



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Michael Buckley,
Police Chief (PM1621T), Morristown

CSC Docket No. 2016-4560

Examination Appeal

ISSUED: **OCT 25 2016** (RE)

Michael Buckley appeals his score on the examination for Police Chief (PM1621T), Morristown. 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 1 for the first question, 2 for the second question, 1 for the third question, a 2 for the fourth question, 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 domestic violence involving police officers. Officers responded to a domestic violence call at the home of Officer Brian who lives with his wife Mary. Mary alleges that Officer Brian assaulted her and threatened to kill her during an argument, and she exhibits signs of injury. She states she is a fearful of the weapons in his possession, and requests a temporary restraining order. Officer Brian is present at the scene,

and probable cause exists to believe that an act of domestic violence has occurred and the presence of weapons would expose Mary to a risk of serious bodily injury. Part A asked for the responsibilities of the responding or arresting officers. Part B asked for the responsibilities of the primary patrol supervisor or on-scene supervisor. Part C asked for proper procedures for the custody and control of any seized or surrendered weapons. Part D indicated that, during the department follow-up, the Chief of Police or Law Enforcement Chief Executive shall ensure that all officers who responded to a law enforcement domestic violence call are debriefed, and it asked what should the debriefing include. The appellant received a score of 1. The assessor noted that, for part A, the appellant failed to indicate that the responding or arresting officer must seize any firearm purchaser identification card or permit to purchase a handgun issued to the accused; for part B, the appellant failed to indicate that the on-scene supervisor will assume command and ensure that the crime scene is secured and that all evidence is collected in accordance with approved police investigative procedures; for part C, the appellant failed to indicate that department issued weapons, seized or surrendered, are to be returned to the custody and control of the department which issued the weapons; and, for part D, the appellant failed to review department confidentiality guidelines.

On appeal, the appellant provides a list of information that he gave in his presentation. He states that he spoke confidently, was well dressed, and stated that tragic incidents occur with little or no warning; would lead by example and walk the walk, and talk the talk; would meet with the Mayor, City Manager and governing body to gain political support and backing for a line item in the budget for training, technology, equipment and an awareness campaign for victims of domestic violence; would meet with the Deputy Chief and delegate to him to conduct a comprehensive review of the policies, procedure, rules and regulations to coincide with the Attorney General Directives; would ensure that the Administrative Captain sets up and establishes training dates for the department, personally visit each training date, and have an ethics component into the training; he would also have hands-on, self-directed, lecture and scenario based training; would have brunch sent to the training to thank the officers for attending; would have TIP boxes located in areas of the department looking for feedback on the training from the lowest levels of the department up to command staff personnel; would note any deficiencies and correct them; posted a blog on the department website, looking for feedback from the community; secured and safeguarded the scene, ensuring on-site first aid was given to the victim, had the victim guarded at the hospital until the officer was arrested, charged and placed in the county correctional facility; advised that the weapons of the officer were seized and secured, the department weapons retained by the agency and the personally owned firearms were also taken; consulted with the prosecutor's office if they would take the weapons; discussed the importance of the youth and educating them and recommended educating the youth in the schools, assuming approval by the administration of the school; commended and disciplined officers for not following the guidelines; mentioned USC 18 and if a law enforcement officer is

found guilty of a domestic violence offense concerning weapons; spoke of New Jersey law and the disqualifications, harassment, simple assault, and simple assault with the negligent use of a deadly weapon; said that New Jersey is stricter than its federal counterparts; talked of case law regarding the implicit standards of good conduct as stated in *City of Asbury Park v. Civil Service Commission*; mentioned that domestic violence is abusive and controlling behavior; had a principal contact liaison assigned to the victim and increased patrols to do a drive by of the residence, drive victim to victim advocacy proceedings, and provide updates of the case; said that he would go further and provide his cell phone to the victim; recommended progressive discipline, up to and including termination; stated the reasons in writing to the Prosecutor's Office with reasons to charge or not charge from the Chief executive officer of the department; would address the department, telling them the context of the charges and to increase patrols at the victim's residence, also indicating that this type of behavior will not be tolerated; talked about fitness for duty examinations and gave specifics of fitness for duty; had a picnic, standing side by side with victim's rights groups with the media sending a message out to the public; utilized community groups and religious leaders; showed compassion and empathy for victims of domestic violence; and remained as cutting edge, and said "a boss says 'go' but the leader says 'let's go'." He argues that his presentation was just under ten minutes, and the assessor appeared to not be paying attention while he was speaking and did not follow up with any questions.

