

B-23



STATE OF NEW JERSEY

In the Matter of Jason Matthews, *et al.*, Police Lieutenant, various jurisdictions

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket Nos. 2017-1707, *et al.*

Examination Appeal

ISSUED: FEB 08 2017 (JH)

Jason Matthews, Neal Pedersen and Lawrence Petrola (PM1390U), Brick; John Mayer (PM1405U), Elizabeth; Christopher Leonhardt (PM1442U), Point Pleasant; and David Wardrope (PM1456U), Verona; appeal the examination for Police Lieutenant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on October 27, 2016 and consisted of 80 multiple choice questions.

Mr. Mayer presents that he was only provided with 30 minutes for review and he was not permitted to review his test booklet, answer sheet and the correct answer key. In addition, he argues that his ability to take notes on exam items was severely curtailed. As such, he requests that any appealed item in which he selected the correct response be disregarded and that if he misidentified an item number in his appeal, his 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 provides:

Sergeant Kelly is interviewing a burglary suspect. The suspect said that he was breaking into a car to steal a visible laptop computer when he was confronted by the owners of the car, a husband and wife. The suspect said that he hadn't previously been aware of who owned the car or laptop. The suspect said as he tried to run away, he scuffled with the husband and punched him several times. He called the husband a 'faggot' before finally escaping without the laptop. The victims gave the same account of the incident. Sergeant Kelly asks you if this crime should be treated as a bias incident.

Candidates were required to complete the following sentence, "You should clarify that according to the definition of a bias incident in the N.J. Attorney General's Bias Incident Investigation Standards,¹ this crime is . . ." The keyed response is option c, "not bias-based, because while the suspect uttered a derogatory slur, the motive for the commission of the crime was not based on the sexual orientation of the victim." Mr. Mayer argues that option b, "bias-based, because the suspect uttered a derogatory slur based on the real or perceived sexual orientation of the victim," is correct. He refers to the Attorney General Bias Incident Investigation Standards (Revised January 2000) (Standards) section 9, "Guidelines for Confirming Bias Incidents," which provides:

To assist law enforcement officers in confirming whether a suspected bias incident is actually motivated by bias, the following criteria shall

¹ The Bias Incident Investigation Standards provides:

For New Jersey law enforcement purposes, a bias incident is defined as any suspected or confirmed offense or unlawful act which occurs to a person, private property, or public property on the basis of race, color, religion, sexual orientation or ethnicity. An offense is bias-based if the motive for the commission of the offense or unlawful act is racial, religious, ethnic or pertains to sexual orientation.

be applied. These criteria are not all inclusive. Common sense judgement must also be applied in the final determination.

Motive

1. The absence of any other apparent motive for the bias incident.
2. Display of any bias symbols, words, graffiti or other types of evidence.
3. A common sense review of the facts and circumstances surrounding the incident. Consider the totality of the circumstances. (Review *N.J.S.A. 2C:33-11*.)
4. How the victim feels about the incident.
5. Statements made by the suspects.
6. Statements made by the witnesses.
7. Prior history of similar incidents in the same area affecting the same victim group.

Mr. Mayer notes that the section concludes, "If after applying these criteria and asking the appropriate choice questions, a suspected bias incident cannot be definitely determined to be any other type of incident or is a borderline case, it should be confirmed as a bias incident for continuing investigation purposes." Mr. Mayer argues that since "[t]he question did not stipulate whether or not the victim was asked how he felt towards the incident [or] . . . whether or not the victim may or may not actually be a homosexual," this "lack of looking into such matters should meet the criteria of a borderline case, hence rendering this worthy of being investigated as a bias incident." The question indicates that the suspect was breaking into a car to steal a visible laptop and he had not been previously aware of who owned the car or laptop. Thus, the question makes it clear that the motive for the crime was to steal the laptop rather than the sexual orientation of the victim. As such, the question is correct as keyed.

