STATE OF NEW JERSEY

In the Matter of Jorge Cabral, Police Sergeant (PM2030V), Elizabeth	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
CSC Docket No. 2018-3229	Reconsideration Request

ISSUED: February 11, 2019 (JH)

Jorge Cabral requests reconsideration of the final administrative determination in *In the Matter of Richard Gizzi, et al., Police Sergeant* (CSC, decided April 18, 2018). A copy of that decision is attached hereto and incorporated herein.

As provided in the original decision, the subject examination was a two-part examination, which was administered on October 26, 2017, consisting of a video-based portion, items 1 through 30, and a multiple-choice portion, items 31 through 90. Question 66 indicated that a 15-year-old juvenile was brought into the station by Officer Gomez. The juvenile was involved in a fight and Officer Gomez tells you the juvenile will be charged with simple assault. Officer Gomez is unsure about the procedures for documenting the arrest. The question required candidates to complete the following sentence, "You should inform Officer Gomez that for criminal identification purposes, the juvenile should be . . ." The keyed response was option c, "finger printed and photographed." As indicated in Procedures for Collecting Juvenile Fingerprints and Photographs (February 1998) (Procedures), under the heading, "Responsibilities of a Law Enforcement Agency which Files Delinquency Charges (Charging Agency)," provides that when a juvenile who is 14 or older is charged with an offense that would be a crime[1] if committed by an adult, the

[1] *N.J.S.A.* 2C:1-4a provides that an offense defined by this code or by any other statute of this State, for which a sentence of imprisonment in excess of 6 months is authorized, constitutes a crime within the meaning of the Constitution of this State. Crimes are designated in this code as being of the first, second, third or fourth degree.

charging agency shall take all reasonable steps to fingerprint the juvenile. *See N.J.S.A.* 2A:4A-61a(3). However, as also noted in the Procedures:

> Caution: . . . In addition, juveniles who are charged with disorderly persons offenses or petty disorderly persons offenses may not be fingerprinted under *N.J.S.A.* 2A:4A-61a(3) . . .

Given that simple assault is a disorderly persons offense,[2] the Division of Test Development and Analytics determined to rekey this item to option b, "photographed only" prior to the lists being issued.

In his request, Cabral maintains that the item was rekeyed based "on the misplaced legal assumption that a simple assault is a disorderly persons offense." In this regard, he presents that the question "DID NOT indicate where the fight took place and the question did not indicate what was the degree of the crime." He refers to *N.J.S.A.* 2C:12-1f which provides:

> A person who commits a simple assault as defined in paragraph (1), (2) or (3) of subsection a. of this section in the presence of a child under 16 years of age at a school or community sponsored youth sports event is guilty of a crime of the fourth degree. The defendant shall be strictly liable upon proof that the offense occurred, in fact, in the presence of a child under 16 years of age. It shall not be a defense that the defendant did not know that the child was present or reasonably believed that the child was 16 years of age or older. The provisions of this subsection shall not be construed to create any liability on the part of a participant in a youth sports event or to abrogate any immunity or defense available to a participant in a youth sports event. As used in this act, 'school or community sponsored youth sports event' means a competition, practice or instructional event involving one or more interscholastic sports teams or youth sports teams organized pursuant to a nonprofit or similar charter or which are member teams in a youth league organized by or affiliated with a county or municipal recreation department and shall not include collegiate, semi-professional or professional sporting events.

He argues that the question "did not contain any information that could be used to properly determine the grading of the simple assault. Specifically, the question did

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[2] *N.J.S.A.* 2C:12-1a provides that simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

not provide any information with respect where the fight took place or under what circumstances . . . Since a simple assault in the presence of a child under 16 years of age at a school or community sponsored youth event is a fourth degree crime according to Title 2C, Officer Gomez would obtain fingerprints and a photograph . . ."

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which the Commission may reconsider a prior decision. This rule provides that a party must show that a clear material error occurred or present new evidence or additional information which would change the outcome of the case and the reasons that such evidence was not presented during the original proceeding.

In the present matter, the appellant has failed to meet the standard for reconsideration. The appellant does not present new evidence or additional information which was not presented at the original proceeding which would change the outcome of the original decision, nor has the appellant proven that a clear material error has occurred in the original decision. Accordingly, based on the record presented, the appellant has failed to support his burden of proof in this matter.

Although the appellant maintains that *N.J.S.A.* 2C:12-1f would be charged as a "simple assault," it is noted that the statement which accompanied the introduction of Assembly Bill No. 440,[3] which was subsequently codified as *N.J.S.A.* 2C:12-1f,[4] provided, in part:

> Violent outbreaks at school and youth sports events by parents, including attacks on coaches, players and other spectators, have become more frequent in recent years, resulting in injury and disruption. These outbreaks, in addition to creating an unsafe environment for the children who are present, also promotes violence to children as a means of resolving conflict. It is the sponsor's view that in order to counter these negative and harmful consequences, stiffer penalties should be imposed for violent behavior committed in the presence of children. Accordingly, *this bill classifies simple assault as aggravated assault* if the assault is committed in a fight or scuffle which the actor initiated at a school or community sponsored youth sports event, while in the presence of a child under 16 years of age. (emphasis added).

