



STATE OF NEW JERSEY

In the Matter of James Tassillo, *et al.*, County Correction Sergeant, various jurisdictions

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket Nos. 2017-10, *et al.*

Examination Appeal Corrected Copy

ISSUED: December 14, 2016 (JH)

James Tassillo and Anthony Turre (PC2571T), Bergen County; Mario Fernandez and Jay Nejad (PC2573T), Hudson County; and Victor Pozsonyi and Marrisa Taylor-Munger, (PC2574T), Union County; appeal the promotional examination for County Correction Sergeant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on June 1, 2016 and consisted of 65 multiple choice questions. It is noted that during the test administration, candidates were provided with two booklets, Booklet A and Booklet B. Booklet A contained stimulus material and Booklet B contained the exam questions.

In addressing challenges to the scoring key, only arguments and contentions as they relate to disputed issues will be reviewed herein. An independent review of the issues presented under appeal has resulted in the following findings:

Question 11 indicates that an officer comes to you asking what level of approval he needs before he can use restraining equipment on an inmate. The question asks, according to N.J.A.C. 10A:31-9.3 (Use of restraining equipment), for the action that requires the approval of the Facility Administrator or designee. The keyed response is option d, Restraining equipment "[shall be] removed from an inmate when the reason for its use has ceased." N.J.A.C. 10A:31-9.3 provides:

- (a) Restraining equipment may be used only in the following instances:
1. As a precaution against escape during transit;

2. For medical reasons by direction of appropriately authorized medical staff;
  3. To prevent inmate injury or injury to others; or
  4. To prevent property damage.
- (b) Restraining equipment shall be used to prevent property damage only in instances when such use has been approved by the adult county correctional facility Administrator or designee.
  - (c) At no time shall an inmate be left without proper supervision while in restraints.
  - (d) Restraints shall not be used as punishment, or in any way that causes undue physical discomfort, inflicts physical pain or restricts the blood circulation or breathing of an inmate.
  - (e) Restraints shall be removed promptly when the reason for their initial use has ceased to exist or has sufficiently abated.
  - (f) In the event restraints are used, a written report by the correctional personnel involved shall be submitted to the appropriate supervisor before the end of the tour of duty.

Upon review of this item during the appeal process, the Division of Test Development and Analytics determined that this item had been miskeyed and the key was corrected to option a, "used to prevent an inmate [from] damaging his cell," prior to the lists being issued.

Question 15 indicates that Inmate Williams was recently placed into Protective Custody by custody staff following a threat from another inmate. Inmate Williams hopes to be released as soon as possible. He asks you how often his status will be reviewed by the Classification Committee. The question requires candidates to complete the following sentence, "You should inform him that, according to *N.J.A.C. 10A:31-18.3* Review of inmates in Protective Custody, his status is reviewed every . . ." The keyed response is option d, "30 days." Mr. Fernandez, who selected option a, "7 days," refers to *N.J.A.C. 10A:31-18.2* (Hearing procedure for involuntary placement to Protective Custody) which provides, "The adult county correctional facility's Classification Committee shall review involuntary Protective Custody placements within seven days." It is noted that the question specifically refers to *N.J.A.C. 10A:31-18.3* which provides, "Each inmate in Protective Custody shall be reviewed every 30 days by the Classification Committee." Thus, the question is correct as keyed.

For questions 31 through 60, candidates were instructed to refer to the stimulus material in Booklet A.