Question 8 indicates that upon exiting a department store, Briana Carmichael set off the security alarm. Security staff asked Briana if she had anything in her possession that she had not paid for and she admitted immediately that she placed a dress she did not purchase into her large purse. Officers from your department arrive and are considering whether a stationhouse adjustment would be appropriate in this shoplifting situation since Briana is a juvenile. The question presents candidates with four statements and asks which information you would need to know in order to determine whether a stationhouse adjustment would be permitted by the Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses² in Briana's case. The keyed

² See Attorney General Law Enforcement Directive No. 2008-2, Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses (Revised March 2008) (Guidelines).

response, option c, does not include statement II, Briana's exact age. Messrs. Matthews, Mayer and Petrola argue that statement II is correct. Specifically, Messrs. Matthews and Petrola refer to the Guidelines which, under the section, "Other Factors to be Considered," provides:

Police shall also consider the following factors when determining the appropriateness of conducting a stationhouse adjustment:

1. Police shall consider the age of the offender. Younger offenders, particularly those who may be less able to understand the consequences of their actions may be more appropriate for stationhouse adjustment. However, no juvenile offender is automatically excluded due to age . . .

Mr. Mayer presents that Briana "may be a toddler incapable of not only understanding his/her actions but also incapable of understanding the stationhouse adjustment itself. An example of this would be a two year old child who takes the dress and puts it into her bag while the mother has her back turned." In this regard, Mr. Mayer refers to *N.J.S.A. 2C:20-11b(2)*³ and contends that "the required mental culpability for shoplifting is 'PURPOSELY' . . . It is thereby necessary to establish the age of said juvenile to determine the mental culpability prior to conducting a stationhouse adjustment in such a case." It is noted that the question does not ask of what Briana would be convicted since the trier of fact would be responsible for determining "mental culpability," and not the arresting officer. Mr. Mayer further contends that the question "never established that the suspect is indeed a juvenile to begin with. Many times a suspect lies about his/her age to avoid being charged as an adult." The question clearly informs candidates that Briana is a juvenile. Furthermore, while the Guidelines indicate that age is a consideration, it is not a determining factor. As noted above, the Guidelines state, "no juvenile offender is automatically excluded due to age." Accordingly, statement II is incorrect.

Question 26 provides:

³ *N.J.S.A. 2C:20-11b(2)* provides that shoplifting consists of the following act:

For any person purposely to conceal upon his person or otherwise any merchandise offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the processes, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof.

While reviewing reports from the previous day, you come across a report filed by Officer Berry, who responded to a disturbance call at the home of Jeanne Smith. Upon his arrival, he found Jeanne with her ex-husband, John. John had a substantial scratch on his forehead that required bandaging. Jeanne had no visible injuries, nor did she complain of pain. Both admitted to physically fighting each other. Jeanne was clearly intoxicated, had trouble standing, and used slurred speech. She admitted that she started the fight with John because she was angry with him for coming over to pick up their six-year-old daughter, and just wanted him to leave. John said that despite a temporary restraining order (TRO) prohibiting him from having contact with Jeanne, he came to her home to get his daughter because he was afraid that Jeanne, in her intoxicated condition, would harm his daughter. When Jeanne scratched him, he struck her in self-defense.

The question requires candidates to complete the following sentence, "According to *N.J.S.A. 2C:25-21*, Officer Berry should . . ." ⁴ The keyed response is option c,

⁴ *N.J.S.A. 2C:25-21* (Arrest of alleged attacker; seizure of weapons, etc.) provides, in pertinent part:

- a. When a person claims to be a victim of domestic violence, and where a law enforcement officer responding to the incident finds probable cause to believe that domestic violence has occurred, the law enforcement officer shall arrest the person who is alleged to be the person who subjected the victim to domestic violence and shall sign a criminal complaint if:
 - (1) The victim exhibits signs of injury caused by an act of domestic violence;
 - (2) A warrant is in effect;
 - (3) There is probable cause to believe that the person has violated *N.J.S. 2C:29-9*, and there is probable cause to believe that the person has been served with the order alleged to have been violated. If the victim does not have a copy of a purported order, the officer may verify the existence of an order with the appropriate law enforcement agency; or
 - (4) There is probable cause to believe that a weapon as defined in *N.J.S. 2C:39-1* has been involved in the commission of an act of domestic violence.
- b. A law enforcement officer may arrest a person; or may sign a criminal complaint against that person, or may do both, where there is probable cause to believe that an act of domestic violence has been committed, but where none of the conditions in subsection a. of this section applies.
- c. (1) As used in this section, the word 'exhibits' is to be liberally construed to mean any indication that a victim has suffered bodily injury, which shall include physical pain or any impairment of physical condition. Where the victim exhibits no visible sign of injury, but states that an injury has occurred, the officer should consider other relevant factors in determining whether there is probable cause to make an arrest.

