



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Neil Spidaletto,
Police Chief (PM1637T), Sparta

CSC Docket No. 2016-2639

Examination Appeal

ISSUED: **OCT 25 2016**

(RE)

Neil Spidaletto appeals his score on the examination for Police Chief (PM1637T), Sparta. It is noted that the appellant failed the examination.

It is noted for the record that this was an oral examination consisting of four questions. The examination content was based on a comprehensive job analysis. Senior command personnel from police departments, called Subject Matter Experts (SMEs), helped determine acceptable responses based upon the stimulus material presented to the candidates, and they scored the performances. In each question, candidates were presented with a scenario and had to respond to a series of questions about the scenario. Each question, and overall oral communication, was rated on a five-point scale, with 5 as the optimal response, 4 as a more than acceptable passing response, 3 as a minimally acceptable passing response, 2 as a less than acceptable response, and 1 as a much less than acceptable response. The appellant received a score of 2 for the first question, 1 for the second, 3 for the third and fourth questions, and a score of 4 for oral communication. On appeal, the appellant appeals his scores for each question and for oral communication.

Question 1 pertained to Police Administration. This item referred to "John's Law," and indicated that vehicles operated by persons arrested for operating a motor vehicle under the influence of intoxicating liquor or drugs or refusing to submit to chemical breath testing, would be impounded for at least 12 hours. Part A asked candidates to identify and describe conditions for the early release of an impounded vehicle. Part B asked for the requirements that must be satisfied by a person claiming an impounded vehicle before it can be released. The appellant

received a score of 2 and the assessor noted that, for part A, the appellant failed to indicate the fact that if the vehicle is owned or leased by the arrested person, then the vehicle may be released to another person, only if the following conditions and requirements are satisfied: the arrestee has given his/her permission to the other person to operate the vehicle. The assessor noted that, for part B, the appellant failed to indicate that the person claiming the vehicle must be able to operate the vehicle in a safe manner, and that the person claiming the vehicle would not be in violation of Title 39 by operating the vehicle.

On appeal, the appellant provides a list of information that he gave in his presentation. He states that he spoke confidently about the prevalence of driving while intoxicated (DWI) throughout the country; explained that this issue is a law enforcement problem that affects almost every community; this problem is serious and it is important that they make DWI enforcement one of the top priorities to address; stated that increased enforcement over the years has made a dent in DWI accidents and statistics show that deaths resulting from DWI are actually down; mentioned working with organizations and using grant money; indicated what John's Law derived from and what caused its creation, focusing on specifics of the tragic event that ended in the loss of life; stressed the importance of how officers in the agency are properly trained on this law to prevent such tragedies from occurring; went over John's law and the mandatory 12 hours impoundment; discussed the John's Law sheet that is prepared by the officer and presented to the individual that comes to pick up the arrestee; discussed specifics as to the procedure on signing off on the form and what happens if someone does not sign off on the form; discussed that it not the officer's duty to read the form to the individual picking the subject up and this form can be given to the summoned individual with the expectation that they will read the form; said it was important to get an identification from the person summoned to pick up the arrestee and to make sure that this individual was in a condition to operate the vehicle and not intoxicated themselves; discussed circumstances when another individual can take the vehicle with certain permissions by the registered owner; mentioned that if it was not the registered owner's vehicle, then the owner certainly can retrieve the vehicle with proof of ownership and the vehicle is registered and insured; monitored this particular topic during a specific time period on how officers in his agency are applying John's Law; called a meeting with commanders to address what will be discussed at a follow up meeting; mentioned that he would have them mark this meeting on their schedule and he would do so on his; discussed specific feedback from his commanders and how they were going to train officers during roll call sessions and using Power DMS; explained that Power DMS was an electronic system where policies, procedures, and training material is stored and then distributed to the individuals within the shared agency; explained specifically that this system records an electronic signature; reiterated that all laws, encompassing DWI enforcement are important and stressed that the officers in the agency will be trained in these matters; explained that the agency would be vigilant in DWI

enforcement taking advantage of the grant opportunities to increase DWI enforcement using roving patrols or checkpoints; stated that checkpoints would have to follow the Kirk Guidelines; stated that he cited *State vs. Slockbower*; gave examples of when officers may impound a vehicle; and stated he would educate the public through social media.