Question 34 indicates that during lunch time in the housing unit, Inmate Ruiz and Inmate Shim begin to raise their voices at each other. CO Kim is unsure what to do so she calls you over the radio. The question requires candidates to complete

the following sentence, "You should tell CO Kim over the radio to . . ." The keyed response is option b, "have the inmates lock-in to in [sic] their cells until meal time is over." Mr. Tassillo argues that option d, "wait and see if the situation escalates before doing anything" is the best response. Specifically, he presents that the inmates could be merely talking louder than the other inmates in the tier in order to be heard. He also asserts that food may not be used as a disciplinary measure pursuant to *N.J.A.C. 10A:31-10.6* (Prohibited use of food for discipline). Mr. Turre contends that option a, "raise her voice over the arguing inmates and order them to stop talking," is the best response. Mr. Turre asserts that "seeing as we don't know that there was a security risk, or even if the inmates were arguing as opposed to just speaking loudly, we can't accurately make a determination and would violate 10A by locking the inmates in their cells, with or without their trays, without being certain there was a safety or security concern at hand." Mr. Turre adds that "seeing as discipline should be progressive and [i]nmates should be given a warning before a drastic action is taken, I believe the [o]fficer should raise her voice . . . and issue a warning before taking further action." Messrs. Tassillo and Turre argue that an on-the-spot correction form would be required in this situation. It is noted that the Division of Test Development and Analytics contacted Subject Matter Experts (SMEs) regarding this matter who indicated that by having CO Kim raise her voice, this would not calm the situation. The SMEs also noted that it would be best to de-escalate the situation rather than to take a "wait and see" approach. In this regard, the SMEs emphasized that most issues tend to occur during meal times and as such, it would be best to intervene before the situation escalates to a point where it would be out of control. Thus, option d is not the best response.

Question 36 indicates that CO Kim jokes that Inmate Jones is "either on a strange diet or he doesn't like the food here. He keeps eating bits of the letter his kid sent him!" The question asks for the first thing you should do. The keyed response is option d, "have all mail/paper immediately removed from Inmate Jones' cell and have it tested for narcotics." Messrs. Pozsonyi and Turre contend that option c, "request a medical evaluation for Inmate Jones and have staff keep a log of his food intake at each meal," is the best response. Mr. Pozsonyi argues that "checking paper for narcotics isn't practical or done in a timely fashion. If narcotics [are] found it would delay the inmate from receiving medical treatment if necessary." Mr. Turre refers to *N.J.A.C. 10A:31-8.8(f)*<sup>1</sup> and contends that "the mail should not be immediately removed from the inmate's cell as the only altered paperwork that we know of is the paper he is eating . . . A better option would have been to secure the cell and have a search conducted by custody staff within the inmate's cell, and any possible contraband removed for further investigation." Mr. Turre adds "while the

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<sup>1</sup> *N.J.A.C. 10A:31-8.8(f)* provides, "Searches shall be conducted with a minimum amount of disturbance to an inmate's property. An inmate's property shall not be damaged, destroyed or confiscated unless it is determined to be contraband. An inmate shall be permitted to observe the search of his or her cell and property from a distance, where reasonably feasible."

letters, papers and envelopes in the cell may very well be contraband or evidence of a crime, there is no compelling reason to put the collection of these materials as evidence before the safety and well-being of the inmate." It is noted that the question asks for the **first** action you should take. In this regard, the collection of mail/paper from Inmate Jones' cell would not take an inordinate amount of time. By collecting the material now, it not only preserves evidence but prevents Inmate Jones from continuing to ingest paper and allows the materials to be sent for narcotics testing. In addition, option d does not preclude the officers from taking further action until the mail/paper has been tested and the results received. Moreover, it is noted that option c does not indicate that Inmate Jones will be immediately sent for treatment. Rather, option c provides that you are *requesting* a medical evaluation. Accordingly, the question is correct as keyed.

Question 37 indicates that Inmate Kowalski asks you if CO Allen is available. When you ask Inmate Kowalski why he wants to know, he says, "Allen is my sister's grandson. She stopped speaking to me years ago, but I heard she's been real sick lately, and I wanted to see how she's doing." CO Allen has not disclosed that he has a relative in this jail. The question asks, based on this conversation, for the first thing you should do. The keyed response is option b, "meet with CO Allen to obtain information about his possible family ties to Inmate Kowalski." Mr. Pozsonyi asserts that option c, "inform Lieutenant Baker of the officer's rule violation and ask her how she wants you to proceed," is the best response. He argues that since "the inmate knows a lot of personal information about the officer[, t]his indicates that there may be fraternization . . . Fraternizing and inmate manipulation is a big threat to the staff and facility." The SMEs indicated that at this point, you do not know for a fact that CO Allen is related to the inmate and thus, you need to obtain further information. Given that you have not verified that Inmate Kowalski and CO Allen are related, option c is not appropriate at this point.

