

Marana Police Department Board of Inquiry

Marana Police Department Case #1502-0658



June 25, 2015

INTRODUCTION

On Thursday, May 7, 2015 at 0800 hours a Board of Inquiry convened on the first floor of the Marana Police Department located at 11555 W. Civic Center Drive. The Board of Inquiry was held as a result of a use of force incident that occurred on February 19, 2015, involving Marana Police Officer Michael Rapiejko. The incident occurred on the roadway in the area of the 5600 block of W. Coca Cola Place.

BOARD OF INQUIRY

The Board of Inquiry was held in accordance with Marana Police Department General Orders Chapter 1200. The following is a list of the members that comprised the Board of Inquiry.

Voting Board Members

- **Captain R. Jimenez #185** **Commander, Support Services Division (Chair)**
- **Lieutenant P. Ashcraft #163** **Commander, Operations Division**
- **Sergeant J. Shumate #288** **Sergeant, Operations Division**
- **Officer D. Powell #377** **Lead Police Officer, Operations Division**
- **Mrs. Laine Sklar** **Senior Assistant Town Attorney**

Non-Voting Members

- **Sergeant Chris Warren #317** **Sergeant, Office of Internal Affairs**

Case Summary

On February 19, 2015 at 0900 hours, Marana Police Department Communications advised via radio that a Hispanic male wearing a white T-shirt and jeans had stolen a rifle from the Wal-Mart located at 8280 N. Cortaro Road and was now running towards the post office.

The call text indicated the following information that was not put out on the radio: One caller indicated there was one bullet in the gun and another caller reported the male was running away passing the post office and it looked like he was loading the gun.

Officer Rapiejko advised Communications to contact the post office and movie theater to have them lock their doors.

Several Marana Police Department patrol units responded to the area to set up containment. Officer Rowan was the first officer to encounter the suspect who was later identified as Mario Valencia. Valencia was walking southbound on Arizona Pavilions towards Coca-Cola Place. Officer Rowan advised over the radio that the suspect was carrying a rifle and at one point he was holding the rifle to his neck. Officer Rowan ordered the suspect to drop the weapon, but the suspect did not obey the order and rapidly walked away from Officer Rowan.

As Officer Rowan was following the suspect, a citizen drove next to his patrol vehicle and yelled to Officer Rowan that the weapon was unloaded. As Officer Rowan was speaking with the citizen, the suspect turned toward them and pointed the firearm in their direction, then turned and continued walking away. Officer Rowan drove closer to the suspect as the citizen was driving next to him, then the suspect fired a round from the rifle into the air. The citizen stated "never mind" and Officer Rowan advised via radio that the suspect discharged the firearm.

Officer Rapiejko arrived on scene, observed the suspect still holding the rifle in-hand, walking away from Officer Rowan and proceeding rapidly toward the Sergeant Controls building. Officer Rapiejko accelerated his patrol vehicle and struck the suspect. The impact from the patrol vehicle stopped the suspect and separated him from the weapon.

The suspect was detained in handcuffs and the Northwest Fire Department was dispatched to the scene. Northwest Fire treated the suspect and transported him to University Medical Center.

Multiple officers arrived on scene and began securing the area. Marana Police detectives responded and conducted an investigation into the incident. Sergeant James Paul was the supervisor in charge of the investigation and Detective Michael Torres was designated as the lead detective. Detectives from the Tucson Police Department later responded and assisted, as Valencia was a suspect in multiple crimes they were investigating.

The scene was secured and a manual count of all officers' ammunition was conducted on scene. The scene was processed and measured.

Officer Rapiejko, Officer Rowan, Officer Scott, Officer Brewer and Officer Holland were present during the incident. Sergeant Hess was the patrol supervisor on duty at the time of the incident and arrived a few moments later.

Officer Rapiejko and the witness officers listed above were interviewed by detectives. Officer Rapiejko's attorney was present during his interview. The interviews were recorded and later transcribed. Officer Rapiejko also participated in a walk through with detectives at the scene.

Sergeant Hess later completed the basic case report for this incident.

Twenty-four hour security of the suspect was established at the hospital. The Tucson Police Department and Marana Police Department divided the duties in shifts.

The suspect was released from the University Medical Center on February 21, 2015 and was subsequently booked into the Pima County Adult Detention Center by the Marana Police Department and the Tucson Police Department. The Marana Police Department booked Valencia for three counts of robbery, two counts of aggravated assault on a peace officer, three counts of aggravated assault, burglary in the first degree, burglary in the third degree, theft of means of transportation, two counts of shoplifting, aggravated criminal damage, misconduct involving weapons and discharging a firearm in Town limits. The Tucson Police Department booked Valencia for two counts of armed robbery, aggravated assault, burglary in the first degree, burglary in the third degree, theft of means of transportation, two counts of arson of an occupied structure and two counts of aggravated criminal damage.

