



STATE OF NEW JERSEY

In the Matter of Steven Dellavalle, *et al.*, Sheriff's Officer Sergeant, various jurisdictions

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket Nos. 2017-3740, *et al.*

Examination Appeal

ISSUED: AUG 21 2017 (JH)

Steven Dellavalle and Cecelia Gangi (PC3002U), Essex County; and Stephen Capoano and Matthew Scutti (PC3005U), Ocean County; appeal the promotional examination for Sheriff's Officer Sergeant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on May 4, 2017 and consisted of 80 multiple choice questions.

Ms. Gangi argues that she was only provided with 30 minutes for review and her ability to take notes on exam items was severely curtailed. As such, she requests that any appealed item in which she selected the correct response be disregarded and that if she misidentified an item number in her appeal, her arguments be addressed.

Regarding review, it is noted that the time allotted for candidates to review is a percentage of the time allotted to take the examination. The review procedure is not designed to allow candidates to retake the examination, but rather to allow candidates to recognize flawed questions. First, it is presumed that most of the questions are not flawed and would not require more than a cursory reading. Second, the review procedure is not designed to facilitate perfection of a candidate's test score, but rather to facilitate perfection of the scoring key. To that end, knowledge of what choice a particular appellant made is not required to properly evaluate the correctness of the official scoring key. Appeals of questions for which

the appellant selected the correct answer are not improvident if the question or keyed answer is flawed.

With respect to misidentified items, to the extent that it is possible to identify the items in question, they are reviewed. It is noted that it is the responsibility of the appellant to accurately describe appealed items.

An independent review of the issues presented under appeal has resulted in the following findings:

Question 2 presents candidates with the following sentence, "The suspect is living at 422 Laurel Avenue on the 2nd floor." The question asks how the sentence can be corrected to make it more appropriate in a law enforcement report. The keyed response is option b, "The suspect lived at 422 Laurel Avenue on the 2nd floor." Mr. Dellavalle argues that "stating that the suspect 'LIVED' (past tense) at 422 Laurel Avenue indicates that he no longer lives there, which is not the case. A mistake like that can be crucial . . ." He maintains that option a, "On the 2nd floor of 422 Laurel Avenue is where the suspect lives," is the only viable option. Harvey Wallace and Cliff Roberson, *Written and Interpersonal Communication Methods for Law Enforcement* (5th ed. 2012), provides, under the section, "General Rules for Report Writing," "Law enforcement reports are generally written about past events. Accordingly, under most circumstances, they should be written in the past tense. Rather than write that the car is black, state that the car was black. (It may have been repainted since then.)" As such, the question is correct as keyed.

Question 18 refers to Donald J. Schroeder and Frank Lombardo, *Management and Supervision of Law Enforcement Personnel* (5th ed. 2013). The question indicates that you are speaking to Officer Milgram about an assignment and Officer Milgram nods his head every so often to let you know that he is listening to you, but you can tell that he does not fully understand the assignment. Officer Milgram was only acting as if he understood you. Candidates are required to complete the following sentence, "According to Schroeder and Lombardo, this is an example of . . ." The keyed response is option b, polite listening. Ms. Gangi contends that option d, selective listening, is the best response. In this regard, she refers to the text which provides, under the section, "Selective Listening":

The captain describes to [Officer] Ginty the ten dimensions in which he was rated, in nine of which he barely met the standard rating and in one of which he received an outstanding rating. The captain spends most of the time discussing the nine dimensions in which Ginty performed poorly. When asked about the meeting later, Ginty states, "The skipper really liked my performance. All he talked about was that dimension in which I was rated as outstanding.' People like to hear

what pleases them, and they tend to block out that which they do not like.

The question does not indicate that Officer Milgram, unlike Officer Ginty in the example above, is simply focusing on information that pleases him. Rather, the question indicates that Officer Milgram does not understand what you are telling him. In this regard, the text provides, under the section, "Listening Failure":

The most frequent obstruction to communication is failing to listen. Most of the time it is due to 'polite listening.' This occurs often when the sender is the superior, and the receiver is the subordinate. Not wishing to seem incompetent or imply that the boss is not communicating clearly, the subordinate acts as if he understands, whereas in actuality he is engaging in polite listening.

Thus, the question is correct as keyed.

