

B-115



STATE OF NEW JERSEY

In the Matter of Mark Evangelista, *et al.*, Police Lieutenant, various jurisdictions

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2015-1536

Examination Appeal

ISSUED: FEB 09 2015

(JH)

Mark Evangelista, Tyrone Hickey and Pawel Wojtowicz (PM0945S), Jersey City; Mark Rakaukas (PM0961S), Mount Laurel; Michael Bergbauer and Glenn Gaston (PM0982S), Union City; Jonathan Shluker (PM0987S), West Orange; and Christopher Sylvester (PM0996S), Plainfield; appeal the written portion of the examination for Police Lieutenant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject exam was administered on October 23, 2014 and consisted of 80 multiple choice questions.

The appellants argue that they were only provided with 30 minutes for review and they were not permitted to review their test booklets, answer sheets and the correct answer key. In addition, they contend that their ability to take notes on exam items was severely curtailed. As such, they request that any appealed item in which they selected the correct response be disregarded and that if they misidentified an item number in their appeals, their 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 11 indicates that two of your new recruits at the County Police Academy failed the drug screening. The question presents candidates with three statements and asks for the action that the Attorney General's Law Enforcement Drug Testing Policy does not require law enforcement agencies to do. The keyed response, option c, included statement II, "Implement a random drug testing program for sworn officers." Mr. Rakauckas argues that statement II is correct since random drug testing is mandatory in his jurisdiction. It is noted that the instructions provided to candidates in the test booklet state: "When answering questions contained in this booklet, you should base your decisions on the information provided, as well as your knowledge of the subject matter. Do NOT automatically assume that the rules of your particular department apply." In this regard, the question clearly refers to the Attorney General's Law Enforcement Drug Testing Policy which states:

This policy does not require law enforcement agencies to drug test applicants, nor does it require law enforcement agencies to implement a random drug testing program for sworn officers. However, law enforcement agencies have an independent obligation to undertake the drug testing of individual officers when there is reasonable suspicion to believe that the officer is illegally using drugs.

Thus, the question is correct as keyed.

Question 19 provides:

Officer Rules stops a pick-up truck at 2 a.m., after radar indicates that the truck exceeded the speed limit. Officer Rules also observed the truck "weaving" (crossing over the center line). Upon speaking to the driver, Henry Magoo, Officer Rules observes that Magoo's eyes are bloodshot, his speech is slurred, and there is an odor of an alcoholic beverage on his breath. Magoo admits to Officer Rules that he had consumed a couple of beers at a bar. Magoo fails several field sobriety

tests, but refuses to submit to a breathalyzer exam. Officer Rules then places Magoo under arrest and immediately transports him to the local hospital, where he asks Magoo to submit voluntarily to the taking of a blood sample. Magoo refuses and Officer Rules then calls you, the shift commander, and advises you of the situation. He tells you that he wants a nurse to draw Magoo's blood, without first obtaining a search warrant.

The question asks, based on the October 8, 2013 New Jersey Supreme Court order regarding this type of situation, for the action you should now advise Officer Rules to take. The keyed response is option c, Advise Officer Rules to "obtain a telephonic search warrant from a designated Municipal Court judge prior to having the blood drawn. No showing of exigency to justify the warrant being issued telephonically is required." Mr. Hickey argues that option d, "charge Magoo with refusing to submit to a breathalyzer test and forget about having Magoo's blood drawn, since forcibly drawing blood from a person is a due process violation," is the best response. In this regard, he contends that the question is based on *Missouri v. McNeely*, 569 U.S. ___ (2013). He presents that each court case "has specific circumstances and if you change one fact or provide an additional course of action, like the option of a refusal listed in the answer choice [d], the outcome will most certainly change . . . Choice D would have dramatically changed the course of *McNeel[e]y* if presented during the case." He further argues that "there is no requirement under Missouri or New Jersey Law that requires an officer to seek a warrant for blood when someone refuses to provide a breath sample. The implied consent law addresses the issue and imposes penalties for refusing to provide a breath sample . . . I do not believe that everyone who refuses to provide a sample should be routinely taken to the hospital for a blood sample as answer c suggests when there are less intrusive options available." The question specifically refers to the New Jersey Supreme Court order dated October 8, 2013. Option d provides, in pertinent part, "forget about having Magoo's blood drawn, since forcibly drawing blood from a person is a due process violation." However, the October 8, 2013 order permits an officer to seek a warrant for nonconsensual blood testing in a driving-while-intoxicated case where no indictable charge is anticipated. As such, option d is incorrect.