The Review Process

The Board of Inquiry was called to order by Captain Jimenez. Sergeant Warren presented the case in front of the entire Board. Each member of the Board had been provided with a case file prepared and distributed by Internal Affairs prior to the review date. This case file consisted with the following:

- MPD Use of Force General Order
- MPD Board of Inquiry General Order
- Case Report and Supplement Reports
- Scene Diagram
- Property Sheets
- 911/Radio Log
- Transcribed statement from involved officer

- Transcribed statements from witness officers
- Transcribed statements from witnesses
- Case Photographs
- 911/Radio recordings
- Dash cam footage
- Business videos
- Cell phone video
- Pima County Attorney's Non Prosecution Letter

Upon completion of Sergeant Warren's presentation of the case, the Board was asked if they had any questions and there was discussion.

Beginning and concluding on May 7, 2015, the Board heard testimony from the following individuals:

- Lead Police Officer Bryant Brewer
- Officer Chriswell Scott
- Officer Daniel Rowan
- Officer Michael Rapiejko
- Sergeant Will Hess

A Discussion and review of the facts of the case and the officers' testimony took place among the Board members.

Review Board Findings

Compliance with Policies and Recommended Changes to Policy

- The Board finds that there were no violations of Arizona law by any of the involved members.
- The Board finds that while Officer Rapiejko was responding to the scene, he briefly contacted loss prevention personnel who were running towards the suspect. While he was telling them to stop running toward the area he used profanity toward them. This is in violation of Marana Police Department General Orders.
- The Board recommends a General Order is implemented regarding the documentation of deadly force incidents. During this incident, one of the witness officers was told to

complete the “basic case report.” Later during the investigation, the patrol sergeant was directed to complete the basic case report. The Board recommends that if the investigation is conducted by Marana Police detectives, the lead detective complete the basic case report. If an officer is interviewed as a witness or involved officer, the officer’s taped statement should cover all of the officer’s involvement in the case. Any follow-up information should be added via an additional taped statement.

- The Board recommends review of current policies regarding the dispatching of serious incidents. During this incident, all of the pertinent information was not provided via radio. There were two comments typed into the call text indicating the weapon was probably loaded with one round and another passerby reported the suspect appeared to be loading the weapon. Neither of these two pieces of information was said over the radio. Not all personnel responding to a scene have MDCs and sometimes these pieces of equipment fail. All on duty Communications personnel were on the phone during this incident and were unable to act on the Officer Rapiejko’s requests to contact the post office and movie theater to have them lock down. This call was never upgraded from a priority 4.
- The Board recommends the Department create a standardized format to be used by the lead detective when investigating deadly force/high profile incidents to ensure all information is captured and categorized in a consistent manner. This format should be used to organize all information to be presented to the County Attorney and Board of Inquiry. Additionally, this will allow the reviewing supervisor the ability to systematically review everything to ensure accuracy and completeness. This format can also be used as a reference manual or official example for on scene investigators.
- The Board recommends implementation of a policy addressing when officers who are involved in critical incidents or deadly use of force encounters should be relieved from duty for the remainder of their shifts, and setting forth that an assessment be completed prior to the involved officers being returned to duty.

Tactics

- The Board finds that the suspect had clear notice that this incident was a law enforcement operation. This was made clear by the presence of a clearly identifiable law enforcement vehicle with high visibility markings and emergency lights, the uniform worn by Officer Rowan, and commands given to the suspect.
- The Board finds that Officer Rowan stayed in close proximity to the suspect in order to shield innocent civilians from the suspect.
- The Board finds that Officer Rowan did not develop a strong plan of action to address the deadly threat posed by the suspect. Officer Rowan explained to the Board that initially his only plan was to coordinate additional units responding to the scene. Once the suspect fired the round, Officer Rowan’s only plan was to keep responding units from driving into the suspect’s line of fire.

- The Board finds that Officer Rowan did not appear to be prepared for a lethal encounter with the suspect. Officer Rowan articulated to the Board that he did not unholster his firearm during the contact with the suspect except to address the citizen who drove next to his patrol vehicle in the middle of the incident. Officer Rowan holstered his weapon shortly after.
- The Board finds that, although this was a dynamic situation that unfolded very quickly, Officer Rowan did not direct responding units as clearly as he could have.
- The Board finds that although Officer Rowan gave several commands, he could have given more commands to the suspect. Officer Rowan was focusing on trying to talk the suspect into giving up, rather than controlling the suspect. The Board finds that a better tactic in this situation would have been for Officer Rowan to provide more commands and then begin formulating and carrying out another plan of action when the suspect did not immediately surrender.
- The Board finds that Officer Rowan was not able to address the situation in the rapid manner in which it was evolving. Officer Rowan expressed to the Board that everything happened so quickly that he was not able to formulate a plan. He also stated that being contacted by the civilian while attempting to address the suspect made it harder to respond to the situation. The Board acknowledges Officer Rowan's assessment in regard to both of these factors. It should be noted that less than two minutes (111 seconds) elapsed from the time Officer Rowan contacted the suspect to the time Officer Rapiejko used force on him, and the Board recognizes that this was not much time to process everything that was occurring, everything that needed to be done, and then articulate a clear plan to responding units. Nonetheless, the Board offers the aforementioned critiques of our initial contact with the suspect as an opportunity for all officers to learn what can be done better.
- The Board finds that Officer Rapiejko clearly saw the "big picture" of this incident and began forming a plan of action while responding.
- The Board finds that Officer Rapiejko acted properly in requesting that surrounding businesses be "locked down" in order to mitigate an active shooter or hostage incident.
- The Board finds that Officer Rapiejko clearly articulated why he utilized an unorthodox use of force method. He explained that his patrol rifle was in the trunk of his vehicle and taking the seconds to stop and retrieve it increased the suspect's opportunity to enter businesses and contact innocent civilians. Officer Rapiejko advised that he did not use his handgun to stop the suspect because he would have had to position himself very close to the suspect to accurately engage him, which would have positioned him too close to the suspect without the ability to cover or conceal himself. He further explained that, the suspect was walking rapidly and businesses were behind his view of the suspect and would have been in the line of fire had he used a handgun to stop the suspect. In order to stop the suspect immediately,