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[3] *See* https://www.njleg.state.nj.us/2002/Bills/A0500/440_S1.PDF. *See also* Senate Bill No. 1198.

[4] *See* P.L. 2002, c. 53, effective August 3, 2002.

As also indicated in the above noted statement, this provision was initially to be included under aggravated assault (2C:12-1b(5)(h)) but the Assembly Judiciary Committee subsequently amended the bill to create a new subsection (2C:12-1f).

Moreover, it is noted that the Division of Test Development and Analytics contacted Subject Matter Experts (SMEs) regarding this matter and they indicated that when a complaint is signed, the listed charge has to be as specific as possible. In this case, the SMEs noted that if the intent was to charge the juvenile under the Youth Sports provision, you would be required to indicate that specific charge (*Assault at a Youth Sports Event 2C:12-1f*) on the complaint, and not just *Simple Assault 2C:12*.[5] The SMEs explained that given that *N.J.S.A.* 2C:12-1f elevates the offense to a fourth degree crime, the specific charge would need to be listed since it determines the procedures for processing the juvenile.

ORDER

Therefore, it is ordered that this request 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 6TH DAY OF FEBRUARY, 2019

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

[5] It is further noted that Model Criminal Jury Charges on the New Jersey Courts website (https://www.njcourts.gov/attorneys/criminalcharges.html) lists this charge as "Assault at a Youth Sports Event." *See* https://www.njcourts.gov/attorneys/assets/criminalcharges/assault17.pdf.

Inquiries
and
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Attachment

c: Jorge Cabral
Michael Johnson
Records Center

STATE OF NEW JERSEY

In the Matter of Richard Gizzi, *et al.*, Police Sergeant, various jurisdictions	:	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
CSC Docket Nos. 2018-1505, *et al.*	:	Examination Appeal

ISSUED: April 23, 2018 (JH)

Richard Gizzi, Sean McCarry, Kelly McKeand, Ashley Munoz and Drew Raslowsky (PM0762V), Bayonne; Daynel Ozorio and Marc Rispoli (PM0767V), Bergenfield; Erik Aksdal, Michael Feeney and William Vendrell (PM0772V), Brick; Ryan Kimble (PM0777V), Burlington; Michael Curran (PM0782V), Cinnaminson; Andrew Alvarez and Robert Marks (PM0784V), Clifton; Jason Smith (PM0790V), East Rutherford; Joseph Winowski (PM0799V), Freehold; David Bacsik, Eirnvn Papafilipakis and Matthew Quarino (PM0804V), Hamilton; Anthony Caruso, Robert Roman and Luke Zeszotarski (PM0809V), Hoboken; Sean Greenberger, Michael Kelly and Vincent Rubio (PM0813V), Jackson; John Fabula, Michael Farinola, Jason Ward and Benjamin Wuelfing (PM0815V), Kearny; Christopher Di Biase, Stephen Meyer and Justin Pederson (PM0819V), Lakewood; Brian Murphy and Jason Sweitzer (PM0831V), Middletown; Sean Cahill, Ryan Daughton and Erika DiMarcello (PM0840V), New Brunswick; David Hudak and Anthony Scala (PM0842V), North Arlington; Ryan Uzunis and Jason Zier (PM0843V), North Brunswick; Christopher Vivarelli and Patrick Walsh (PM0847V), Ocean City; Kevin McKeon (PM0859V), Ridgewood; Stephen Jankowski (PM0868V), Sea Isle City; An Wang (PM0870V), South Amboy; William Heater (PM0875V), Stanhope; Charles Antinori (PM0876V), Teaneck; Michelle Aviles, Yalinett Cartas, Patricia Lazzarini and Samantha Martinez (PM0877V), Union City; Joseph Rubel, Peter Simon and Salvatore Valentino (PM0878V), Union; Annmarie McCormick (PM0882V), Vineland; Joseph Angelo, Richard Hilliard and Andrew Lyszyk (PM0895V), Woodbridge; Edward Cunningham, Gregory Hollo and Diane Otero (PM0901V), Trenton; Edward Benenati, Jorge Cabral, David Haverty and Richard Hernandez (PM2030V), Elizabeth; Valerie Carriere, Lydiana Diaz, Sanny Fernandez, Maciej

Kuzmicki, Luz Rojas, Matthew Scalcione and Juan Velazquez (PM2041V), Jersey City; Jimmy Michel and George Tsimpedes (PM2048V), Parsippany-Troy Hills; appeal the examination for Police Sergeant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

This was a two-part examination, which was administered on October 26, 2017, consisting of a video-based portion, items 1 through 30, and a multiple-choice portion, items 31 through 90. The test was worth 80 percent of the final average and seniority was worth the remaining 20 percent. As noted in the 2017 Police Sergeant Orientation Guide (Orientation Guide), which was available on the Civil Service Commission's (Commission) website, the examination content was based on the most recent job analysis verification which includes descriptions of the duties performed by incumbents and identifies the knowledge, skill and abilities (KSAs) that are necessary to perform the duties of a Police Sergeant. As part of this verification process, information about the job was gathered through interviews and surveys of on-the-job activities of incumbent Police Sergeants throughout the State. As a result of this process, critical KSAs were identified and considered for inclusion on the exam.