Question 26 provides:

While investigating the suspicious death of a 3-month-old child, detectives bring in Marla Bishop, the child's mother, to the County Prosecutor's Office for questioning. Once at the office, Bishop is permitted to use a phone to call her mother. During the call, detectives overhear Bishop say that she has not been permitted to have an attorney. One of the detectives interrupts Bishop and tells her no one had denied her request for a lawyer since said she never asked for one. The detective then prepares to take her statement. During this

time, but unbeknownst to Bishop, her family hires an attorney, who arrives at the Prosecutor's Office. A detective tells the attorney that he will see if Bishop wants to speak to the attorney. The detective then asks Bishop if she wants to see an attorney who is in the office. Believing that he is referring to an Assistant Prosecutor, Bishop replies that she wants to finish her statement first. Bishop then gives an extremely self-incriminating statement. The detectives now come to you, their supervisor, concerned that the statement will be suppressed. They ask if you think they should have allowed Bishop to speak with a lawyer prior to obtaining her statement.

The question asks what you should tell them based on relevant case law. The keyed response is option c, "Bishop's statement to her mother constituted an effective trigger for her right to counsel. Bishop was entitled to speak to the attorney hired by her mother, before any questioning, and the statement will likely be suppressed." Mr. Wojtowicz argues that "at no point in the stem of the question did it state w[h]ether I was being tested on Federal or State case[]law . . . According to Federal case[]law[,] *Davis v. United States* (1994)[,] a defendant must state a request for counsel clearly and unambiguously, which is obviously different from *State v. Elmore*." In *Davis v. United States*, 512 U.S. 452 (1994), the United States Supreme Court held that police must only stop questioning if a suspect makes a request for counsel that is unambiguous or unequivocal. However, the State of New Jersey does not follow the restrictive approach described in *Davis v. United States*, *supra*. Rather, as noted in *State v. Elmore*, 205 N.J. Super. 373 (App. Div. 1985), "it is also well established that even an equivocal request for counsel is effective to trigger the protections of the Fifth Amendment with respect to an interrogation." *Id.* at 379. *See also*, *State v. Wright*, 97 N.J. 113 (1984) and *State v. McCloskey*, 90 N.J. 18 (1982). Given that the approach used in *Davis v. United States*, *supra*, is not utilized and thus, does not directly affect police procedures in the State of New Jersey, it is not clear why Mr. Wojtowicz believed he was being tested on federal case law. It is further noted that this item is sourced to *State v. Elmore*, *supra*, in which the court determined that "Elmore's statement to her mother that she was not allowed to have a lawyer constituted the kind of an equivocal request for counsel described in the cited cases as an invocation of her Miranda rights which should have forestalled further interrogation." *Id.* at 380. As such, the question is correct as keyed.

Question 27 indicates that Detective Murray is investigating a possible Endangering Welfare of Children offense. The question asks, "According to the specific language in the revised N.J.S.A. 2C Endangering Welfare of Children statute, a child is defined as any person under what age?" The keyed response is option d, 18.¹ Mr. Rakauckas presents that he was unaware of the law change and

¹ N.J.S.A. 2C:24-4b(1) indicates that a child means any person under 18 years of age.