In reply, the appellant gave many actions including information that was completely irrelevant to the questions. In fact, the first two minutes and twenty seconds contained information that was not a direct response to the question. The appellant's summary shows that the appellant spoke extensively about training, which did not answer any of the four questions. Candidates receive credit for information that is in response to the stimuli and questions asked. Training, looking for feedback, and looking for support for a training program is not a responsibility of the responding or arresting officers or of the primary patrol supervisor or on-scene supervisor, nor does it address proper procedures for the custody and control of any seized or surrendered weapons or include debriefing content. Rather, it is completely irrelevant to the questions.

When the appellant finally did start a direct response to the question, he incorrectly summarized question 1 as "proper procedures and guidelines for responding to calls for domestic violence." He then gave an academic response, stating, "The primary purpose is to provide first aid training, assistance, preservation of crime scene as well as tending to the victim of the, of the incident. Domestic violence is a serious incident. It's based upon abusive and controlling behavior and I will ensure that the scene is handled in its entirety from the initial investigation, all the way from safeguarding evidence, doing mandatory arrests, transportation to and from a hospital, as well as, ah photographing the injuries of assault." The appellant's manner of speaking was abstract and theoretical, and

rather than giving a direct response to the questions, he spoke as though he was handling a domestic violence situation, although not this specific one. Even so, for the above passage, the appellant received credit for indicating that the responsibility of the responding officer is to make a mandatory arrest in accordance with the Attorney General's Guidelines on Police Response Procedures in Domestic Violence Cases. He then gave more superfluous information, such as designating a liaison officer to visit and provide assistance to the victim. The appellant provided another response to part A, immediately seizing all weapons, for which he received credit. He cannot receive credit in Part C for the same response, particularly when he did not indicate that he was providing information regarding the debriefing. The appellant did not provide a separate answer for each part, but provided one long dialogue with no indication of which part he was responding to, except for Part A, which he incorrectly summarized. He gave more superfluous information, such as how he would discipline the Officer under his command and that he would launch an internal investigation. Candidates were not to give everything they knew about domestic violence involving officers, but were required to answer specific questions. The appellant did not provide information in a manner that illustrated that he understood the questions and the correct responses to those questions. He missed the actions noted by the assessor, and his score of 1 for this question is correct.

Question 2 pertained to Police Management. In this item, the candidate has received information that a suspected terrorist group may be planning to commit an act of terrorism at an unknown location, and that a terrorist group was discussing attacking a soft target in a business district. There are no further details. The question asked candidates what actions should be included in the plan to address this issue in his jurisdiction. The appellant received a score of 2 and the assessor noted that the appellant missed the opportunities to mention: increased uniform police presence at potential soft target areas; document/review all fields stops or suspicious activity; and meet with business owners and operators in soft target areas to educate them on, and encouraging them, to report suspicious activity or packages.

On appeal, the appellant argues that he talked about the review of the rules, regulations, and guidelines, as well as everything as discussed in the first presentation; discussed training, delegation and the importance of the community; mentioned that the community is the eyes and ears to the agency, as well as commanders across America facing legitimacy and procedural justice issues; referenced mistrust and gave references such as Ferguson, Ohio, New York; said that there is a wall and he has to build a bridge tying in the community to the agency; spoke about utilizing emergency management resources and mobile video messaging boards so the community sees examples; spoke about identifying terrorism in accordance with 2C:38-1, a mandatory notification is made to the prosecutor's office who in turn notifies the Regional Operations Intelligence Center for the NJSP; spoke of the requirement to notify the Deputy Superintendent of the

State Police; mentioned partnerships and one way of getting the message out was by way of a stencil that was placed on dilapidated buildings in poor areas; discussed that there was a wall between the community and law enforcement and that he would connect the two by building a bridge; stated that the community is the most important part of identifying the terrorist groups that operate in towns and that a partnership at neighborhood meetings would assist greatly; referenced training and said the first line supervisors are critical in supervising the agency. He states that he did not receive any follow-up questions, including asking if there was anything he would like to add.

