

ABRIDGED SUMMARY OF CATEGORICAL USE OF FORCE INCIDENT AND FINDINGS BY THE LOS ANGELES BOARD OF POLICE COMMISSIONERS

LAW ENFORCEMENT-RELATED INJURY 029-20

Division	Date	Duty-On (X) Off ()	Uniform-Yes (X) No ()
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Wilshire	5/30/20		
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Officer(s) Involved in Use of Force	Length of Service
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Officer A	24 years, 5 months
Officer B	15 years, 11 months

Reason for Police Contact

During the protests that followed the death of George Floyd in Minneapolis, Minnesota, officers were deployed to the area of a protest in Wilshire Area. Upon their arrival, the officers encountered a crowd of protesters and assembled into a skirmish line. An officer standing on the line was kicked in the chest by a protester and knocked to the ground. A second officer, armed with a 40mm Less Lethal Launcher (LLL), observed the assault and fired upon the Subject, who was struck in the groin area and suffered an injury requiring surgery, resulting in a Law Enforcement Related Injury (LERI).

Subject(s)	Deceased ()	Wounded (X)	Non-Hit ()
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Male, 49 years of age.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent subject criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the BOPC of Police; and the report and recommendations of the Office of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

The following incident was adjudicated by the BOPC on April 27, 2021.

Incident Summary

On Saturday, May 30, 2020, at approximately 1300 hours, officers, assigned as a Tactical Support Element (TSE), were deployed to the Wilshire Area in response to growing protests following the death of George Floyd in Minneapolis, MN. A preplanned protest was scheduled to take place at Pan Pacific Park and attendance was expected to be sizeable.

The Tactical Support Element consisted of 22 personnel attired in dark blue utility style police uniforms, black tactical vests and black ballistic helmets with face shields. The uniforms were outfitted with patches on each shoulder indicating "Los Angeles Police Metro" patches on the front and back sides of their vests displaying the officer's last names and the officers' serial numbers affixed to the back of their ballistic helmets. All officers were equipped with Body-Worn Video (BWV) cameras attached to the front of their tactical vests.

At approximately 1425 hours, the TSE was attending a briefing at the Command Post (CP) located in the north parking lot of an entertainment studio. During the briefing, a Mobile Field Force (MFF) squad broadcasted a request for help at 3rd Street and Edinburgh Avenue, advising they were surrounded by a large hostile crowd.

The Tactical Support Element's mission was to provide support for the MFF squad and a Metropolitan Transit Authority (MTA) bus, believed to have passengers, that were surrounded by hostile protestors. Officers responded on platforms affixed to the sides of modified Chevrolet Suburban vehicles to the area of 3rd Street and Edinburgh Avenue. The following personnel were part of the responding TSE and have been identified for their involvement in or proximity to the isolated incident resulting in the aforementioned LERI.

<u>Personnel</u>	<u>Assignment</u>
Lieutenant A	TSE Platoon Leader
Officer A	40mm Less-Lethal Launcher
Officer B	Skirmish Line
Officer C	Skirmish Line
Officer D	Skirmish Line

At approximately 1429 hours, the Suburban vehicles arrived at the intersection of 3rd Street and Edinburgh Avenue. The officers dismounted and formed a skirmish line on the east side of the intersection facing east. As this occurred, the large crowd began to move toward the skirmish line, where they began to chant and confront the officers. According to the officers, the crowd was very aggressive as they began to verbally threaten the officers and refused instructions to leave the area.

Officers A, B, C, and D were positioned on the north end of the skirmish line, on or near the north sidewalk of 3rd Street. Lieutenant A, who positioned behind the skirmish line,

continued to evaluate the crowd and officers as he/she moved from the northside to the southside. At approximately 1435 hours, the skirmish line was directed to move forward (east) to where the officers and potentially the passengers of the MTA bus were in need of help. The skirmish line moved approximately 180 feet forward and stopped. Officer C was standing in a dirt area containing palm trees and shrubs that separated the north sidewalk and a commercial parking lot. Officer D was positioned to Officer C's left, standing in the parking lot, and Officer B was positioned to Officer C's right, standing on the street. Officer A, armed with his/her 40mm Less-Lethal Launcher, was directly behind Officer B.

The following is a depiction of the events that occurred based on actions captured on Officer's BWV and Officer C's perceptions.