Question 38 indicates that CO Banks has been seen eating while on duty, which is contrary to your facility SOPs. She was caught by the jail cameras eating a candy bar three times in one shift. This has been brought to Lieutenant Baker's attention and she now asks you for your input. The question asks for what you should suggest. The keyed response is option d, "that you'd like to meet with Banks privately to discuss why she has been eating on the job." Messrs. Tassillo and Turre maintain that option a, "asking Banks if she has been instructed by her doctor to eat every couple hours," is the best response. They note that the stimulus material indicates that CO Banks is a veteran officer with seven years of experience, has outstanding performance reviews and is four months pregnant. Mr. Tassillo presents that while option d is also correct, "I feel that you already have some sort of input as to why, and shouldn't make [CO] Banks stress going to this private meeting due to her being 4 months pregnant." Mr. Turre argues that "it is not without reason to believe her doctor may have told her to eat regularly ever few hours . . . This should be done before a formal sit down is arranged with CO Banks, which could possibly stress her

out or affect her morale.” The SMEs indicated that while you may be aware that CO Banks is pregnant, you should not assume that this is the reason why she is eating. Option a presumes that a doctor directed CO Banks to eat. Option d does not make this assumption and allows CO Banks to explain the reason for eating in her own words. Thus, option d is the best response.

Question 40 indicates that Inmate Paulson is usually assigned painting duty around the housing units. You believe he is being overly enthusiastic to help since he might be affected by the paint fumes. The question asks for the action you should take at this point. The keyed response is option c, “Ask CO Carter to keep a close eye on Inmate Paulson while he is performing the paint job.” Mr. Pozsonyi argues that option b, “Assign the job to another inmate for now and remove Inmate Paulson from work duty,” is the best response. He asserts that “a prudent officer would believe that Inmate Paulson may be having a reaction to the paint or the chemicals that he is in contact with. So by removing Paulson his behavior can be monitored and his health isn’t being jeopardized by possible harmful paint or chemicals.” Option b assumes that Inmate Paulson is affected by the paint, which is not indicated in the question stem. Thus, the SMEs indicated that the Sergeant would need to assess the situation first. Given that the inmate has not done anything wrong and is not visibly affected, the SMEs determined that monitoring the situation is the best course of action at this point. As such, the question is correct as keyed.

Question 42 indicates that Inmate Marshall is talking on the phone in the cell block when CO Kim informs him that it is time to hang up and lock in. The inmate holds up one index finger as to indicate “one more minute.” CO Kim looks at you for advice. The question asks how CO Kim should respond. The keyed response is option c, she should “tell the inmate the phone will be shut off unless he hangs up immediately.” Mr. Pozsonyi argues that option b, “continue with the lock-in procedures and return her attention to him after the other inmates are secured.” Mr. Pozsonyi presents that “by continuing to lock the area in you will isolate everyone in their cells. By then the inmate may be off of the phone and you can administer disciplinary action[,] if necessary. Also, if Inmate Jones [*sic*] becomes argumentative or combative[,] you will only have to deal with him and not all the other inmates.” Mr. Tassillo, who selected option b, maintains that “the correct answer is that you immediately hang up the phones.”<sup>2</sup> In this regard, Mr. Tassillo asserts that Inmate Marshall clearly disregarded the direct order from CO Kim and the rules of the facility regarding counts. Regarding option a, the SMEs indicated that this action could escalate the situation more than is necessary. With respect to option b, the SMEs indicated that an officer would never want to ignore an inmate, especially when she or he is being non-compliant. Option c allows the officer to gain compliance while explaining to the inmate the consequences of failing to comply. As such, option c is the best response.