In reply, the question asked for actions that should be included in the plan to address a potential act of terrorism in the jurisdiction. The appellant received credit for educating the general public, increasing community policing activities and citizen contacts, ensuring proper training, reviewing policies regarding responses to critical incidents, and reviewing intelligence files of suspected terrorist activities. These responses contributed to his score of 2. Nevertheless, the appellant did not take any of the actions listed by the assessor, and the actions listed by the appellant do not support that he did. Additionally, a review of the appellant's video indicates that he missed the actions listed by the assessor. The appellant gave information regarding terrorism and said he would have to prepare the community. Aside from providing training and reviewing policies, the appellant did not provide further actions regarding providing information to his personnel. He did not tell sworn personnel of the intelligence received, provide soft target locations to all personnel, or increase police presence at potential soft target areas. His response lacked many specific actions which would address prevention of a future act of terrorism in the candidate's jurisdiction or the preparation for one. For example, he did not ensure all personnel had proper equipment or prepare a tactical response if a terrorist act occurred. Lastly, the appellant was asked at the end of the presentation if there was anything he would like to add and he said no.

Question 3 pertained to Criminal Law. This item referred to roadside checkpoints. Part A asked for the criteria that must be met in order to set up a DWI roadblock pursuant to *N.J. v. Kirk* (1985). Part B asked if the DWI roadblock and checkpoint provide an opportunity for motorists to avoid the checkpoint or refuse to participate. The question asked candidates to explain their answer. Part C asked for the essential action law enforcement should take if there are intersecting streets in a DWI checkpoint zone, and it also asked candidates to explain their answer. The appellant received a score of 1. The assessor noted that, for part A, the appellant missed the opportunities to indicate there must be a social utilitarian purpose or legitimate State interest for the checkpoint (*e.g.*, DWI, safety, scenes of recent serious crimes, fleeing felons, etc.); to indicate that, to avoid frightening the traveling public, adequate on-the-scene warnings must be given; and to indicate that officers participating in the checkpoint should be provided with specified, neutral and courteous procedures to follow when stopping motorists. For

part C, the appellant failed to post signs/barriers indicating that no turns are permitted (*i.e.*, motorists must proceed to the checkpoint).

On appeal, the appellant states that he spoke of line item in the budget, training, technology as he did in the previous questions; talked about the DWI guidelines and stated that in order to be approved, the prosecutor's office had to review the administrative plan 72 hours prior to implementation, and reflective vests and equipment were needed; provided status updates to the mayor and governing body and that he received from the deputy chief for 30, 60, 90, and 180 days; said the purpose of the checkpoint was to prevent drunk driving, not arrest drunk drivers; ensured there were no unnecessary delays in accordance with Article 1 paragraph 7 of the NJ constitution and that, prior to the checkpoint being set up, he had the resources and appropriate number of officers; mentioned motor vehicle violations such as tinted windows and inspection stickers, in addition to intervals on stopping cars 3, 6, 9, 12, 15; used data to determine volume, traffic accidents, DWI incidents; gathered facts, analyzed, selected the best alternative, implemented the alternative and evaluated the decision; provided traffic vests and thumb drives with search warrants and blood warrants so as not to delay any operations; maintained an awareness campaign with MADD, SADD to show compassion and empathy; notified emergency personnel in surrounding municipalities, as well as had tow trucks on scene; referenced the checkpoints at intersections and said that you cannot do that but, just as on the highway as long as a sign is in place saying checkpoint ahead, and if the cars exit, the checkpoint can be right there; ensured that follow-up after action reports were completed and submitted through the chain of command; ensured that he communicated, delegated and led by example; and utilized social media. He said he did not receive any follow-up questions.

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 provide the responses listed by the assessor. Nothing in the appeal suggests that he mentioned these responses to Part A. The appellant provided a lot of information that was not specific to the questions. For example, he said he would provide a line item budget, have the Deputy Police Chief conduct a review of rules and guidelines, and met with a captain to set up monthly training. This is not criteria that must be met in order to set up a roadblock, according to the case law indicated, that is, it was not responsive to Part A. The appellant did not answer Part C at all. The question asked for the essential action law enforcement should take if there are intersecting streets in a DWI checkpoint zone. In his presentation, the appellant stated, "The essentials of these intersecting streets should be based upon data, accidents, motor vehicle accidents, volume, driving while intoxicated arrests. And this will be based on gathering the facts, analyzing the data, selecting the best alternatives and implementing the best alternatives, evaluating the

decisions on going to be making.” The appellant then began responding to guidelines. He did not provide separate responses to the different parts, and this passage appears to be the sum of his response to Part C. The appellant did not respond appropriately, as it appears he did not understand the question. The appellant answered Part B, but his response was not sufficiently explained. His score of 1 reflects that he did not adequately respond to Parts A and B, and missed the point of Part C entirely. The appellant was asked if there was anything he would like to add, and he said no. His score will not be changed.