In the video-based portion of the examination, candidates were presented with two separate scenarios: Scenario #1: Call for Service and Scenario #2: Upset Citizen. The candidates were to assume the role of a Police Sergeant as they viewed scenarios associated with the duties of a Police Sergeant. Each scenario was divided into segments, which presented information and circumstances that candidates were to consider before responding to questions in their test booklet.

Cabral, Caruso, Cunningham, Gizzi, Kelly, Michel, Scalcione, Tsmipedes, Winowski and Zier contend 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:

For Scenario #1: Call for Service, in the first video segment, you have been called to the home of Mark and Maria Garfield to assist a unit responding to a report of a domestic disturbance. Maria requested police assistance because her husband, Mark, had taken their son without permission. As you arrive, you are met by Officer Brown who is with Maria, Mark and their son. Officer Brown tells you that Mark and Maria are having some problems and Maria had been staying with her parents but she came home a few weeks ago with their son. While they have been trying to work things out, Maria says that things have gotten worse recently. Maria also said that they had a big argument that morning and she told Mark that she would be taking their son back to her parents' home. Maria then went to sleep and when she woke up, Mark and her son were gone. Maria had no idea where they were and she called the police.

For questions 1 through 7, candidates were presented with seven potential actions and were instructed, based on the information presented in the scenario, to decide if the action is required or not required, at this point, to properly deal with the situation.

Question 1 refers to the action, "Ensure Mark and Maria have been separated and interviewed individually." The keyed response is option a, "This action is required." Since Aksdal selected the correct response, his appeal of this item is moot. Benenati and Haverty maintain that option b, "This action is not required," is the best response. Specifically, Benenati contends that "the only place in my study source materials I found this situation remotely mentioned was on the checklist for domestic violence incidents in the Attorney General Guidelines. On this checklist under section 2 Primary Investigation, second checkbox it states to interview the SUSPECT AND VICTIM separately. At this point in the video I did not feel the husband and wife were a SUSPECT or a VICTIM. The husband and wife are merely two parties in a simple dispute." Haverty argues that "there was a dispute involving the custody of the couple[']s child and there was no mention of any domestic violence offenses. The video also never lead [*sic*] to any potential criminal investigation, rather the incident was a civil issue involving custody of the child." Haverty also refers to the checklist and argues that "at no point in the video was the husband or wife a potential or referred to as a SUSPECT or a VICTIM. The

husband and wife are merely two parties in a simple dispute." As noted above, you have been called to "assist a unit responding to a report of a *domestic disturbance*." (emphasis added). As such, given that you have just arrived on scene, this situation should be treated as a domestic violence incident until determined to be otherwise. Thus, option b is not the best response.

Question 3 refers to the action, "Ensure EMS has been dispatched to the scene." The keyed response is option b, "This action is not required." Sweitzer and Zeszotarski argue that option a, "This action is required," is the best response. In this regard, Sweitzer presents that "in any situation like this, we do not know what the issues are between the parents and/or child. There could be assault issues, sexual assault issues, etc., that may not show from the outside. In every day police work, every law enforcement officer will be calling medical services to check on the child, even if there was no sign of injury." Zeszotarski asserts that "here we have a child who the mother feared was missing and there was no indication given as to where he had been . . . An EMS response in this scenario serves three crucial purposes in this scenario: 1. First and foremost, it evaluates the child's well-being[;] 2. It puts all parties on scene at peace regarding the child's well-being . . . [;] 3. It absolves the police of liability and establishes a baseline for the child's health should a problem with the child be reported later. An EMS response does all of this with little to no downside." It is noted that the Division of Test of Development and Analytics contacted Subject Matter Experts (SMEs) regarding this matter who noted that the scenario does not indicate that there was any violence or injury to any of the parties involved and there was no request by any of the parties for EMS. The SMEs also noted that officers, as first responders, would have the training to assess the needs and condition of an individual. The SMEs indicated that a request for EMS would only be appropriate if a medical condition is identified or suspected. The SMEs further indicated that the parties can refuse EMS treatment, especially in a situation like this where there is no request by the parties for EMS or any indication that injuries exist. As such, the SMEs noted that a call for EMS at this point would be premature and a waste of resources. Thus, the question is correct as keyed.