Officer Rapiejko chose the quickest, most accurate and effective method of force he felt was available, his patrol car.

- The Board finds that Officer Rapiejko did not communicate his intended action or use of force response to other officers on scene. The Board recommends that if time permits, such actions or use of force responses should be communicated prior to action.
- The Board finds that while Officer Scott was traveling to the scene, he took his patrol rifle out of the “rack,” prepped it and was ready for a rapid deployment. Officer Scott recognized the severity of the situation and began preparing a plan of action while responding.

Judgment/Supervision

- The Board finds the judgement of Officer Rapiejko relative to the use of deadly force in this incident was appropriate, reasonable and timely given the totality of the circumstances.
- The Board finds that Officer Rapiejko processed all information provided over the radio and via call text on the MDC while responding to the scene. Additionally Officer Rapiejko was mentally processing what tools and tactics were available while he was in route to the scene.
- The Board finds that Officer Rapiejko’s immediate threat recognition and subsequent action were appropriate due to the fact that the suspect did not comply with verbal commands to put the rifle down, that the suspect fired a round from the rifle and that the suspect was walking rapidly towards a heavily populated area.
- Multiple Board members and officers involved in the incident expressed concern that we did not act sooner to address the threat or develop a plan of action.
- The Board finds that Sergeant Hess directed officers appropriately upon arriving on scene and appropriately called for additional resources.
- The Board finds there was no reason to conduct a magazine inspection/ammunition count at this scene.

Equipment/Training

- The Board finds that Officer Rapiejko’s patrol rifle does not fit conveniently in the passenger compartment of his assigned patrol vehicle due to the length of the barrel and the placement of the E-Citation printer. Therefore at the time of this incident, his patrol rifle was secured in the trunk and was not quickly accessible. The Board recommends alternative placement is explored.

- The Board finds that all officers involved had all the necessary equipment in their vehicles and on their persons to address this incident.
- The Board recommends training and a quick reference card regarding the responsibilities of cover officers and officers involved in lethal force encounters. Multiple copies of the cards should be carried by Sergeants and Lead Police Officers so they can be handed out to involved officers.
- The Board recommends additional training for sworn supervisors on how to direct the scene of a critical incident.
- The Board recommends additional training on a more varied selection of “force on force” scenarios. Specifically the “Priority of Life model” and the protection of third parties.
- The Board recommends additional training on “combat breathing.”
- The Board recommends additional training for Communications as to when to upgrade calls and the relaying of pertinent information on the radio.

Conclusion

The Board finds Officer Rapiejko’s use of force in this incident was justified. The presence of law enforcement was warranted and clearly identifiable when Officer Rowan initially approached the suspect while driving his fully marked and lighted patrol vehicle. Officer Rapiejko’s decision to utilize deadly force was made in a split second and was based upon several factors:

- Officer Rapiejko knew the suspect had just stolen a firearm from Wal-Mart and was armed with the weapon.
- Officer Rapiejko knew the suspect had fired the rifle based on radio transmissions he heard while responding to the scene.
- Officer Rapiejko saw the suspect holding the rifle in his hands.
- After being contacted by law enforcement and ordered to put the rifle down, the suspect continued to walk quickly away from police, toward a populated business area.

Based on the totality of the circumstances, the Board finds the non-typical force option used during this incident was reasonable. Officer Rapiejko made the decision not to shoot the suspect based on the firearms available to him, the scene behind the suspect and the rapidly evolving nature of this situation.

The Pima County Attorney's Office reviewed the case and determined there was insufficient evidence to prove that Officer Rapiejko's conduct was not justified under ARS 13-410. A non-prosecution letter was issued for Officer Rapiejko.

Shooting Review Board's Voting Members


Captain R. Jimenez #185 **Commander, Support Services Division (Chair)**


Lieutenant P. Ashcraft #163 **Commander, Operations Division**


Sergeant J. Shumate #288 **Sergeant, Operations Division**


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