"I understand that I should know this, but the question did not state from recent law change of 2013, etc." Mr. Rakauckas is correct in his assertion that candidates should keep apprised of developments or changes in law. It is noted that the question did indicate that it was referring to the revised statute. Moreover, even if the question specifically referred to the "change of 2013," it is not clear how it would have affected Mr. Rakauckas' response since he indicates that he was not aware of said change.

Question 29 indicates that the Chief has assigned you to review department policy and training regarding domestic violence to ensure the department is in compliance with Title 2C. Candidates are presented with four statements. The question asks, according to *N.J.S.A. 2C:25-19*,² for the person who is a victim of

² *N.J.S.A. 2C:25-19* provides:

- a. "Domestic violence" means the occurrence of one or more of the following acts inflicted upon a person protected under this act by an adult or an emancipated minor:

- (1) Homicide N.J.S. 2C:11-1 et seq.
- (2) Assault N.J.S. 2C:12-1
- (3) Terroristic threats N.J.S.2C:12-3
- (4) Kidnapping N.J.S.2C:13-1
- (5) Criminal restraint N.J.S.2C:13-2
- (6) False imprisonment N.J.S.2C:13-3
- (7) Sexual assault N.J.S. 2C:14-2
- (8) Criminal sexual contact N.J.S.2C:14-3
- (9) Lewdness N.J.S. 2C:14-4
- (10) Criminal mischief N.J.S.2C:17-3
- (11) Burglary N.J.S. 2C:18-2
- (12) Criminal trespass N.J.S. 2C:18-3
- (13) Harassment N.J.S. 2C:33-4
- (14) Stalking P.L.1992, c.209 (C.2C:12-10)

When one or more of these acts is inflicted by an unemancipated minor upon a person protected under this act, the occurrence shall not constitute "domestic violence," but may be the basis for the filing of a petition or complaint pursuant to the provisions of section 11 of P.L.1982, c.77 (C.2A:4A-30).

- d. "Victim of domestic violence" means a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member. "Victim of domestic violence" also includes any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant. "Victim of domestic violence" also includes any person

domestic violence as defined in the statute. The keyed response, option c, includes statement II, "17-year-old female who is subjected to domestic violence by the father of her unborn baby." Mr. Gaston argues that this statement "never mention[s] the age of the father of the child. A juvenile father is not emancipated until the child is born, where a juvenile mother is emancipated when pregnant . . . Age of the actor comes into play and needed to make a complete determination." A "victim of domestic violence" must meet certain criteria pursuant to *N.J.S.A. 2C:25-19(d)*. In this regard, a victim of domestic violence must be subject to "domestic violence" which is defined, pursuant to *N.J.S.A. 2C:25-19(a)*, as the occurrence of a qualifying act or acts inflicted upon a person protected under the act *by an adult or an emancipated minor*. It is noted that none of the four statements provided to candidates indicate whether the perpetrator is 18 years of age or older or is an emancipated minor.³ Thus, it is not possible to determine whether domestic violence occurred without this information. Accordingly, the Division of Selection Services determined to omit this item from scoring.

Question 33 refers to Kären M. Hess and Christine Hess Orthmann, *Management and Supervision in Law Enforcement* (6th ed. 2012). The question indicates that you need to order some new equipment for your department. In order to save yourself time, you delegate to your subordinate the task of researching the various types of equipment available for order. After she has completed the research, you would like her to give you her opinion about which equipment might best fit the department's needs. You will then make the decision of which equipment to purchase. The question asks, according to Hess and Orthmann, for the level of authority that you need to give her to allow her to complete this task. The keyed response is option d, Recommending. Mr. Evangelista argues that option c, Acting, is the best response. He contends that the question asks for the level of authority needed for the Sergeant to "complete the task." He argues that these "words show that the Captain has the confidence that the Sergeant can handle the task." Also, "this is subject to interpretation in the sense that whether the Captain's confidence for the Sergeant to 'complete the task' was meant for any particular task, or for the task of conducting the research itself . . . [I]t can be argued that the Captain giving the level of authority to 'complete any task' requires ACTING authority." It is noted that the text indicates:

who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

- e. "Emancipated minor" means a person who is under 18 years of age but who has been married, has entered military service, has a child or is pregnant or has been previously declared by a court or an administrative agency to be emancipated.