Question 5 refers to the action, "Ensure a check of both parties has been run through the Domestic Violence Central Registry." The keyed response is option a, "This action is required." Since Vendrell and Wuelfing selected the correct response, their appeals of this item are moot. Benenati, Cabral, Fabula, Haverty, Tsimpedes and Velazquez maintain that option b, "This action is not required," is the best response. Specifically, Benenati presents that since neither Mark or Maria "showed or complained of any injury," checking the registry is not required. Cabral argues that "according to the scenario and at that time, no information was provided stating either party was exhibiting signs of injury. Even if the scenario stated injuries were exhibited by both parties, the Attorney General's Domestic Violence Procedures Manual[, *supra*,] states that an officer SHOULD CONSIDER

but is NOT REQUIRED to consider the following: 'In determining which party in a domestic violence incident is the victim where both parties exhibit signs of injury, the officer should consider . . . [o]ther relevant factors, including checking the DV Central Registry.' The Attorney General's Domestic Violence Procedures Manual[, *supra*,] does not state that an officer MUST, SHALL, or is REQUIRED to, nor does it state that this action must be done on scene." Fabula maintains that "[*N.J.S.A.*] 2C:25-34(1)b states that the Domestic Violence Central Registry should only be accessed by a police officer while investigating a report of domestic violence . . . At no point throughout this scenario was it alleged that an act of domestic violence occurred. It was clear that the matter was primarily a dispute with a child custody component." Haverty refers to the Domestic Violence Procedures Manual, *supra*, and argues that "since this scenario neither involved an incident of domestic violence or any person showing any signs of injury, I believe the correct answer for this question should be NOT REQUIRED." Tsimpedes contends that "although the scenario indicated that there was a 'domestic disturbance,' there was no indication at this time in the scenario that an act of domestic violence had occurred . . . Therefore, without information that both parties exhibited signs of injury when the question was asked, ensuring to check both that both [*sic*] parties have been run through the Domestic Violence Central Registry (DVCR) would ***not be required***." Velazquez asserts that "checking the DV registry was [not] appropriate at the time . . . As an officer you were still fact finding . . . [and] locating the child and making sure there is no imminent danger to the victim is paramount . . . Also[,] the guidelines mention specific times where checking the registry would be required . . . In this case, it seems this may be an 'interference with custody' type issue which is not covered under the Domestic Violence [A]ct." It is noted that the Division of Test of Development and Analytics contacted SMEs regarding this matter who indicated that since you know very little about the two individuals involved, the most basic place to begin your investigation would be to check the DVCR to determine if there is a history of domestic violence. The SMEs also indicated that the DVCR would allow you to quickly check whether there is a temporary restraining order (TRO) or any other order of protection between the two parties involved. The SMEs emphasized that this would be an important piece of information to be aware of since it would inform the way you proceed with your investigation. Accordingly, the question is correct as keyed.

Question 8 asks, based on the information reported to you at this point, for the Title 2C charge, if any, that should be filed against Mark Garfield. The keyed response is option d, "No charge is appropriate at this time." Uzunis contends that option c, "Interference with Custody," is correct. Uzunis refers to *N.J.S.A.* 2C:13-4 (Interference with Custody)[1] and *Paterno v. Paterno*, 254 *N.J. Super.* 190 (Ch. Div.

[1] *N.J.S.A.* 2C:13-4 provides, in part:

1991),[2] in which "the court held simply interfering with parenting time constitutes a violation under the statute. Based on the fact pattern there is no question Mark 'interfered' with Maria's parenting time." It is noted that there is no indication in the scenario that that there is a custody agreement, custody order or parenting plan. As such, the question is correct as keyed.

In the second video segment for Scenario #1, Officer Brown informs you that the husband, Mark, says that this is just a misunderstanding. Mark indicated that they had an argument in the morning but he only took his son over to the neighbor's house so that he could cool off for a bit. Officer Brown also informs you that Mark stated that Maria and their son have spent the past few months with her parents, who live out of state, and she told Mark that she was taking their son back there. Mark also said that Maria did not fall asleep but passed out because she is probably using cocaine again.

For questions 9 through 13, candidates were presented with five potential actions and were instructed, based on the information presented in the scenario, to decide if the action is required or not required, at this point, to properly deal with the situation.

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a. Custody of children. A person, including a parent, guardian, or other lawful custodian, is guilty of interference with custody if he:

(1) Takes or detains a minor child with the purpose of concealing the minor child and thereby depriving the child's other parent of custody or parenting time with the minor child; or

(2) After being served with process or having actual knowledge of an action affecting marriage or custody but prior to the issuance of a temporary or final order determining custody and parenting time rights to a minor child, takes, detains, entices, or conceals the child within or outside the State for the purpose of depriving the child's other parent of custody or parenting time, or to evade the jurisdiction of the courts of this State; or

(3) After being served with process or having actual knowledge of an action affecting the protective services needs of a child pursuant to Title 9 of the Revised Statutes in an action affecting custody, but prior to the issuance of a temporary or final order determining custody rights of a minor child, takes, detains, entices, or conceals the child within or outside the State for the purpose of evading the jurisdiction of the courts of this State; or

(4) After the issuance of a temporary or final order specifying custody, joint custody rights or parenting time, takes, detains, entices, or conceals a minor child from the other parent in violation of the custody or parenting time order.

[2] In *Paterno, supra*, the former husband sought to enforce his visitation rights under the parties' property settlement agreement. *Id.* at 191.