In reply, the appellant gave many actions including information that was irrelevant to the question, such as when a vehicle can be impounded, and the importance of John's law. In response to part A, the appellant stated, "The registered owner is the only individual that can get the vehicle released," and he explained that if the arrestee is not the registered owner, the registered owner could gain access to the vehicle prior to the 12-hour limit after showing proof of registration and insurance. These were proper responses to part B, and the appellant received credit for including proof of registration and insurance as part of the documentation. He also mentioned that the owner should be licensed. The appellant provided much irrelevant information, including monitoring his officers to make sure they properly apply John's law, having a meeting with training Captains, and educating the public using social media. But he did not take some of the actions he listed in his appeal. He did not discuss circumstances when another individual can take the vehicle with certain permissions by the registered owner, as listed in his appeal. Certainly, he did not indicate that one condition is that the arrestee has given his/her permission to the other person to operate the vehicle.

In response to part B, the appellant stated that the person claiming the vehicle must not be intoxicated, but he did not indicate that he must also be able to operate the vehicle in a safe manner, and not be in violation of Title 39 by operating the vehicle. The appellant's response did not fully address the expected response. Credit is not given for information that is implied or assumed, and the appellant's answer, while lengthy and rambling, did not directly respond to the questions. He missed the actions noted by the assessor, and his score of 2 for this question is correct.

Question 2 pertained to Police Management. In this item, an officer, Richard Houston, was promoted to the rank of Police Sergeant after 15 years. Prior to his promotion, he received a minor discipline on two separate occasions and was rated as an average performer. Houston had been a Police Sergeant for two years, and the officers under his command complained that he was incapable of making proper decisions. They would often attempt to resolve calls for service before the Sergeant arrived on scene just to ensure that situations were properly handled. Additionally, charges against the Sergeant were sustained for improper look up on CJIS, improper handling of a domestic violence matter, and improper supervision of a vehicle pursuit. Recently, the Sergeant has been administratively charged with authorizing an improper entry, which was also sustained. Demotion has been recommended as the appropriate action. This question asked, as the Police Chief,

which factors should be considered for demoting Sergeant Houston. The appellant received a score of 1 and the assessor noted that the appellant missed the opportunities to mention: potential liabilities faced by the department if Sergeant Houston is allowed to remain in his current title of Police Sargent; the seriousness of his violations; whether Sergeant Houston has been provided with training and given an opportunity to succeed; and whether the steps in the progressive discipline process were properly followed.

On appeal, the appellant argues that he stressed the seriousness of the issue and that it would have to be addressed immediately; explained that these serious errors by a supervisor have no place in his agency and would not be tolerated; he would enforce progressive discipline; he reviewed each internal investigation that was conducted in regards to each violation the Sergeant committed for thoroughness and completion; he explained that the Sergeant's subordinates are obligated to discuss misconduct in the agency; he explained that if any of these violations rose to a criminal level, the County Prosecutor would need to be contacted; he agreed that a demotion was warranted if the Sergeant committed these violations; he explained that a Sergeant has the role to impress on his officers that they are conducting themselves according to laws, policies and procedures; he discussed that a Sergeant making these errors could impart this negligent attitude on young, impressionable officers and the violations that he committed were not minor ones in any way; he mentioned that after his demotion and retraining, if these incidents continued to occur with him that termination would certainly be a possible option; he monitored all three of these violations that the Sergeant committed for a certain amount of time; he had a meeting with his command staff to specifically go over these areas and come up with a plan on how to properly train officers; he explained the importance of getting feedback from command staff; he stated that his commanders made their rank because of their competency, and he values their opinion but would make the final decision; he discussed roll call training and Power DMS being used as a training tool; he explained that training would be the backbone of the agency, and he has seen the job become more complex and involved; he mentioned how there are constantly new laws being introduced by the legislature and more guidelines and procedures are being developed through the Attorney General's Office; he mentioned the importance of training officers and first line supervisors and making sure his command staff receives continued training throughout their career; he discussed the Guardian Tracking system acting as an Early Warning System to assist Internal Affairs commander and the Chief about potential future problems; and he explained that the Guardian Tracking system is a computerized system that will electronically keep track of potential red flags on officers so problems may be addressed before they become big problems.