³ While all four statements indicate the victim was "subjected to domestic violence," it is not possible to determine whether domestic violence occurred without the above noted information regarding the perpetrator.

It is not enough to delegate a task. The employee also needs the necessary authority to get the task done. To avoid problems, managers need to match tasks with one of three levels of authority:

1. *Recommending*: Assign an employee to research available options and present the manager with a recommendation of the best choice.
2. *Informing and implementing*: Assign an employee to research and choose the best option, inform the manager and be ready to implement it.
3. *Acting*: Give the employee the authority to act, if the manager is confident the employee can handle the task independently.

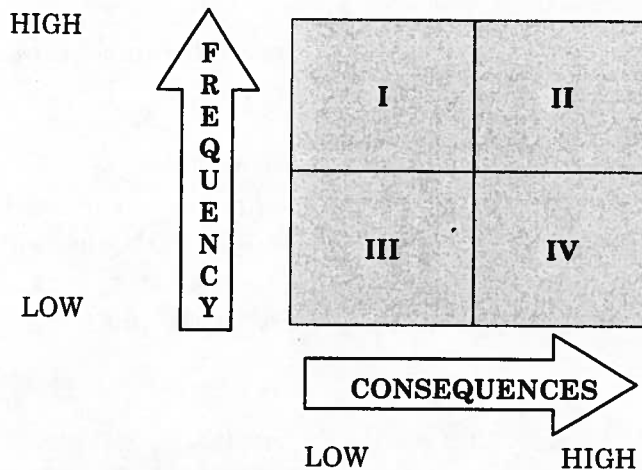
The question indicates that you are simply seeking the Sergeant's recommendation on the equipment, *i.e.*, "you would like her to give you her *opinion*" (emphasis added) and "you will then make the decision of which equipment to purchase." Providing the Sergeant with acting authority would mean she would have the authority to make the purchase. As such, the question is correct as keyed.

Question 34 refers to Hess and Orthmann, *supra*. The question indicates while you have many tasks to complete each day, you would rather not delegate any of them to your subordinates. The question asks, according to Hess and Orthmann, what will most likely happen if you habitually do not delegate tasks to your employees, and instead prefer to do them all yourself. The keyed response is option c, "There will not be another trained person to perform certain tasks if you ever need to be absent from work." Mr. Shluker notes that the text states, "If you do not learn to delegate, there will never be another person trained to perform the work *in times of crisis*" (emphasis added). He asserts that "everyday tasks and workload cannot be considered a time of crisis, the question clearly indicates that the tasks to be delegated are everyday tasks and makes no reference to a crisis situation." He maintains that option d, "Upper management will decide to give you more complex tasks and you will not have enough time to complete them all," is the best response. In this regard, he refers to the text which indicates that "delegation is the way managers and supervisors free up time to get their work done while avoiding getting tied up in administrivia . . ." and "supervisors/managers who complete their duties are given more responsibilities." He contends that "both of these statements represent a stronger argument for my answer choice." Part of time management is delegation. As noted in the text, "effective time management often is evaluated based on the amount of tangible product produced – *this much time* spent produced *these* results." As such, a manager who does not delegate is only able to complete the work the manager does him or herself rather than the work that could be accomplished by the appropriate utilization of staff. Thus, it is not clear why Mr. Shluker concludes that a manager who does not produce as much product as could

have been achieved with delegation would be given more responsibilities. The text provides, "The effective manager is one who can be gone for a few days or even weeks and everything continues smoothly during the absence. If you do not learn to delegate, there will never be another person trained to perform the work in times of crisis." The absence of a manager, who has not delegated and is thus, the only person who knows how to handle everyday tasks, is what creates the crisis. Accordingly, option c is the best response.