At 14:50:42 hours, a male (the Subject) wearing a green hat, sunglasses, a black gator-style mask covering his lower face, a white T-shirt, and black shorts, appeared from the crowd and stood in front of Officers B and C. The Subject lowered his mask and immediately extended out his right arm, pointed his finger and began shouting at Officer B, "Calm the [expletive] down. Just chill the [expletive] out. Chill the [expletive] out."

At 14:50:46 hours, as captured on BWV, Officer C stated, "Back-up. Leave the area." The Subject turned his attention to Officer C and stated, "Shut the [expletive] up, [expletive] you."

At 14:51:25 hours, the Subject began looking around as he backed-up into the crowd and raised his mask over his mouth and nose. At 14:51:30 hours, an unidentified male wearing a straw hat and black T-shirt, appeared to be talking on his cell phone as he walked from the center of the skirmish line to the north, directly in front of Officer C. According to Officer C, "that male [...] side stepped to his left and pushed his body into my body, pushed himself into my baton, pressing my baton towards my chest area. At which time, I extended my baton pushing him away from me."

After pushing the unidentified male to his left, Officer C turned back toward the crowd. The Subject had moved back toward the front of the crowd and was now standing directly behind two women. At 14:51:38 hours, as depicted on Officer C's BWV, the Subject appeared to be looking in Officer C's direction as he grabbed the shoulders of two women in front of him. As captured on BWV, the Subject appeared to be using their shoulders as stabilization as he lowered his center of gravity.

At this time, an unidentified male jumped up from behind the Subject and threw an empty 37mm cannister at Officer C. According to Officer C, "I saw him jump up above the crowd. And he threw a metal object in my direction."

The Subject's actions were simultaneous with the throwing of the 37mm cannister as he thrust forward and lifted his right leg and kicked out at Officer C. His kick struck Officer C in the chest, knocking him/her to the ground. Officer C landed on his/her back in the landscaped planter adjacent to the sidewalk.

Officer A was approximately 10 to 15 feet behind the skirmish line when he/she saw the Subject kick Officer C and knock Officer C to the ground. According to Officer A, as soon as he/she saw the assault on Officer C, he/she was concerned the Subject would continue the assault and/or assault other officers on the skirmish line. He/she (Officer A) shouldered his/her 40mm less-lethal launcher, acquired a sight on the Subject's midsection, and fired a single shot from an approximate distance of 15 to 20 feet.

The 40mm projectile struck the Subject in the groin area and deflected off his left thigh. After firing the round, Officer A lowered the less-lethal launcher, removed the fired casing, and loaded a live round into the chamber. He/she came back up on target; however, the Subject had disappeared into the crowd.

According to the Subject, he obtained transportation from a ride-share vehicle to a hospital, arriving there at approximately 1600 hours. The Subject underwent surgery to treat an injury he sustained as a result of the impact from the 40mm projectile and was discharged from the hospital in the early hours of May 31, 2020.

On June 25, 2020, the Subject brought this incident to the attention of the Los Angeles Police Department with the filing of a formal complaint. On July 9, 2020, he was interviewed by investigators from Internal Affairs, and he eventually provided the Department with a signed authorization for the release of his medical records. On August 4, 2020, the medical records were retrieved from the hospital where he was treated. On August 20, 2020, investigators from FID briefed Department command staff from Professional Standards Bureau and personnel from the Office of the Inspector General. It was determined this incident met the criteria of a LERI.

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting of a firearm by any involved officer(s); and the Use of Force by any involved officer(s). Based on the BOPC's review of the instant case, the BOPC made the following findings:

A. Tactics

The BOPC found the tactics of Officers A and B to warrant a Tactical Debrief.

B. Less-Lethal Use of Force

The BOPC found Officers A and B's less-lethal uses of force to be In Policy.

Basis for Findings

In making its decision in this matter, the Commission is mindful that every “use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public. The Department’s guiding principle when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe, feasible, and reasonable to do so. As stated below, when warranted, Department personnel may use objectively reasonable force to carry out their duties. Officers may use deadly force only when they reasonably believe, based on the totality of circumstances, that such force is necessary in defense of human life.

Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to physical hazards, violate the law and rights of individuals upon whom unreasonable force or unnecessary deadly force is used, and subject the Department and themselves to potential civil and criminal liability. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers.” (Special Order No. 4, 2020, Policy on the Use of Force - Revised.)