Question 4 was a Leadership/Supervision question pertaining to a traumatized officer. Officer Reed was not an initial responding officer, but he played an active role in trying to rescue a victim in a fatal automobile crash where the person burned to death. He informed the Administrative Captain that he could not properly function in his current position as a result, as he cannot concentrate on work, is reluctant to respond to injury calls of any kind, and is having trouble sleeping at night. The Administrative Captain notifies the Police Chief of the situation. This question asked for the actions to address Officer Reed’s situation. The appellant received a score of 2 for this question, and the assessors noted that he missed the opportunities to have the Administrative Captain document his conversation with Officer Reed; put Officer Reed on administrative leave; and interview Officer Reed’s supervisor to determine if there have been any changes in his performance (*e.g.*, attitude, attendance, etc.) over the past two weeks.

On appeal, the appellant argues that he opened with the same format as other questions except for indicating that he would serve as the buffer for the politicians and the first line officers so that they can do their jobs; talked about the importance of fitness for duty examinations and referrals if the officer is a danger to himself or others; implemented a well-being and wellness program; talked about indicators of stress such as appearance and everyone handles stress differently. In this oral presentation, the assessor asked if he was talking about this officer and he said yes, he was giving examples of officers who may have been deployed in the military and to identify post-traumatic stress disorder. He spoke of incidents in the department and the importance of critical incident stress debriefing, and referenced COP to COP which is a stress program for officers who experience traumatic events. The appellant argues that this was the only assessment where he was asked if he wanted to add anything else and he said he would refer to his notes and added that he would personally meet with the officer to determine what is going on with him. This assessor then asked about the politicians, and the appellant said that he needed to keep them informed as to the status of the well-being and wellness programs that he had implemented.

In reply, the appellant once again provided an academic response to a specific situation. He opened his presentation by indicating that there are numerous people across the nation who have feelings regarding tragic losses, such as the loss of a

family member. He then said that he would meet with the mayor, the city manager, and the governing body to gain political support and backing for a line item in the budget for training, and for a well-being and awareness program. This type of response is completely irrelevant to the situation given and the question asked. He stated that he would prepare, review and implement "objectives," after the Deputy Police Chief reviewed guidelines, and he "delivered the message to the men and women of the department that I command." This part of the appellant's response lacks information specific to the scenario. The appellant spoke at length regarding training. He set up training dates, set up tabletop exercises, trained on the use of new technology, and delivered brunch to the training. This is absolutely immaterial to the question. The appellant even stenciled walls to "put the message out," and indicated that the message would go away when it rained. The appellant spoke impersonally, never mentioning Officer Reed's name. Instead, he talked about "men and women in the department who are veterans and the veterans who came from overseas from when they were assigned, from the department to the military."

The assessor said to the appellant, "Excuse me a moment. You're talking about the specific scenario, right?" The appellant responded, "Yes sir." The assessors said, "About the individual that..." The appellant said, "Under a stressful situation." The assessor said, "Okay. Not all. You're just talking about this individual officer, right?" The appellant again responded, "Yes sir." The assessor said, "Okay. I just wanted to make sure, okay?" At this point, the appellant began talking about "the officer" undergoing a fitness for duty exam, in reviewing the results. The appellant then immediately reverted back to his prior manner of speaking that did not involve actions to address Officer Reed's situation. He said he would implement an improvement plan and get feedback from administrative personnel and commanders, and he made sure that the officer received training. The appellant said it was important that he maintained a partnership with support groups and the hospital, and he invited the media to participate and "deliver the message." Clearly, the appellant did not answer the specific question given, and the appellant did not properly respond to the redirection of the assessor for more than one or two sentences. After the two-minute warning, the assessor asked the appellant if there was anything he would specifically do regarding this officer. The appellant responded only that he would meet with him. A review of the appellant's presentation indicates that he missed the actions as listed by the assessor, and did not respond appropriately to the question. His score of 2 is correct.