Question 44 refers to Hess and Orthmann, *supra*. The question indicates that you assign Sergeant Halpern to compile a data report on the number of parking violations for which your department has issued tickets during the last year. Sergeant Halpern tends to complain a lot when you give him special tasks and does not like to spend a lot of time compiling data reports. You are aware that it will take him about three hours to complete this task. However, at the beginning of Sergeant Halpern's shift, you describe to him the task that you want him to complete, tell him you want the task completed by the end of his shift, and then tell him that it should only take an hour of his time. Sergeant Halpern begins the task one hour before the deadline you gave him and is not able to finish it on time. Sergeant Halpern is frustrated that the task is taking longer than you indicated and you are frustrated that Sergeant Halpern has not completed the task by the deadline you gave him. The question asks for the barrier to communication that this situation illustrates. The keyed response is option b, "Tendency to say what we think others want to hear." Mr. Sylvester argues that option c, "Strained sender-receiver relationships," is correct since it appears that the Lieutenant and Sergeant have had these issues before, which has made them both frustrated with each other. He explains that "it appears that the relationship between the two is strained, which is what I believe more adequately fits the communication barrier issue for this incident." With respect to a strained relationship between sender and receiver, the text notes that "the very nature of their duties ensures that law enforcement officers will be placed in the center of situations that are typified by stress and hostility." This last barrier often arises when police have to take negative actions against an individual." The question does not indicate that there is hostility between the Lieutenant and Sergeant or that negative actions have been taken. As such, option c is not the best response.

Question 53 refers to Hess and Orthmann, *supra*. The question indicates that you are helping to prepare a training program for your department's officers. When choosing the training areas on which to focus, you decide to do this from the standpoint of reducing risk. The question notes that Hess and Orthmann present a training criticality matrix to illustrate where training investments should be focused on first. In this regard, the question presents candidates with the following diagram in the test booklet:



The four numbered quadrants (I, II, III, and IV) represent the four possible combinations of frequency and consequences.⁴ The question asks, based on the text and the diagram, for the quadrant on which training investments should be focused on first. The keyed response is option d, "IV." Mr. Bergbauer maintains that "the graph created for the exam was not representative of the actual matrix and, consequently, internally flawed . . . The keyed answer, (d) (Roman Numeral IV in the graph), was identified in the exam as 'high frequency, high consequences.' The correct answer, and the one I selected, was (b) (Roman Numeral II in the graph), which *should have been identified* as high frequency, high consequences." As indicated in the graph above, and as noted previously, quadrant IV represents low frequency, high consequence. Furthermore, it is noted that the matrix in the text identifies the quadrants as (corresponding quadrant in test booklet diagram): A (IV); B₁ (III); B₂ (II); and C (I). In this regard, the text states, "The risk manager will recommend training investments to be focused first on the procedures or activities that intersect on quadrant A. Annual training to address topics relevant to quadrant B would be considered second." As such, the question is correct as keyed.

Question 55 refers to Hess and Orthmann, *supra*. The question indicates that Lieutenant Watley believes that subordinates initially need a lot of support and direction. However, over time as they gain more experience with tasks, subordinates need less direction, but more support. Lieutenant Watley's goal is for subordinates to reach the point where close supervision can be reduced and delegation can be increased, which will illustrate his trust and confidence in them. The question asks for the leadership style, described by Hess and Orthmann, that is illustrated by Lieutenant Watley. The keyed response is option a, "Situational

⁴ As such, Quadrant I indicates high frequency, low consequences; Quadrant II indicates high frequency, high consequences; Quadrant III indicates low frequency, low consequences; and Quadrant IV indicates low frequency, high consequences.

leadership.” Mr. Bergbauer contends that option b, “Transformational leadership,” is equally correct. He refers to the text which provides:

Transformational leaders set high standards of conduct and become role models, gaining trust, respect and confidence from others; articulate the future desired state and plan to achieve it; question the status quo and [are] continuously innovative, even at the peak of success; and energize people to achieve their full potential and performance.