In reply, the question asked for considerations before demoting the Sergeant, and the appellant's response was not on point. The appellant recapped the narrative given for the question, stated that the sergeant's errors were not

tolerated, and that demotion was warranted and termination was a future possibility. None of these were considerations to be taken before demoting the Sergeant. The appellant then gave actions he would take, such as speaking with the Sergeant's squad, and ensuring a proper Internal Affairs investigation. Neither of these responses are considerations. The appellant made sure that the problem was not systemic in the department, and this was a tangent that did not pertain to the subordinate in question. The appellant then mentioned how the demotion would affect the Sergeant, and said he would monitor the Sergeant. He gave further actions, which are not a direct response to the question. The appellant completely misunderstood the question, and his response was unrelated to the question. He missed all the actions listed by the assessor, as his response did not answer the question. His score of 1 reflects that he missed the point of the question entirely, and will not be changed.

Question 3 pertained to Criminal Law. This item referred to searches incident to arrest. Candidates were instructed to answer the questions according to applicable case law established by the United States Supreme Court and the New Jersey Courts. Part A asked for the permissible scope of the search incident to an arrest based on probable cause, the required conditions, and why such searches are considered to be justified. Part B asked under what circumstances, if any, is it permissible to search the digital information on a cellphone seized as a result of the search incident to a lawful arrest. The appellant received a score of 3 and the assessor noted that, for part A, the appellant missed the opportunities to indicate that the search is limited to the person arrested, and to indicate that the search is limited to the area under his immediate control.

On appeal, the appellant states that he explained that all search and seizure issues are serious topics and he needs to be well informed on all aspects of case law; he explained that training would play a large role in educating the officers and they should be aware of the 4th Amendment of the U.S. Constitution and Article I Paragraph 7 of the New Jersey Constitution; he stressed the citizen's rights will be upheld in his agency and any violations of this will not be tolerated; he explained that there are a multitude of areas besides search incident to arrest that are an exception to the written warrant requirement, including motor vehicle, abandonment, consent, plain view/touch, inventory, open fields and the last being search incident to arrest; he spoke specifically of an officer having probable cause in order to make an arrest and subsequently search an individual for any illegal contraband after this arrest; he explained what probable cause was in order for an officer to make a valid arrest and that it was very important that officers know the difference between search incident to arrest and a Terry Frisk; he discussed that a Terry Frisk was conducted specifically out of concern that an individual might be armed or carrying a weapon, and this was not to be confused with a valid arrest with probable cause and a search incident to the arrest.; he reiterated proper training of officers will allow them to understand these differences; he discussed an

associated case and the recent change involving car searches in reference to *State vs. Witt*; he explained the case and the outcome in regards to probable cause and exigency no longer needed by officers when searching a vehicle in which the occupant was arrested, and that the only requirement needed with this decision is probable cause that contraband will be found within the vehicle.; he indicated that New Jersey law will no longer follow *Pena-Flores* but will revert back to follow the *State v. Alston* case; in regard to Part B, he responded that a warrant is required; explained that New Jersey's law affords their citizens more rights as compared to the fourth amendment of the U.S. Constitution regarding New Federalism; he discussed a comparison case in California regarding a search of a law enforcement officer's cell phone and workplace rights referenced the outcome in this case; he said he would monitor all search and seizure incidents for a period of time; he called a meeting with members of his command staff and administrative Lieutenant to take notes during this meeting and said the topic of this meeting would be search and seizure; he proceeded forward with training; he stated that it is important that the members of his agency keep current on laws and educating the public; and he explained that he would do this through social media sites including Facebook and my department Web Page, said he would volunteer time to the community and meet with community leaders such as Civic Leaders and leaders of faith-based groups to explain to them some of these new laws; stated that technology assists in monitoring officer activities; and he monitored police cameras.

A review of the appellant's video indicates that the appellant gave a series of responses in response to Part A, some of which were pertinent to the question, and much of which were not. A review of the responses listed by the appellant in his presentation, which are fairly represented in his appeal, clearly indicates that he did not indicate that the search is limited to the person arrested, or to indicate that the search is limited to the area under his immediate control. Nothing in the appeal suggests that he mentioned these responses to Part A. His score of 3 is correct.