Question 33 refers to the Impounded Vehicles Policy provided to candidates in the test booklet. The question indicates that Joe was driving his mother's vehicle when he was pulled over by Officer Santiago on the street where his mother lives. He was then taken into custody. Officer Santiago called Joe's mother to ask if she could take control of the vehicle. The question asks for the true statement in terms of how Officer Santiago handled this situation. The keyed response is option d, "Officer Santiago violated the policy." Ms. Gangi presents that the phrase, "called Joe's mother," is unclear since "one cannot determine if the mother was standing there and he called her over or if he called her on the phone. It [was] also inconclusive whether or not they were in front of the mother's house . . ." She also argues that this item is similar to "a prior question . . . [in which] the driver and co-worker were in the car. The co-worker took possession of the vehicle and . . . the best answer choice (keyed option) [was] that there was not enough information."¹ The Impounded Vehicles Policy provides, under the section, "Vehicle Impounds:"

When an officer makes an arrest and the arrestee is the driver of the vehicle, the following procedures will apply:

- All vehicles requiring processing by a Crime Scene Analyst or is determined to be part of a continuing investigation shall be impounded.

¹ Ms. Gangi appears to be referring to question 44 in which a driver of a business vehicle was taken into custody and the officer permitted the driver's co-worker, who was a passenger in the vehicle, to take control of the vehicle. Unlike this item, question 33 does not indicate that Joe's mother is in the vehicle.

- All vehicles will be impounded when the driver is taken into custody, except under the following conditions:
 - The owner or coworker (in the case of a business owned vehicle) is present and has a valid driver's license and is physically able to take control of the vehicle.
 - Another person is present with a valid driver's license and is physically able to take control of the vehicle, and the arrested person agrees to turn the vehicle over to them.
 - If the arrest is made on private property, and the legal owner of the vehicle is present, the vehicle can remain after obtaining approval from the property owner

The Impounded Vehicles Policy requires Joe's mother, the owner, to be present in order to take control of the vehicle. The question does not indicate that she is present. Thus, Officer Santiago violated the Impounded Vehicles Policy by calling Joe's mother. As such, the question is correct as keyed.

Question 46 indicates that it is probation report night at the judicial center and there is minimal staffing. A sergeant and three officers are assigned to maintain security at the judicial center where there are 40 people (employees and probationers). The fire alarm begins to sound and one of the officers smells smoke. The question asks how the Sergeant should best handle this situation. The keyed response is option c, "Evacuate all personnel not essential to the incident from the building, while maintaining building security." Mr. Dellavalle, who selected option d, "Evacuate the building until the fire department can arrive on scene," argues that the answer choice which provides, "evacuate the building and notify the fire department," is the best response² since "leaving personnel in a building, which may be on fire, is extremely dangerous and would not be the best decision for any Sheriff's [Officer] Sergeant to make." The Subject Matter Experts (SMEs) indicated that essential personnel should remain in the building and building security should be maintained. Accordingly, option d is not the best response.

Question 47 indicates that you are executing a court ordered writ of possession on a single-family house. The appointed locksmith, hired by the plaintiff, attempts to gain access to the single-family house. During the locksmith's attempts to gain access, you discover that the house is occupied and there is smoke exiting from the roof vents indicating the house is on fire. You radio dispatch to

² It is noted that "evacuate the building and notify the fire department" was not provided as answer choice to candidates. Furthermore, none of the answer choices indicated, "notify the fire department."

have fire and EMS respond to the scene. The question asks what should you do next. The keyed response is option b, "Have the locksmith vacate the scene to a safer location." Mr. Dellavalle maintains that option a, "Have the locksmith continue to attempt to gain access to the building until firefighters arrive," is equally correct. He asserts that "getting the locksmith to safety almost certainly means that the occupants of the house will die or become seriously injured . . . Simply standing next to the front door of a house that may be on fire poses a minimal risk compared to being trapped, locked inside a burning house with nowhere to go." It is noted that the question does not provide any information regarding potential victims or the layout of the house. As such, it is not clear how Mr. Dellavalle concludes that "the occupants of the house will die or become seriously injured" and they "are trapped, locked inside a burning house with nowhere to go." Moreover, the SMEs indicated that ensuring the safety of the locksmith is your next step. The locksmith is a civilian and thus, his or her safety is as important as any occupant in the home. Furthermore, in an emergent situation, a locksmith is not the most expedient way to force open a door. As such, option b is not the best response.