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<sup>2</sup>Although “you immediately hang up the phones” was not provided as an answer choice, it appears that Mr. Tassillo is referring to option a, “immediately have the pod officer shut off the phones.”

Question 46 indicates that during a routine cell inspection, CO Banks tells Inmate Reid that he needs to clean up the wrappers left over from his commissary. Inmate Reid responds by screaming, "I will not be treated like a child!" The question asks how CO Banks should respond to this escalating situation. The keyed response is option a, she should "not raise her voice, remain calm, and repeat the command." Mr. Turre argues that option d, "contact you in order to resolve the situation," is the best response. In this regard, he asserts that "repeating the order in a calm voice would more than likely only further aggravate the [i]nmate, possibly escalating into a Code Brown (fight) situation . . . Seeing as not only was an order refused, but the [i]nmate became aggressive with an [o]fficer, this is means for disciplinary action. This is why I believe that at this point the [o]fficer should call for the [s]upervisor on the radio and have the [s]upervisor respond." The SMEs indicated that the officer should remain calm and de-escalate the situation, if possible. In addition, the SMEs indicated that the officer should attempt to resolve the issue on his or her own before contacting his or her supervisor. As such, the question is correct as keyed.

Question 50 indicates that CO Carter was returning Inmate Foye to his cell following a legal visitation. Inmate Foye was upset from a legal setback involving his case. As he was entering the housing unit, Inmate Foye stumbled. He felt that CO Carter had tripped him and responded by turning and pushing CO Carter. CO Cruz responded as backup and CO Carter quickly took Inmate Foye to the ground and gained control of the situation when Inmate Foye submitted. The incident de-escalated and Inmate Foye was found to have a small cut on his forehead. The question asks, as the supervisor, how you should respond to the situation. The keyed response is option c, "Have CO Kim take Inmate Foye to receive medical attention." Mr. Tassillo argues that option b, "Have CO Cruz take Inmate Foye to receive medical attention" is correct. In this regard he contends:

The reason I feel that this is the right answer is because as we know we as the supervisor oversee 9 officers per shift. Ofc. Carter is a Hallway Officer. Ofc. Cruz is a housing unit South officer and Ofc. Kim is also a housing unit South officer . . . If Ofc. Kim were to be called to escort Inmate Foye to medical, 33% of my manpower for my shift will be used in controlling an incident in which no code was called. It also leaves me with 1 officer to remain in the moat of Housing Unit South where there are always 3 officers on post. Pulling Ofc. Kim off her post would be detrimental to the other inmates who are housed in the units. Ofc. Cruz could easily have escorted Inmate Foye to medical.

The SMEs indicated that the officers who are involved in an incident with an inmate should not escort the inmate to medical. The SMEs added that in order to prevent a staffing shortage, all of the inmates in CO Kim's unit should lock-in while CO Kim brings Inmate Foye to medical. Thus, the question is correct as keyed.

Question 51 indicates that officers have informed you that they feel tensions have been mounting in Housing Unit North, Block D. Although they do not know what the problem is, they think that an incident is likely to occur. The question asks how you should respond to this information. The keyed response is option a, "Lock inmates into their cells and investigate the situation." Ms. Taylor-Munger argues that there is not enough information presented in the stem in order to establish "reasonable suspicion." In this regard, she maintains that "the question needed specific and articulable facts, such as all inmates being fully dressed w[ith] sneakers tied tight or if the model inmates refused to come out of their cells. Guys walking around w[ith] clenched fists." She presents that otherwise, "any officer can say they are sensing tension and the inmates can be locked in every day[,] every shift w[ith]out just cause." She adds that "if [option] a was the answer the inmates shouldn't even be out because in the supplemental examination material administration already knows there is tension." She asserts that "the answer should be C<sup>3</sup> because of reasonable suspicion."<sup>4</sup> The SMEs indicated that "reasonable suspicion" has a very specific definition, *i.e.*, when an law enforcement officer has "reason to believe that the individual(s) are engaging in criminal activity or wrong doing based upon the officer's training and experience." The SMEs noted that in a correctional facility, this term is mainly used for strip searches, body cavity searches and arrest. The SMEs emphasized that "reasonable suspicion" is not required for locking inmates into their cells. However, the SMEs indicated that the question does not provide enough information for candidates to determine the appropriate course of action. As a result, the Division of Test Development and Analytics determined to omit this item from scoring prior to the lists being issued.