Question 10 refers to the action, "Ensure officers have located and checked on the well-being of the child." The keyed response is option a, "This action is required." Since Scalcione selected the correct response, his appeal of this item is moot. Marks, McCarry and Roman argue that option b, "This action is not required," is correct. Specifically, Marks presents that the "information given in the narrative overtly states you are responding to meet the officer who already has all the parties in his presence . . . Location of the juvenile is therefore established and the welfare of the juvenile is also a non-issue if he is now in the presence of an officer and a supervisor . . ." McCarry presents that "the narrator . . . stated, 'As you arrive on scene, you are met by Officer Brown, Mark (the husband), Maria (the wife), and their son (the child). From this point on in the video scenario, all the parties involved in the incident never leave the scene." Roman contends that "the first scenario stated that Officer Brown was with all three people involved: father, mother, and son. Also, in an earlier question, it was asked to have EMS respond, which was Not Required.[3] The child was already located by Officer Brown and did not speak of any harm to the child, therefore, locating and checking the well-being of the child was Not Required at that time." It is noted that the Division of Test of Development and Analytics contacted SMEs regarding this matter who indicated that ensuring and verifying the presence and well-being of all parties involved, especially children, is a necessary and required action. They emphasized that as the supervisor, the first thing you should do when you arrive on scene is to confirm that all parties are accounted for and that they are safe and unharmed. As such, the question is correct as keyed.

Question 11 refers to the action, "Ensure representatives from the Division of Child Protection and Permanency respond to the scene." The keyed response is option b, "This action is not required." Since Ozorio selected the correct response, his appeal of this item is moot. Caruso, Di Biase, Martinez, Roman, Velazquez and Walsh maintain that option a, "This action is required," is the best response. Specifically, Caruso presents that the scenario indicates that one of the parents may be using drugs and thus, "contacting DCPP would be positive and can ensure that if there are any problems, especially drug use then DCPP can be made aware of the situation and take appropriate steps to ensure the well-being of the child." Di Biase argues that given that there is suspected drug use, "it is the duty of law enforcement to immediately report this information to DCPP." Martinez asserts that "Title 9 . . . is designed to safeguard children who have been abused or at risk of imminent harm. It also provides for civil prosecution of a parent or guardian who abuses or neglects a child . . . [A]ccording to [Scene] #2, there were unequivocal accusations of possible narcotic exposure toward the child, which is a major safety issue." Velazquez argues that "there were allegations of drugs and drug use in the home where a juvenile resides which creates a danger for the child . . . DCP&P should be notified to determine if the child is safe under the circumstances." Walsh

[3] Roman appears to be referring to question 3, *supra*.

contends that "there is possible drug use involved in a home involving a child. It would be a good thing to have DCPP involved with the case as they may have a past history with this family and may use this information to ensure the safety of the child." As noted above, the action indicated in this item is *not* to notify DCPP but rather, have representatives from DCPP respond to the scene. The Division of Test of Development and Analytics contacted SMEs regarding this matter who indicated that at this point, you have an unsubstantiated claim of drug use. The SMEs referred to *N.J.S.A.* 9:6-8.10 (Reports of Child Abuse)[4] and further noted that there are no indications of abuse or neglect by the parents. The SMEs concluded that while it would be appropriate to consult with DCPP, having DCPP respond to the scene would be premature and a waste of resources at this point. As such, the question is correct as keyed.

Question 13 refers to the action, "Assist Mark in obtaining a temporary domestic violence restraining order." The keyed response is option b, "This action is not required." Since Uzunis selected the correct response, his appeal of this item is moot. Jankowski and Vivarelli argue that option a, "This action is required," is correct. Specifically, Jankowski asserts that "an officer must assist any person wishing to pursue a restraining order assistance [*sic*] [.] Therefore, you are required to assist a victim (which he claims to be) in obtaining a restraining order." Vivarelli presents that "if the husband in this case wanted help in obtaining a [temporary restraining order (TRO),] the officer is required to help . . . The circumstances presented in the video do not excuse the officer from helping the husband apply for a TRO." It is noted that scenario does not indicate that Mark has requested or implied that he is seeking a TRO. As such, the appellants' arguments are misplaced.

In the third video segment for Scenario #1, Officer Brown tells you that when he discussed with Maria what Mark had said, she told Officer Brown that Mark spends all their money on drugs and that she needs to get the child out of the house right away. Officer Brown further tells you that Maria "says we can go into the

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[4] *N.J.S.A.* 9:6-8.10 provides:

> Any person having reasonable cause to believe that a child has been subjected to child abuse or acts of child abuse shall report the same immediately to the Division of Child Protection and Permanency by telephone or otherwise. Such reports, where possible, shall contain the names and addresses of the child and his parent, guardian, or other person having custody and control of the child and, if known, the child's age, the nature and possible extent of the child's injuries, abuse or maltreatment, including any evidence of previous injuries, abuse or maltreatment, and any other information that the person believes may be helpful with respect to the child abuse and the identity of the perpetrator.

house and search for the drugs, and in fact, she knows exactly where they are and can take us right to them." However, Mark is refusing to let anyone in the house.