The Commission is cognizant of the legal framework that exists in evaluating use of force cases, including the United States Supreme Court decision in Graham v. Connor, 490 U.S. 386 (1989), stating that:

“The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation.”

The Commission is further mindful that it must evaluate the actions in this case in accordance with existing Department policies. Relevant to our review are Department policies that relate to the use of force:

Use of De-Escalation Techniques. It is the policy of this Department that, whenever practicable, officers shall use techniques and tools consistent with Department de-escalation training to reduce the intensity of any encounter with a suspect and enable an officer to have additional options to mitigate the need to use a higher level of force while

maintaining control of the situation.

Use of Force – Non-Deadly. It is the policy of the Department that personnel may use only that force which is “objectively reasonable” to:

- Defend themselves;
- Defend others;
- Effect an arrest or detention;
- Prevent escape; or,
- Overcome resistance.

Use of Force – Deadly. It is the policy of the Department that officers shall use deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary for either of the following reasons:

- To defend against an imminent threat of death or serious bodily injury to the officer or another person; or,
- To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts.

In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible.

Note: Because the application of deadly force is limited to the above scenarios, an officer shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the officer or another person.

The Department's Evaluation of Deadly Force. The Department will analyze an officer's use of deadly force by evaluating the totality of the circumstances of each case consistent with the California Penal Code Section 835(a), as well as the factors articulated in *Graham v. Connor*. (Special Order No. 4, 2020, Policy on the Use of Force - Revised.)

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

A. Tactics

Tactical De-Escalation Techniques

- **Planning**
- **Assessment**
- **Time**
- **Redeployment and/or Containment**
- **Other Resources**
- **Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques)**

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

Planning – On the day of the incident, a plan to deploy to the pre-planned protest had been created among the TSE, which included both Officers A and B. During the plan, it was determined that Officer A would be assigned to the less-lethal force cadre. Officer B was assigned to the skirmish line. Officers A and B had responded to numerous incidents involving violent protestors throughout the day. Officer A believed there would possibly be violent protestors at the location due to the help call, which had been broadcast and the further information broadcast, stating that protestors were vandalizing a bus and had surrounded officers of a mobile field force. Officer A had prepared his/her 40mm LLL by loading it with one sponge round.

The BOPC noted the length of time from Officers A and B observing the Subject's attack on Officer C to the time Officers A and B utilized force to stop the Subject's attack. The BOPC concluded that while Officers A and B had very limited time to create a plan, they had been engaged in active planning leading up to the incident. Officer A was a part of the planning process when TSE members determined Officer A would be a part of the less-lethal cadre. Additionally, Officer A ensured he/she had received authorization to utilize less-lethal force if necessary, while en route to the location. Officer B did not have time to create a plan prior to striking the Subject but had given numerous verbal warnings to protestors in front of and near him/her and had warned them to get further back.

Assessment – Officer A, while standing in front of a large and violent crowd, continuously assessed his/her surroundings. Officer A observed the Subject kick Officer C, causing Officer C to fall backwards to the ground. Officer A discharged one sponge round from his/her 40mm LLL, striking the Subject in the groin. Officer A assessed and determined the Subject was no longer a threat. Officer B continuously assessed his/her surroundings and observed Officer C fall backwards to the ground after being kicked by the Subject. Officer B utilized his/her baton to deliver one strike to the Subject's thigh. Officer B assessed after the strike and determined the Subject

no longer posed a threat. Both Officers A and B continued to assess as the Subject turned away and ran back into the crowd.

Time – The BOPC noted the length of time from Officers A and B observing the Subject's attack on Officer C to the time Officers A and B utilized force to stop the Subject's attack. The BOPC concluded that Officers A and B responded to an immediate violent attack from the Subject and had very limited time to choose other options.

Redeployment and/or Containment – Officer A redeployed from his/her original location of 5-10 feet behind the skirmish line and moved to a position that was approximately 15-20 feet from the Subject. Officer A was able to acquire a sight picture of the Subject's center mass from his/her position. Officer A observed the Subject flee into the crowd of protestors and did not attempt to contain the Subject.

The BOPC noted Officers A and B's decision to not to contain the Subject. They considered Department policy regarding attempts at containing a suspect in this instance and utilized the expertise of a Subject Matter Expert (SME). The SME advised that Department policy does not require officers assigned to a blocking force or mobile field force to apprehend a suspect that they cannot locate. In this instance, the Subject had fled into the crowd of protestors and was not visible to Officers A and B. The BOPC acknowledged Officers A and B's statements which revealed each officer would have attempted to contain the Subject in order to render aid to him had they been able to locate him.