Question 60 indicates that Officer Dietrich was approached by a member of the court staff reporting that an individual who appeared out of place was in a restricted area. Officer Dietrich immediately reported to the location and met the individual in the restricted area where there was a maintenance cart with sharp tools located a few feet from the individual. The individual displayed signs of mental illness and was demanding to speak with Judge Pine, who he has criminal proceedings with in the courtroom. Officer Dietrich notifies you. The question asks how should you best advise Officer Dietrich. The keyed response is option d, You should advise Officer Dietrich to "escort the individual to the courtroom while you assign another officer to investigate the security breach." Mr. Capoano, who selected option c, "pat search the individual and allow him to go back to court," argues that "the subject is in a restricted area therefore he is trespassing and could be arrested/charged. He is by a tool cart with sharp objects, so he should be patted down or sent back through the screening area. How can you sent the subject into the courtroom with a possibility that he has tools or weapons with him[?]" The SMEs indicated that it would be necessary to escort the individual out of the restricted area and not allowed to wander about. In addition, the SMEs indicated that it would be imperative to determine the source of the security breach so that this situation does not occur again. The SMEs further indicated that while it is feasible that the individual could be pat searched, the two steps noted above must be done. In this regard, given that option c does not indicate that the individual would be escorted to the courtroom, it is not the best response.

Question 61 indicates that Dan, a teacher at Shady High School, drives to Shady Street, where Jane Green, a 16-year-old student of Dan's, is working as a prostitute. Dan offers Jane money in exchange for sex, and they drive off in Dan's

car together. Undercover officers have been investigating Dan for an ongoing sexual relationship with Jane and witnessed this exchange. Dan was later arrested and charged. Candidates are presented with three charges. The question asks, pursuant to Title 2C, with what Dan should be charged. The keyed response is option b, I, Engaging in prostitution as a patron,³ and III, Aggravated sexual assault, only. *N.J.S.A. 2C:14-2* (Sexual assault) provides, in pertinent part:

- a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:
 - (1) The victim is less than 13 years old;
 - (2) The victim is at least 13 but *less than 16 years old*; and
 - (a) The actor is related to the victim by blood or affinity to the third degree, or
 - (b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or
 - (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household . . . (emphasis added)

Given that Jane is 16 years old, aggravated sexual assault is not an appropriate charge. As such, the Division of Test Development and Analytics has determined to rekey this item to option a, I, Engaging in prostitution as a patron, only, prior to the lists being issued.

Question 72 provides candidates with five statements and asks which are types of force formally recognized by the Attorney General Guidelines. The keyed response, option d, includes all five statements: I, Deadly force; II, Physical force; III, Mechanical force; IV, Physical contact; and V, Constructive authority. Mr. Dellavalle refers to the Attorney General Use of Force Policy (revised June 2000) and argues that physical contact and constructive authority “are NOT considered uses of force.” He maintains that “everyone is extremely aware of all the concepts mentioned in the policy . . . but is important that we differentiate ACTUAL force from routine everyday citizen contact.” As noted in the Revised Attorney General Policy on Conducted Energy Devices (October 7, 2010), “the Attorney General Use of Force Policy (rev. 2000) formally recognizes five distinct types of force: constructive authority, physical contact, physical force, mechanical force, and deadly force.” As such, the question is correct as keyed.

³ *N.J.S.A. 2C:34-1* (Prostitution and related offenses) provides, in pertinent part that a person commits an offense if the actor engages in prostitution as a patron. See *N.J.S.A. 2C:34-1b(1)*.

CONCLUSION

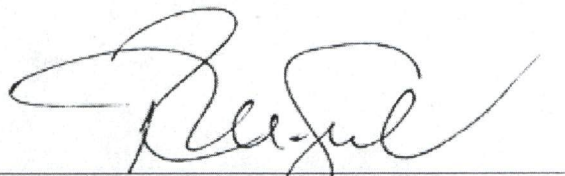
A thorough review of the appellants' submissions and the test materials reveals that, with the exception of the scoring change noted above, the appellants' examination scores are amply supported by the record, and the appellants have failed to meet their burdens of proof in this matter.

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 16TH DAY OF AUGUST, 2017



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