Question 4 was a Leadership/Supervision question pertaining to an officer involved in domestic violence. A woman was at headquarters and she wanted to sign an assault complaint against Sergeant Benson. The candidate reported to headquarters and recognized the woman as the Sergeant's longtime girlfriend. She was visibly upset and showing signs of being physically assaulted. This question asked for immediate actions to be taken to address the matter, including notifications that should be made. The appellant received a score of 3 for this question, and the assessors noted that he missed the opportunities to determine if medical attention is needed for the girlfriend, and to advise the girlfriend of her rights under the Domestic Violence Act.

On appeal, the appellant argues that he explained how serious domestic violence is and that this would require his immediate attention; explained the

prevalence of domestic violence in law enforcement compared to other occupations; stated that it would not be tolerated and officers that commit domestic violence would be disciplined, including termination; showed compassion to victims; notified the County Prosecutor; ensured an investigation was conducted by internal affairs; interviewed appropriate witnesses, obtained statements and photographs of the victim's injuries; assigned the victim a designated principal law enforcement contact to assist her through this process including court proceedings; indicated that if charges from this incident did not warrant immediate suspension, he would make sure that the Sergeant's weapons were taken into custody and, with the direction of the County Prosecutor, determined if this officer would be allowed to carry a weapon while on duty; advised that he would monitor Domestic Violence Incidents within the agency; called a meeting with commanders to discuss this topic and discussed a follow up meeting regarding training; discussed the Early Warning System and monitoring the behavior of officers prior to incidents such as this; stressed that that domestic violence will not be tolerated and victims will receive the compassion and attention they deserve; put the victim in a secure environment; and discussed suspending the officer.

In reply, this is a thorough listing of the actions taken by the appellant, and some of these actions contributed to his score of 3. Nowhere in this list does the appellant indicate that he determined if medical attention is needed for the girlfriend, not that he advised the girlfriend of her rights under the Domestic Violence Act. Indeed, a review of the appellant's presentation indicates that he missed these actions as listed by the assessor. A holistic view of the appellant's presentation indicates that a score of 3 is correct.

As to oral communication for questions 1 and 2, the assessors noted that the appellant displayed a minor weakness in organization as evidenced by speaking about what he would do in his agency and not about the factors he should consider before demoting Sergeant Houston. As to oral communication for questions 3 and 4, the assessors noted that the appellant went on a tangent in question three by discussing department meetings and training, and that he displayed a minor weakness in word usage as evidenced by phrases such as "Police of Chief" and "electronical." The appellant states that a score should not have been reduced by 1 point because it was a *minor* weakness, and that he thoroughly and completed conveyed sufficient information for each question.

In reply, in the scoring criteria for oral communication, a score of 4 indicates that one minor weakness detracts from the communication, and as such, there is no error for a minor weakness resulting in a score of 4. One of the factors in oral communication is organization, defined as presenting ideas in a logical fashion, stating a topic, and providing supporting arguments as well as a conclusion or summary. A review of the appellant's performance indicates that the appellant's performance lacked organization. The appellant did not present his ideas in a

logical fashion, particularly for question 2, which he did not respond to appropriately at all. In question 1, the appellant rambled and was tangential, as though he were giving his own agenda, what he wanted to say regarding the topic, rather than responding to the specifics of the question. In question 3, the appellant gave superfluous information for two minutes before he provided a direct response to the question, and then added non-pertinent information at the end. He provided examples of his own experience, such as the school he was attending, which is inappropriate in an examination setting. The questions are designed to elicit candidate knowledge regarding specific topics, not to get personal information. The appellant was most direct in his response to question 4, although he added information that was not a direct response to the question as well, and at the end of his presentation, he repeated information already given. The appellant's oral communication had a weakness in organization and his score for this component will not be changed.

CONCLUSION

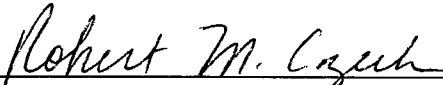
A thorough review of the appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION
THE 19th DAY OF OCTOBER, 2016



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