Other Resources – None

Lines of Communication – Officers A and B continually verbalized with the crowd and with the Subject to move back and to leave the area prior to becoming involved in a use of force with the Subject. After striking the Subject with the 40mm LLL sponge round, Officer A broadcast the incident over the tactical frequency and provided the Subject's description and last known location.

The BOPC noted the Subject's violent kick and forward movement, indicating the Subject would have continued his violent actions had he not been stopped. They concluded de-escalation techniques were not feasible for Officers A and B due to the need for immediate actions to stop the threat that the Subject posed to Officer C and surrounding officers.

- During its review of this incident, the BOPC noted the following tactical considerations:

1. Rendering Medical Treatment

Officers A and B, after using force on the Subject, observed the Subject disappear into the crowd of protestors, which were in front of Officers A and B. Officers A

and B stated they were unable to observe the Subject in the crowd. Officers A and B therefore did not request medical treatment for the Subject.

According to the FID investigation, the Subject stated to medical staff at the hospital that he quickly ran from the scene after he was struck by the sponge round.

The BOPC noted the nature of the crowd and crowd members' violent actions toward the officers. They concluded there were no feasible opportunities for Officers A and B to locate the Subject to render aid. The BOPC noted Officers A and B's decision to not contain the Subject. They considered Department policy regarding attempts at containing a suspect in this instance and utilized the expertise of a SME. The SME advised Department policy does not require officers assigned to a blocking force or mobile field force to leave their assignment in order to apprehend a suspect that they cannot locate. In this instance, the Subject had fled into the crowd of protestors and was not visible to Officers A and B. The BOPC acknowledged Officers A and B's articulation which revealed each officer would have attempted to contain the Subject in order to render aid to him had they been able to see him.

Based on the totality of the circumstances, the BOPC determined that Officers A and B's actions were not a deviation from approved Department tactical training.

2. Use of Force Warning

An officer shall give a verbal warning in situations which require the use of a TASER, Bean Bag Shotgun, less-lethal munitions or impact device to control an individual, when feasible. The warning is not required when an officer is attacked and must respond to the suspect's actions. Additionally, if a tactical plan requires the element of surprise in order to stabilize the situation, a warning is not necessary.

The verbal warning should include a command and a warning of potential consequences of the use of force. The command should be similar to, "drop the weapon," or "stop what you are doing" and "followed by "or we may use the Beanbag Shotgun, and that may cause you serious injury" (Los Angeles Police Department Use of Force – Tactics Directive No. 6.2, Beanbag Shotgun – March 2013).

Officer A did not give a verbal warning prior to using less-lethal force. Officer A believed the Subject would have enacted further violence on Officer C or officers nearby had the Subject not been stopped immediately.

The BOPC noted Department policy and acknowledged that a use of force warning was not required when an officer is being attacked, as was the case with Officer C. Additionally, the officers determined a use of force warning was not

feasible and the delay caused by providing such a warning could have potentially allowed the Subject additional time to enact further violence against officers. The BOPC further noted the Subject's efforts to injure Officer C and his/her forward movement, which could have had further impact on Officer C and surrounding officers.

- The BOPC also considered the following:
 1. **Target Acquisition** – Officer A observed the Subject kick Officer C in the chest, causing Officer C to fall back onto the ground. Officer A aimed his/her 40mm LLL at the Subject's center mass and fired one 40mm LLL sponge round, striking the Subject in the groin area. Officer A stated in his/her FID interview that the Subject was moving and not standing still at the time Officer A fired the round.

This topic was to be discussed at the Tactical Debrief.

- The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

In conducting an objective assessment of this case, the BOPC determined that Officers A and B's actions were not a deviation from approved Department tactical training, thus requiring a finding of Tactical Debrief.

Each tactical incident also merits a comprehensive debriefing. In this case, there were areas identified where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

The BOPC found Officers A and B's tactics to warrant a Tactical Debrief.

