



B-16

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Ronald Van Kluyve,
Deputy Police Chief (PM1598U),
Paterson

Examination Appeal

CSC Docket No. 2017-2624

ISSUED: MAR 24 2017

(RE)

Ronald Van Kluyve appeals his oral score on the promotional examination for Deputy Police Chief (PM1598U), Paterson. It is noted that the appelliant received a final average of 85.250 and ranks second on the resultant eligible list.

The subject promotional examination was held on December 8, 2016. It is noted for the record that this was an oral examination consisting of four questions, relating to Police Administration, Police Management, Criminal Law, and Leadership/Supervision. 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 questions, or with a scenario and had to respond to a series of questions about the scenario.

Performances were recorded and scored by SMEs. 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 appelliant received a score of 4 for Police Administration, 4 for Police Management, 3 for Criminal Law, 4 for Leadership/Supervision, and a 4 for oral communication. On appeal, the appelliant disagrees with his scores for the Criminal Law and Leadership/Supervision questions.

CONCLUSION

The Criminal Law question referred to the Emergency Aid Doctrine. There were four parts. Part B asked for the two elements that must be met in order to justify a warrantless home entry or search under the emergency aid doctrine. Part D asked if the receipt of a 911 "open line" abandoned or hang up call alone gave the police grounds to enter a home without a warrant to investigate the nature of the emergency, and it asked candidates to explain why or why not.

For Part B, the assessors noted that the appellant did not mention that there must be a reasonable nexus between the emergency and the places to be searched. For Part D, the assessors noted that the appellant did not say, "No, there is not." On appeal, for Part B, the appellant argues that he said there must be an actual emergency and areas to be searched must be associated to that emergency. He states that he said officers are not permitted to search for contraband or evidence of a crime, and their search is limited to areas where people can be found, not inside drawers and such. For Part D, the appellant disagrees, stating that the case "Supreme Court of NJ vs. Frankel, (2004)"¹ indicates that officers have a duty to respond and investigate all 911 calls, even hang ups and open line types as they are emergent in nature and are a cry for help. He states that, without searching for the source of the call, a person in need may never be found.

In reply, for Part B, a review of the appellant's video and related documents indicates that, in response to part B, the appellant stated, "The, the two elements that must be met are that there has to be a real emergency that they're responding to. It's not um as a pretense or a ah, a subterfuge ah in any way, shape or form that they are using to try to enter the home alone." For this response, the appellant received credit for one element, that public safety official must have an objectively reasonable basis to believe that an emergency requires that he provide immediate assistance to protect and preserve life, or prevent serious injury. The appellant continued with, "And also that they, the part, the second part is that they are searching for um, but they're not searching for evidence or contraband or anything like that. They're actually seeking out a victim of a crime or someone who is in need of a medical emergency um, so that, however, if they do happen to see contraband or evidence of a crime in plain view that would be permissible. That would be considered reasonable as far as ah, the officer who has been allowed to seize that contraband and or um, instrument of a crime." In this passage, the first part of the response is essentially the same as the prior element, and the second part of the response is not an element that must be met. This was a formal examination setting and candidates were required to state what they meant to say. Credit could not be given for information that was implied or assumed. The appellant did not

¹ The appellant did not provide a citation, however, it appears that he is referring to *State v. Frankel*, 179 N.J. 586 (2004).

indicate in this response that there must be a reasonable nexus between the emergency and the places to be searched,

For part D, it is reiterated that the responses to the questions were formulated by SMEs, who determined that the answer to the question was no, and the reason why is that each case must be decided in the totality of the circumstances confronted by the public safety official, who must weigh the competing values at stake, the privacy interests of the home versus the interest in acting promptly under potentially lifesaving assistance to a person who may be incapacitated. In his reply, the appellant answered that the police absolutely had grounds to enter due to the design of the 911 call, and that the police had a duty to do so for the safety of the person on the scene. This response is simply incorrect. The question asked if a receipt of a call *alone* gives grounds to enter a home without a warrant, and it does not. *Frankel, supra*, states that an open 911 call, by its very nature, may fairly be considered an SOS call, a presumptive emergency, requiring an immediate response. However, the Court rejects the State's position that the receipt of a 9-1-1 open-line, abandoned or hang-up call alone gives the police the reasonable belief ground necessary to enter a home to investigate. Nor did the Court accept the defense position that such a call, followed by callbacks that only elicit busy signals and a visit to the home by an officer whose knock on the door goes unanswered, would never be sufficient to justify entry. Instead, it indicated that the proper approach weighs the competing interests, including the privacy interests of the home versus the interest in acting promptly to render potentially life-saving assistance, under the totality of the circumstances standard. *Id.* at 604 to 605. The appellant missed the responses noted by the assessor for both parts of question 3, and his score of 3 for this component will not be changed.

The Leadership/Supervision question indicated that, a year ago, the department had to terminate a 12-year veteran for misconduct, and that recently an officer with three years of experience was arrested and charged with official misconduct. The City Council is concerned as to whether these are isolated incidents or a widespread problem, and the Mayor has asked the Chief to address these concerns at a meeting next week. Since the Chief is out of town, the candidate has to attend the City Council meeting in his place and plans to inform them that the department uses an early warning system that collects officer performance data, which is analyzed to identify problems of behavior warranting intervention or remediation before those behaviors develop into glaring problems. Part A asks for data that should be considered or included in the department's early warning system according to the New Jersey Attorney General's Internal Affairs Policy and Procedures.

The assessors indicated that the appellant missed the opportunity to note that this data should include claims of duty-related injury. The appellant argues that he mentioned on-duty injuries.

A review of the appellant's performance indicates that he mentioned the claims of duty-related injury. Thus, his score for this component should be changed from 4 to 5.

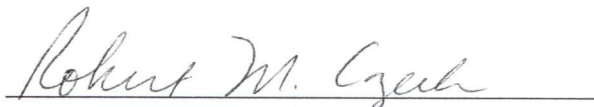
A thorough review of appellant's submissions and the test materials indicates that, except for question 4, the appellant's test score is amply supported by the record, and appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be granted in part. The appellant's score for question four should be raised from 4 to 5 and the remainder of the 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 22nd DAY OF MARCH, 2017



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