera recording of the incident, you can be heard telling Officer Allen, ***"This is what we've been trying to get you into the whole time you've been with me"***.

In conclusion, numerous inconsistencies were documented between your written police report and statements related to this internal investigation and the events as they transpired, as reflected in the evidence. **It is my determination that you have been untruthful in your use of force report and written statements associated with this investigation. It is my further determination that your actions were excessive, unreasonable, intentional without just cause. Accordingly, on the basis of and for the reasons set forth in this Notice of Final Determination, as to the violations of Sanger Police Department Policies alleged in Complaint No. 2022-007, my final determination is as follows:**

Violation of Policy 318 Standards of Conduct (Specifically 318.4 General Standard) - SUSTAINED

Violation of Policy 318.5.9 Conduct - SUSTAINED.

Violation of Policy 300.3. Use of Force and 300.3.3 Factors Used to Determine the Reasonableness of Force - SUSTAINED.

Violation of Policy 303.2 Policy Conducted Energy Device - SUSTAINED.

Violation of Policy 303.4 Verbal and Visual Warnings - SUSTAINED

I find the above sustained policy violations to have been intentional, egregious acts and your conduct inexcusable.

DISCIPLINARY CONSEQUENCE OF SUSTAINED VIOLATIONS: Please be advised that effective immediately, **your employment with the City of Sanger Police Department is terminated.** At the time you are provided with this Notice of Final Determination, you will be required to surrender all City-issued and/or City-owned property in your possession, custody, or control. The Human Resources Department will be in contact with you regarding available options for

continuation of benefits, final pay, and other related matters. Inquiries regarding those matters should be directed to the Director of Human Resources.

You have a right to appeal my decision. Should you wish to appeal my decision please refer to the City of Sanger Policy Manual Section, including section 8.09 Complaint/Appeal Procedures thereof, for information regarding the process, rules and procedures related thereto, including time deadlines for such appeal.

Respectfully,



Waylan Rhodes
Chief of Police

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