B. Less-Lethal Use of Force

- **Officer A** – (40mm LLL, one 40mm eXact iMPact sponge round)

According to Officer A, he/she observed the Subject "holding onto the people on either side of him" and leaning backwards with his leg extended toward Officer C. Officer A noticed Officer C, "disappear" from view and "knew" the Subject had just kicked Officer C. Officer A realized the Subject was in the middle of an "attack" on Officer C and also posed a threat to the officers on either side of Officer C as well. Officer A held his/her 40mm LLL in a slung position across his/her chest. From a position of approximately 15 to 20 feet away from the Subject, Officer A brought his/her 40mm LLL up from its slung position to a shouldered position. Officer A was able to easily identify the Subject and placed his/her 40mm LLL sight over the

Subject's "midsection." As the Subject was "mid-attack" on Officer C, Officer A began "responding to the violent attack" and fired one sponge round at the Subject's center mass while the Subject was in motion as he "thrust" forward. After discharging his/her 40mm LLL, Officer A brought his/her 40mm LLL "down" toward the ground, "ejected the spent casing", and loaded a live round into the 40mm LLL which took him/her approximately "two seconds" to complete. Officer A looked up and observed the Subject retreat into the crowd and out of his/her view. Officer A stated he/she never saw the Subject again. According to Officer A, he/she did not give a use of force warning prior to discharging his/her 40mm LLL because he/she believed his/her role was to "assist officers on the line and to look for targets" that were "attacking the officers."

According to the FID investigation, during Officer A's interview by FID detectives, Officer A stated, "correct" when asked if the Subject was moving and changing his position during the less-lethal use of force.

The BOPC considered Officer A's reasonableness in discharging his/her 40mm LLL. Officer A utilized less-lethal force due to the Subject's coordinated effort to violently kick Officer C and his continued forward movement toward Officer C. The BOPC compared the Subject's actions to the Department's policy regarding the use of the 40mm LLL, which required officers to determine if the suspect's actions were an immediate threat. The BOPC concluded the Subject's actions were an immediate threat to not only Officer C but the surrounding officers as well.

The BOPC noted Officer A's distance during his/her deployment of the 40mm LLL. Officer A deployed the 40mm LLL from an approximate distance of 15-20 feet. The BOPC recognized these distances were within the parameters for the utilization of the 40mm LLL according to Department policy. Additionally, the BOPC considered Officer A's decision to discharge his/her 40mm LLL while standing behind the skirmish line. The SME noted Department policy and its allowance for the 40mm LLL to be discharged from behind a skirmish line. The BOPC also noted Officer A did not provide a use of force warning prior to discharging the 40mm LLL. The BOPC concluded a use of force warning was not feasible due to the Subject's efforts to injure Officer C. The BOPC considered Department policy and acknowledged that a use of force warning is not required when an officer is being attacked, and the BOPC determined a warning could have allowed the Subject to gain further time to carry out additional violence on officers.

Additionally, the BOPC noted Officer A's single discharge of the 40mm LLL was effective and stopped the Subject from further attacks on Officer C. However, due to the Subject's dynamic movement during the incident, Officer A's 40mm LLL discharge contacted the Subject's groin area, which resulted in injury. The BOPC noted this target inaccuracy was due to the Subject's continued movement.

Background – At the time of discharging a single round from his/her 40mm LLL, Officer A was standing on the north sidewalk of Third Street. Officer A's background

consisted of a large crowd of protestors. Beyond the crowd were various small businesses on the south side of Third Street. There were no vehicles in Officer A's background due to the on-going protest.

- **Officer B – (baton, one strike)**

According to Officer B, he/she observed the Subject utilize a “front-thrust kick” and make contact with Officer C's midsection. Officer B observed Officer C fall to the ground. Officer B recognized that the Subject was “violent” toward other officers as well as immediately after kicking Officer C. Officer B utilized a single right-handed power stroke to the Subject's center body mass. Officer B observed his/her baton strike the Subject's center mass. Officer B observed the Subject move back and disappear into the crowd of protestors.

The BOPC noted the Subject's kick to Officer C's chest. The BOPC noted that Officer B utilized a power stroke on the Subject and had aimed for his center body mass but struck his right thigh. The BOPC considered the primary and secondary striking locations for the utilization of the baton according to Department policy. The BOPC noted Officer B stated that he/she aimed for the Subject's chest area, which was a secondary striking area and was within Department policy. However, the BOPC also noted Officer B ultimately struck the Subject in the thigh, which was a primary striking area. The BOPC concluded Officer B's actions were in line with Department policy, which allows officers to utilize their baton when suspects' actions are violent in nature.

The BOPC found Officers A and B's uses of less-lethal force to be in policy.