Question 59 indicates that you have entered Housing Unit North to oversee operations for meal time and observe Inmate Sellers standing next to a trash can in the day room of Block D. Inmate Sellers' left hand is extended over the trash can and blood is slowly dripping from his hand into the trash can. The meal trays are currently being served in Block D. You ask CO Allen about the situation and he tells you, "Sellers accidentally cut his hand during meal service. We told him to wait next to the trash can until tray distribution has been completed for Block D." You estimate that it will take approximately 3-6 minutes to complete tray distribution for Block D. The question asks how you should handle this situation. The keyed response is option b, "Temporarily discontinue meal service for Block D and have Inmate Sellers escorted to medical." Mr. Turre contends that option c, "Call a Code Blue, temporarily discontinue meal service for Block D, and allow medical staff to attend to Inmate Sellers in the Block D day room," is correct. In this regard, he argues:

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<sup>3</sup> Option c provides, "Inform Lieutenant Baker to have a response team standing ready in case an incident does take place."

<sup>4</sup> It is noted that Ms. Taylor-Munger selected option d, "Inform Lieutenant Baker to have a response team standing ready in case an incident does take place."

I agree that meal distribution must be temporarily suspended on Block D. However, a Code Blue (medical emergency) should be initiated. The Inmate's hand is dripping with blood into a garbage can. We do not know the severity of the cut, but this is more than a slight scratch. If the inmate is escorted to medical, a potential risk is being taken . . . There is now potentially not only a sanitary issue, but a bio-hazardous issue throughout half of the facility . . . With this long walk for the Inmate, there is also the risk that the inmate is losing more blood than initially anticipated and the Inmate becomes weak or faints.

The SMEs indicated that option b and option c are similar. With respect to option c, the SMEs noted that given the distance between Block D and the medical wing, as indicated in the stimulus material, it would be best to avoid walking a bleeding inmate that distance. The SMEs also indicated that anytime someone is bleeding, it should be considered a medical emergency. The SMEs further indicated that the other inmates may complain if they were to see Inmate Sellers' bleeding hand. As such, the Division of Test Development and Analytics determined to double key this item to option b and option c prior to the lists being issued.

Question 60 indicates that you later have a chance to speak to CO Allen about the incident regarding Inmate Sellers' injured hand described in question 59. The question asks how you should handle the session with CO Allen. The keyed response is option c, "Explain to CO Allen that he exercised poor judgment in waiting to have Inmate Sellers checked by medical and give him a verbal warning." Mr. Fernandez asserts that option d, "Explain to CO Allen that [he] exercised gross misconduct in waiting to have Inmate Sellers checked by medical and administer a formal reprimand," is the best response. He argues that "when Officer Allen let this individual bleed[,] even if it was for a minute[,] he neglect[ed] his duties since our duties are always the welfare of the population, at all times." The SMEs determined that the appropriate course of action in this situation is a verbal warning and that option d is too severe. As such, the question is correct as keyed.

## CONCLUSION

A thorough review of the appellants' submissions and the test materials reveals that, other than the scoring changes noted above, the appellants' examination scores are amply supported by the record, and the appellants have failed to meet their burdens of proof in this matter.

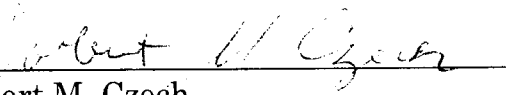
## ORDER

Therefore, it is ordered that these appeals 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 7TH DAY OF DECEMBER, 2016



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