He argues that while a situational leader seeks to reduce close supervision and increase delegation, the question was also looking for a demonstration of trust and confidence. It is noted that the text indicates that “the paramount element of transformational leadership is vision.” Thus, a transformational leader sees a need for change and leads subordinates by sharing that vision. As such, employees must have trust and confidence in the leader. The text indicates that situational leadership “specifies that initially, workers need support and direction. As they become more task-ready, they need less direction and more support, to the point where even support can be reduced....Once a follower or group reaches this level of readiness, close supervision is reduced and delegation is increased, indicating the leader’s trust and confidence.” A situational leader is not attempting to change direction but rather, improve the running of current operations. As such, a situational leader must develop trust and confidence in the employees. Thus, option b is not the best response.

Question 57 refers to Hess and Orthmann, *supra*. The question indicates that you understand that it is important to write incident reports in a timely manner. However, you know that you have a tendency to procrastinate when writing reports because you do not enjoy doing this task. The question asks, according to Hess and Orthmann, for what you should do to help yourself avoid procrastinating in completing this task. The keyed response is option c, “Set a deadline for writing up the report and then let your supervisor know the specific date and time by which you will have it turned in.” Mr. Bergbauer contends that “choice (b), stated to do the task and handle other incidents as they appear,” is equally correct. It is noted that option b, as it appears in the test booklet, provides, “Take your time while working on the report and do other tasks as they come up.” As such, Mr. Bergbauer misremembered option b. The text notes that ways of combating procrastination include: “start with your most unpleasant task to get it out of the way”; “set aside half an hour a day to work on a given project – schedule the time to do it”; and “set deadlines and let others know about them.” As such, option b is not the best response.

Question 79 refers to the Oak Township Police Department Outside Employment Policy (Policy) presented to candidates in the test booklet. The

question indicates that the chief delegates to you the task of reviewing your department's staff members' requests to participate in outside employment. Once you decide whether or not the requests should be approved, you will present the chief with your decision so that he can give his official approval or disapproval. Officer Theissen electronically submitted to the chief an Oak Township Outside Employment Form requesting approval to begin working as a receptionist at a local dentist's office. She submitted the request on October 1, 2014 and indicated that her first day on the job would be October 30, 2014. You look in her file and see that she received a satisfactory rating on her most recent performance evaluation and that she is not in a limited or restricted duty status. The question asks for the true statement regarding the decision you should make. The keyed response is option a, "Her request should be approved." Mr. Wojtowicz maintains that option d, "Her request is unrelated to the policy," is the best response since there is not enough information to answer the question. In this regard, he contends that the question does not state that the chief pre-approved the application. Rather, he emphasizes that the question states that the chief delegated the task to you. The Policy states, "All requests for outside employment must be pre-approved by the police chief." However, as noted above, the question stem provides that the chief has delegated the task of reviewing the requests to you and then the chief will "give his official approval or disapproval" on the request. He further argues that "the policy stated that it does not apply to work that an officer doesn't get compensated for. In the question it did not state w[h]ether the officer was going to get compensated for the work performed." The policy defines outside employment as "any occasion on which a member of the Oak Township Police Department receives wages, compensation, or anything of value from another employer or individual not directly affiliated with the department for services, products, or benefits rendered." Furthermore, the Policy does not require an officer to submit a request if the officer is not receiving "wages, compensation, or anything of value." Thus, the question is correct as keyed.

CONCLUSION

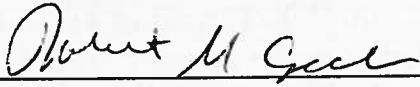
A thorough review of appellants' submissions and the test materials reveals that the appellants' examination scores, with the exception of the above noted scoring change, are amply supported by the record, and the appellants have failed to meet their burden of proof in this matter.

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 4TH DAY OF FEBRUARY, 2015**



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