Question 14 asks for the true statement regarding a lawful search of the house. The keyed response is option c, "Based on Mark's refusal, you are not permitted to conduct a warrantless search of the house." Zier maintains that option d, "Based on the exigent circumstances, you are permitted to conduct a warrantless search of the house," is correct. In this regard, he refers to *Illinois v. McArthur*, 531 *U.S.* 326 (2001)[5] and argues that Maria's statement that she needs to get the child out of the house "made it unclear as to whether the child was currently inside the residence and possibly able to access to [*sic*] the CDS . . . While the keyed answer is based on *Georgia v. Randolph*, 547 *U.S.* 103 (206),[6] the fact pattern of the video was more closely related to *McArthur*[, *supra*]. With respect to the contrast between the two cases and the facts presented in the video, the video and question lacked information that would distinguish between the two cases. Because of this, both answer choices A and D are equally correct." As indicated previously, while the wife in *McArthur*, *supra*, suggested that the officers search the trailer for "dope," the officers did not enter based on the husband's refusal and as a result, the officers sought a search warrant. Accordingly, Zier's reliance on *McArthur*, *supra*, is misplaced.

For Scenario #2: Upset Citizen, in the first video segment, an officer comes to your office and tells you that a citizen, Mr. Rodriguez, who was involved in an incident that morning, is at the front desk and wants to speak with a supervisor.

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[5] In *Illinois v. McArthur*, *supra*, Tera McArthur was to retrieve her belongings from a trailer where she and her husband, Charles, lived and she asked two police officers to accompany her in order to keep the peace. While Tera went inside the trailer, where Charles was present, the officers remained outside. When Tera came back outside, she suggested that the officers check the trailer since Charles "had dope in there." *Id.* at 328. When the officers asked Charles for permission to search the trailer, he refused. While one of the officers left to obtain a search warrant, the officer who remained told Charles that he could not reenter the trailer unless he was accompanied by an officer. However, Charles did reenter the trailer two or three times and each time the officer "stood just inside the door to observe what Charles did." *Id.* at 329. Upon obtaining the warrant and returning to the trailer, the officers searched and discovered marijuana and related paraphernalia.

[6] In *Georgia v. Randolph*, *supra*, Scott and Janet Randolph were separated when Janet left their home with their son to stay with her parents in Canada. *Id.* at 106. After several weeks, Janet returned with their son but shortly thereafter, she complained to police that following a domestic dispute, Scott took the child away. After the police arrived, Scott returned and indicated that he had taken their son to a neighbor's house. Janet told police that her husband was a cocaine user and his habit caused financial trouble which Scott denied. Scott countered that his wife abused drugs and alcohol. Janet indicated that there was drug evidence in the house. The officers asked for permission to search the home, which Scott refused but Janet granted. Janet then led the officers to the bedroom where they found suspected cocaine. *Id.* at 107. The Court held that one occupant may not give law enforcement effective consent to search shared premises, as against a co-tenant who is present and states a refusal to permit the search. *Id.* at 108.

While you review the report that was filed regarding the incident, you have the officer escort Mr. Rodriguez to a room so that you can speak with him privately. Upon review, you realize that the incident should have been classified as a bias incident rather than as an act of vandalism. As you walk into the room, Mr. Rodriguez, who is clearly upset, tells you that he wants to find out what is going on with his case. He explains that he woke up that morning to find a racial slur spray painted on his house. However, Officer Torres just took his name and statement and told him to cover it up with a sheet until he can get it cleaned up. Mr. Rodriguez wants to file a complaint against Officer Torres.

For question 16, since Walsh selected the correct response, his appeal of this item is moot.

For question 19, since Simon selected the correct response, his appeal of this item is moot.

In the second video segment for Scenario #2, Mr. Rodriguez further tells you that this is not the first time that something like this has happened in the neighborhood. He indicates that he has "a pretty good idea who is responsible for this, and if I catch the guy near my property again, you better believe I'm going to let him have it." He also indicates that he "know[s] some pretty well connected people down at city hall" and "if you guys can't handle the situation, I'm going to make a few phone calls and take care of it myself."

For questions 20 through 26, candidates were instructed that, after listening to what has been reported to you, and considering the New Jersey Attorney General Guidelines Initial Law Enforcement Response to Bias Incidents, you have assumed the role of the law enforcement supervisor responding to this incident. You are evaluating your next steps. Candidates were presented with seven potential actions and notifications and were instructed, based on the information presented in the scenario, to decide if the action or notification is required or not required, at this point, to be taken by the law enforcement supervisor in calls involving a bias incident.