“arrest both John and Jeanne for their respective offenses.” Mr. Leonhardt argues that option a, “arrest Jeanne for assault, but not John, since he used ‘reasonable force’ to defend himself,”⁵ is correct. In this regard, Mr. Leonhardt refers to *N.J.S.A. 2C:25-21* and Section 3.8 (Mandatory Arrest) of the State of New Jersey Domestic Violence Procedures Manual (July 2004) and asserts that since you are reading a report from the night before, “it would be premature and inappropriate for [you] to order the arrest” because “probable cause exists only to arrest Jeanne at this time (primary aggressor, visible signs of injury & admission). What probable cause exists to arrest John? The most logical assumption would be for violating TRO . . . or simple assault . . . [W]hat provision of TRO did he violate? . . . This is not clear from the fact pattern, nor has the existence of the TRO been verified through the DV Central Registry.” Mr. Leonhardt also refers to *State v. Wilmouth*, 302 *N.J. Super.* 20 (App. Div. 1997) for the proposition that “a defendant cannot be deemed to be in contempt of a domestic violence restraining order where his conduct conforms with the parties’ understanding of the terms of the order, and where his conduct does not, in itself, constitute domestic violence.” The Subject Matter Expert (SME) determined, in part, that John must be arrested since he expressly acknowledged the TRO and violated the terms by having contact with Jeanne. In this regard, the question clearly states, as noted above, “John said that despite a temporary restraining order (TRO) prohibiting him from having contact with Jeanne, he came to her home to get his daughter . . .” Thus, the question is correct as keyed.

Question 27 indicates that Jell Bell is employed as a DJ at a local “17 and under” teen nightclub. One evening, he gave a water bottle to Jenny Jones, a patron. After opening the bottle and drinking most of its contents, Jenny became disoriented, began to sweat profusely, and in an attempt to cool down, she ran outside where she was nearly struck by a passing motorist. Through investigation, it was determined that Jell had mixed “3,4-Methylenedioxymethamphetamine” (MDMA) into Jenny’s water bottle. Jell admitted to your investigators that he had often thought about “spiking” the water bottles because girls would feel less inhibited and would agree to have sexual intercourse with him. So, he gave a water bottle “spiked” with MDMA to Jenny. The question asks, based on the above

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- (2) In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider the comparative extent of the injuries, the history of domestic violence between the parties, if any, and any other relevant factors.
 - (3) No victim shall be denied relief or arrested or charged under this act with an offense because the victim used reasonable force in self defense against domestic violence by an attacker.

⁵ It is noted that Mr. Leonhardt misremembered option a as “arrest Jeanne only, and charge her with the relevant offense.”

circumstances, for the most appropriate Title 2C charge for Jell. The keyed response is option c, "Endangering Another Person."⁶ Mr. Pedersen argues that option a, "Luring, Enticing Child by Various Means," is correct since Jell "committed a crime with the purpose of having sex with the juvenile. He stated that his intention was to have sex with her by drugging her." *N.J.S.A. 2C:13-6* (Luring, Enticing Child by Various Means) provides, in pertinent part:

A person commits a crime of the second degree if he attempts, via electronic or any other means, to lure or entice a child or one who he reasonably believes to be a child into a motor vehicle, structure or isolated area, or to meet or appear at any other place, with a purpose to commit a criminal offense with or against the child.

The question indicates that Jenny is a patron of the club and does not state that she was lured or enticed into the club by Jell. Accordingly, option a is incorrect.

Question 39 refers to Kären M. Hess, Christine Hess Orthmann and Shaun LaDue, *Management and Supervision in Law Enforcement* (7th ed. 2016), in which the authors state that it is important for managers to get to know their subordinates better and, in the process, get to know themselves better. They discuss the model called the Johari Window as a way for people to accomplish this. The question asks, according to the Johari Window model, which of an individual's areas can be widened through the process of self-disclosure and feedback (*i.e.*, honest interaction with others). The keyed response is option a, "open self." Mr. Mayer, who misremembered the question as asking, "which 'self' is realized through self-disclosure, feedback and honest interaction with you," maintains that option d, "undiscovered self," is the "only correct and acceptable answer." As noted previously, the question asks for the areas which can be *widened*. In this regard, the text provides, "According to this model, through the process of self-disclosure and feedback – that is, honest interaction with others – you can widen the area of openness, reduce the hidden and blind parts, and learn something about your undiscovered self." As such, the question is correct as keyed.