The appellant argues that the assessor appeared to not be paying attention while he was speaking and did not follow up with any questions. He states that he prepared adequately and he feels that since he was a makeup candidate and received a score within seven days, someone may have felt that he was trying to circumvent the system. He maintains that he has never failed an examination that he has sat for. He states that he blames staff for believing he was circumventing the system by being a makeup candidate. The appellant also stated that his score

was adversely affected by the assessor who did not ask him questions, and that there were many other candidates receiving failures because of his grades. He states that the other assessor wished him good luck. He thinks that his test scores were confused with those of another candidate, since he prepared for the exam and has not failed one in the past.

In reply, the assessor properly scored the appellant's presentation. The appellant did not properly respond to any of the questions and received an appropriate score accordingly. The appellant was given ten minutes to answer each questions, the same as all other candidates, and he was free to use all or some of that time to respond to the questions. Each candidate is asked in the beginning if they have any objection to any of the assessors in the room. In both rooms, the appellant said no. The assessors made no errors, but the appellant simply did not follow instructions and directly answer the questions presented to him. The role of the assessor is to score the candidate response. He can ask a question or two, but the assessor is not there to lead the candidate to correct answers or to interrupt. The assessor should wait for the candidate to finish a response before asking a question. In the fourth scenario, the assessor attempted twice to redirect the appellant back to the question, but this was not a requirement on his part. There is not one scintilla of evidence that the assessors made any error whatsoever. The most apparent evidence of scoring is a review of the examinations. The examinations were videotaped and, for appeal purposes, the video, PCAs, assessor notes and related examination materials were reviewed. This review finds that Mr. Buckley was correctly scored, and a detailed analysis of his performance and an explanation of his scores is provided herein. The assessors do not provide evaluations of performances in the examination room, and any verbal responses that they may give in the examination room are not a reflection of a candidate's performance.

Regarding scoring, each examination packet contains the social security number of the candidate on the envelope, each sheet of paper pertaining to scoring, and each videotape. It made no difference which candidate was tested first or second, as performances were identified based on the information written on every piece of documentation. In addition, at the start of each performance, the assessor read the examination and candidate information into the recorder and asked the candidate if this information is correct. A review of Mr. Buckley's video indicates that the assessors read his social security number in both rooms and Mr. Buckley responded affirmatively that the number was correct. His official scores were not those of another candidate.

As to oral communication, the assessors noted that the appellant displayed weaknesses in organization and specificity. They indicated that his responses lacked a clear, logical flow and course of action to address the questions. They also indicated that his responses lacked specific details to identify how he would take

action, and he spent a lot of time discussing topics not germane to the scenarios presented. On appeal, the appellant states that demonstrated knowledge on each question posed and that he successfully addressed all required content within the dimensional areas involved in the scoring process. He states that he displayed solid planning and organizational skills, demonstrated a solid foundation of technical knowledge, was decisive, and gave clear-cut examples in each area. He states that he recognized how each situation affects the community and the importance of communication from the rookie officers at the lowest levels of the agency, up to and including command staff personnel, and delegated duties to the deputy chief. He believes he was clear, concise and specific, using the most of his allotted time for each scenario.

In reply, in the scoring criteria for oral communication, a score of 4 indicates at least one weakness which detracts from the communication. One of the factors in oral communication is organization, and a weakness in this factor is defined as failing to present ideas in a logical fashion, state a topic, and provide supporting arguments as well as a conclusion or summary. Another factor is specificity, and a weakness in this factor is giving vague or general statements, and failing to give sufficient details.

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. For questions which had multiple parts, the appellant did not indicate which part of the question he was responding to, if he responded appropriately at all. The candidate information sheet, which the appellant confirmed that he had received, stated, "In responding to the questions, be as specific as possible. Do not assume or take for granted that general actions/responses will contribute to your score. Read the questions carefully, and focus your responses on the specific questions being asked. Also, remember to answer ALL parts of the questions." The appellant's presentations contained much tangential information, 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. He also gave superfluous information or added non-pertinent information. The questions are designed to elicit candidate knowledge regarding specific topics, not to get all information that a candidate might know about a general area. The appellant's oral communication had at least one weakness and his score for this component will not be changed.

CONCLUSION

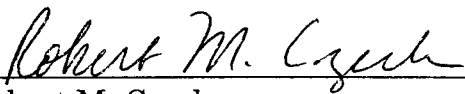
A thorough review of the appellant's submissions and the test materials indicates that the decision below is amply supported by the record, and the appellant has failed to meet his burden of proof in this matter.

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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