Question 26 refers to the action, "Establish contact with the Department of Law and Public Safety Division on Civil Rights." The keyed response is option b, "This action is not required to be made by the law enforcement supervisor." Caruso and Daughton argue that option a, "This action is required to be made by the law enforcement supervisor," is the best response. Specifically, Caruso contends that the "Attorney General Guidelines regarding Bias Incidents" does not indicate "who is responsible to notify regarding Civil Rights . . . This being a second incident then they should in fact be notified." Daughton asserts that "in the Attorney General Guidelines it states word for word: 'When a Law Enforcement Agency is confronted with suspected or confirmed violations of New Jersey's Law Against Discrimination

([i].e. Bias Incident involving Racial Slurs as indicated in this video) the Division on Civil Rights SHALL be contacted[.]' [T]his is why my choice was required." The Bias Incident Investigation Standards (Revised January 2000) (Standards) provide under the section, "Inter-Agency Cooperation," provides, "When a law enforcement agency is confronted with suspected or confirmed violations of New Jersey's Law Against Discrimination, the Division on Civil Rights shall be contacted." However, the Standards also provide:

> 7. INITIAL LAW ENFORCEMENT RESPONSE TO A BIAS INCIDENT
>
> This Section outlines the initial law enforcement response to a reported bias incident. This outline is designed to provide a practical approach to initial response and initial investigation of suspected or confirmed bias incidents . . .
>
> **Law Enforcement Supervisor**
>
> Upon arriving at the scene of a suspected or confirmed bias incident, he or she will:
>
> 1. Supervise the preliminary response and investigation.
> 2. Confer with the initial responding officer.
> 3. Assist in the stabilization of the victim as required.
> 4. Ensure that the crime scene is properly protected and preserved.
> 5. Take steps to insure that the incident does not escalate.
> 6. Determine if additional personnel is required to provide complete public safety services.
> 7. Arrange for an immediate increase of patrols throughout the affected area, as appropriate.
> 8. If the potential exists for further acts of violence or damage to property, arrange for officers to be assigned to the location of the incident in a fixed post position.
> 9. Attempt to verify if the occurrence is a confirmed bias incident following the guidelines for confirming bias incidents contained in these Standards. Verification assistance should be provided by other levels of command and/or additional investigative personnel, as required.
> 10. Request that investigative personnel respond to the scene if a bias incident is suspected or confirmed.
> 11. Notify headquarters and other levels of command regarding the facts and circumstances surrounding the incident.
> 12. Request that the next level of command respond to scene, as appropriate.

13. Provide headquarters with updated, factual information regarding the incident.
14. Ensure that the chief executive of the law enforcement agency is notified of the incident.
15. Ensure that the necessary basic information is obtained in order to sustain a follow-up investigation.
16. Ensure that all initial response reports are properly completed as soon as possible.

Accordingly, contacting the Division on Civil Rights is not specifically identified as a responsibility of the law enforcement supervisor. Thus, option a is not the best response.

For questions 27 through 29, candidates were required to determine whether the action in the question is one that is required or not required to be taken during the follow-up investigation of a suspected or confirmed bias incident.

For question 27, since Zeszortarski selected the correct response, his appeal of this item is moot.

Question 29 refers to the action, "Coordinate a neighborhood watch effort in order to conduct surveillance activities." The keyed response is option b, "This action is not required during the follow-up investigation." Caruso, Daughton, Diaz and Walsh refer to the Standards, *supra*, and maintain that option a, "This action is required during the follow-up investigation," is the best response. Specifically, Caruso presents that Standards, *supra*, do not "state who is responsible to set up either Community Watch or Surveillance. Therefore, I believe this should be REQUIRED." Daughton presents that the Standards, *supra*, "under Investigators Responsibilities, it states the following is required: 'Assist with Community Relations Activities AND Crime Prevention Programs as appropriate.'" Diaz presents that "a crime prevention program that an investigator ensues could be considered a neighborhood watch surveillance. By conducting neighborhood watch surveillance you (as an investigator) are actively participating with the community and gathering more information and witnesses." Walsh argues that the Standards provide that "agencies handling bias incidents shall ensure that community relations activities and crime prevention programs are conducted, as appropriate . . . Surveillance is not specific to just law enforcement actions. Anyone at any time may conduct surveillance. Coordinating a neighborhood watch to keep a close watch over their neighborhood is being proactive." It is noted that the Division of Test of Development and Analytics contacted SMEs regarding this matter who indicated that under the Standards, *supra*, "Conduct[ing] surveillance and other appropriate investigative activities in order to obtain additional evidence and to identify suspects," is listed as one of the responsibilities of the investigator under the section, "Bias Incident Follow-Up Investigation." However, they further noted

that while "assist with community relations activities and crime prevention programs, as appropriate," is also listed as a responsibility of the investigator, the neighborhood watch, as indicated under the section, "Bias Incident Crime Prevention Programs," is not intended to conduct surveillance activities or to assist in the investigation of an incident but rather to identify principles of crime awareness to the affected community. The SMEs further emphasized that investigators would not involve members of the community in a coordinated neighborhood watch effort as part of their investigation of the incident. The SMEs noted that this could lead to vigilante behavior if the civilians believe they are a part of or assisting in the investigation. Thus, the question is correct as keyed.