Question 49 refers to Hess, Orthmann and LaDue, *supra*. The question indicates that Sergeant Griffin is having difficulty completing his work on time, but

⁶ *N.J.S.A. 2C:24-7.1(a)* (Endangering another person; offense created; degree of crime) provides:

- (1) A person commits a disorderly persons offense if he recklessly engages in conduct which creates a substantial risk of bodily injury to another person.
- (2) A person commits a crime of the fourth degree if he knowingly engages in conduct which creates a substantial risk of serious bodily injury to another person.
- (3) A person commits a crime of the third degree if he knowingly engages in conduct which creates a substantial risk of death to another person.

does not feel comfortable delegating any tasks to his subordinates. You meet with him to make sure that he has the proper understanding of what delegation is. Candidates are required to complete the following sentence, "You should tell him that, according to Hess *et al.*, delegation can **BEST** be thought of as transferring . . ." The keyed response is option d, "authority." Messrs. Matthews and Pedersen maintain that option b, "responsibility," is correct. In this regard, they refer to the text which provides, "Delegated tasks should be concise and clear. You must also give authority along with a level of responsibility." It is noted that the text also states, "Delegation, or transferring authority, is a necessary and often difficult aspect of management because it requires placing trust in others to do the job as well as, or better than, the manager would do it . . . Delegation is not passing the buck, shirking personal responsibility, or dumping on someone." The text further notes, "Delegation gives strength to the delegator and the person delegated to. It is not an abdication of responsibility." Thus, while the person delegated to may be granted an aspect of responsibility, the delegator has ultimate responsibility for the completion of the task. Accordingly, option d is the best response.

Question 65 refers to Hess, Orthmann and LaDue, *supra*. The question indicates that you are walking down the city block when you get a feeling that a nearby individual likely poses a threat, based on his body language. Neither of you have spoken a word to each other at this point, but his clenched fists and icy stare have you concerned. Candidates are required to complete the following sentence, "Based on the text by Hess *et al.*, your determination that this person may pose a threat is **BEST** described as being produced by . . ." The keyed response is option b, "intuition." Mr. Wardrope argues that "this question referred to the 'pucker factor'⁷ . . . [and] specifically asks 'being produced by' . . . [H]owever, intuition is not a process and cannot produce the 'pucker factor.' The best answer choice listed would be Whole-Brain Thinking [option a], which is a process that produces intuition, as well as the 'pucker factor.'" Mr. Wardrope does not explain how he arrived at his conclusion that "being produced by" equates to a result of "a process" of which intuition is not. Nevertheless, with respect to whole-brain thinking, it is noted that the text indicates that "brain research also indicates differences in the way each side of the brain processes information differently . . . The left side uses reasoning; the right side, imagination and creativity . . . Our complex, rapidly changing modern society, however, requires the ability to use *both* logic and creativity in problem solving and decision making – that is, **whole-brain thinking**." Regarding intuition, the text notes:

Intuition crosses the left and right hemispheres, integrating facts and feelings. Decisions may be the slow, rational, analytic result of deliberate reasoning or the rapid emotionally based result of intuition. Officers frequently act intuitively in policing, but find it difficult to

⁷ It is noted that the question does not refer to the "pucker factor."

explain. They instinctively read and react to danger signals based on training and experience . . . Some have called this phenomenon the 'Pucker Factor' . . . Whatever it is called, it refers to the officer's ability to just *know* that the individual poses a threat, without either of them ever having to say a word . . . 'Veteran officers especially are experts at spotting body language signals and verbal cues that are precursors to nefarious intent.' (Glennon, 2007).

Thus, despite Mr. Wardrope's assertion to the contrary, the text does not state that whole-brain thinking is "a process that produces intuition." Since the question does not describe a situation in which the officer engages in decision making using both logic and creativity, *i.e.*, whole-brain thinking, option a is incorrect.

For question 72, since Mr. Petrola selected the correct response, his appeal of this item is moot.

CONCLUSION

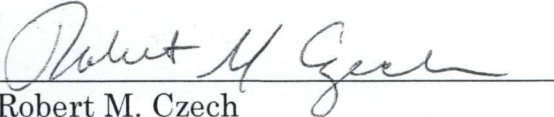
A thorough review of appellants' submissions and the test materials reveals that the appellants' examination scores are amply supported by the record, and the appellants have failed to meet their burden of proof in this matter.

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 ON
THE 8TH DAY OF FEBRUARY, 2017


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