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Barbara LaWall

Pima County Attorney

March 31, 2015

Chief Terry Rozema
Marana Police Department
11555 West Civic Center Drive, Building B
Marana, AZ 85653-7091

Re: Marana Case Number 1502—0658

Dear Chief Rozema:

I have reviewed the above referenced case in which Officer Michael Rapiejko intentionally struck Mario Valencia with his vehicle. Specifically, I have been asked to determine whether criminal charges should be filed against Officer Rapiejko in connection with his use of force.

As part of my review I read all of the police reports, videos, and statements provided to me by Detective Michael Torres. Based on my review, it is my understanding that on February 19, 2015, officers from the Marana Police Department responded to the Walmart on Cortaro Road in response to a shoplifting call. Officers learned that the suspect stole a rifle from the Walmart.

Officer Rowan soon located the suspect, later identified as Mario Valencia walking in the area. Mr. Valencia had the rifle in his hands, and had the barrel pointed at his chin. Officer Rowan asked Mr. Valencia to stop and drop the gun, but Mr. Valencia did not comply and continued to walk towards some businesses. At one point, Mr. Valencia turned to face Officer Rowan and leveled the gun at him. Mr. Valencia turned around, fired a shot in the air and continued walking.

Officer Michael Rapiejko heard the call on the radio and drove to the area. When he arrived in the area, he could see that Mr. Valencia was carrying the rifle with his right hand down near the trigger area of the weapon and his left hand on the stock. Officer Rapiejko was aware that Mr. Valencia had refused to obey commands and that he had fired a shot in the air.

As Officer Rapiejko arrived in the area, he could see Mr. Valencia was headed towards some businesses. There were also other officers in the area. Officer Rapiejko was approximately fifty yards away. Officer Rapiejko determined that Mr. Valencia would be able to fire the gun quickly at the businesses and therefore decided he needed to stop Mr. Valencia from proceeding any further. Fearing that he would not be able to make an accurate shot with his handgun from the distance he was away from Mr. Valencia, Officer Rapiejko decided to strike him with this police vehicle to stop him. Officer Rapiejko then accelerated and struck Mr. Valencia, knocking him to the ground. Mr. Valencia was taken into custody. He suffered minor injuries and was transported to the hospital. He was released a few days later and booked into jail.

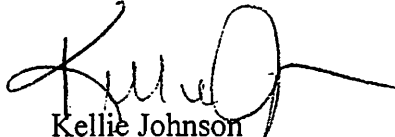
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In order to prove the crime of aggravated assault, the State must prove that a person intentionally, knowingly or recklessly caused physical injury to another person, or that the person intentionally placed another in reasonable apprehension of imminent physical injury. Additionally, A.R.S. §13-410 allows a peace officer to use deadly physical force against another to effect an arrest who the officer reasonably believes has committed a felony involving the use of a deadly weapon. It is the State that must prove beyond a reasonable doubt that an officer use of deadly force was not justified under A.R.S. §13-410.

Here, given all of the circumstances of this case, there is insufficient evidence to prove that Officer Rapiejko had the requisite criminal intent for aggravated assault when he struck Mr. Valencia. Furthermore, given the circumstances the State would not be able to prove that Officer Rapiejko's conduct was not justified under A.R.S. §13-410. For these reasons, the Pima County Attorney's office declines to file any criminal charges against Officer Rapiejko in this matter.

If you have any further questions or need anything else form me in connection with this matter, please don't hesitate to ask.

Sincerely,



Kellie Johnson
Chief Criminal Deputy

cc: Barbara LaWall, Pima County Attorney
Detective Michael Torres, Marana Police Department