Question 32 indicates that a police officer may make a warrantless arrest of a subject in a public place, provided the officer has probable cause to believe the subject has committed a crime. The question requires candidates to determine, based on relevant State case law, which statement is not a factor in making the probable cause determination. The keyed response is option b, "The totality of the circumstances from the subjective view of the officer." Curran argues that "the answer to Question #32 should not have included the answer that had the wording totality of the circumstances . . . The totality of the circumstances actually preceded and created authorization for the arrest. As a result, candidates were forced to choose from the 'lesser of two evils' making [option c, 'Shared knowledge presumed of all officers cooperating on the same investigation,'] the best choice of the group."[7] Jankowski maintains that option a, "A witness's veracity, reliability, and basis of knowledge," is the best response "because a witness's knowledge must be corroborated first before making an arrest as set by various case law (*State v. Privott*)."[8] Zeszotarski presents that no portion of option c would be used as a factor to determine probable cause and thus, it is the best response. Zeszotarski adds that "one cannot presume knowledge is shared or understood between officers, it must be actually shared or communicated." With respect to option a, although Jankowski asserts that a witness's veracity, reliability, and basis of knowledge is not a factor, as noted in *State v. Basil*, 202 *N.J.* 570 (2010):

> In assessing the facts available to a police officer, important considerations are the witness's veracity, reliability, and basis of knowledge. [citation omitted]. Generally speaking, information imparted by a citizen directly to a police officer will receive greater

[7] It is noted that Curran misremembered the question as indicating, "An officer makes a warrantless arrest in a public place. The officer has probable cause that a crime was committed. Based on case law which is not a reason to affect the arrest?"

[8] It is noted that Jankowski does not provide a citation for this matter. However, it appears that he is referring to *State v. Privott*, 203 *N.J.* 16 (2010) in which an anonymous caller reported a man with a handgun at a street corner. *Id.* at 21.

> weight than information received from an anonymous tipster. [citation omitted]. Thus, an objectively reasonable police officer may assume that an ordinary citizen reporting a crime, which the citizen purports to have observed, is providing reliable information. [citation omitted]. *Id.* at 585-586. [9]

With respect to option b, in *Basil*, *supra*, the court noted, "In determining whether there was probable cause to make an arrest, a court must look to the totality of the circumstances, [citations omitted], and view those circumstances 'from the standpoint of an **objectively** reasonable police officer' [citations omitted]." (emphasis added). *Id.* at 585. With respect to option c, in *State v. Ford*, 278 *N.J. Super.* 351 (App. Div. 1995), the court noted that "we recognize that proper application of the 'plainview' doctrine requires both that the police officer be lawfully in the viewing area and that there be probable cause for search and seizure [citations omitted] . . . [W]here police officers are cooperating in the same investigation, the knowledge of one is presumed shared by all." *Id.* at 355-356. As such, the question is correct as keyed.

Question 33 indicates that you are conducting training for officers under your supervision about the State's legal requirements for warrantless arrests. After reviewing the statutory requirements and relevant State case law, you ask the officers to provide examples of warrantless arrests that meet the recently reviewed requirements, to ensure they understand the concepts. Candidates are provided with the scenarios from four officers. The question asks, according to statutory requirements and relevant State case law regarding warrantless arrests, which of the officers provided the scenario that does not meet the requirements for a warrantless arrest. The keyed response is option d, Officer Link.[10] Smith argues that option c, Officer Malcom,[11] is the best response as "the answer only states that the domestic violence was 'reported' (as in alleged), not that the Officer confirmed

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[9] This is similarly reflected in *Privott*, *supra*, in which the court noted, "When an anonymous tip is involved, additional factors must be considered to generate the requisite level of reasonable and articulable suspicion. [citation omitted]. In such cases, the tipster's **veracity, reliability, and basis of knowledge** are 'relevant in determining the value of his report.' [citation omitted]. The police must verify that the tip is reliable by some independent corroborative effort. [citation omitted]." (emphasis added). *Id.* at 26.

[10] Officer Link provided the following example: During a field interview, a suspect repeatedly drops pieces of napkin on the ground in violation of a municipal ordinance against littering. Being unable to produce identification, the officer arrests the suspect and transports him to police headquarters to conduct identification procedures.

[11] Officer Malcom provided the following example: Upon responding to a residence on the report of a dispute between a husband and wife, officers develop probable cause to believe that a simple assault has occurred. Both of the parties involved in the dispute are adults.

that report. It is possible that the husband and wife had a non-violent disagreement over a simple assault that occurred between the husband and another adult. The answer did not state who was involved in the simple assault only that it was between two adults." Smith adds that option d "would have been the best answer . . . if not for the omission of one critical piece of information: the police officer's affiliation . . . State Police Officers do not have a 'breach of peace' restriction . . . Thus, if the responding officer was a state police officer . . ., the officer would be permitted to make a warrantless arrest for violation of a municipal ordinance." It is noted that Smith invents circumstances not provided in the question: for option c, Smith introduces a third party and for option d, he asserts that a "critical piece of information" has been omitted. As such, the arguments presented by Smith are disingenuous.

Question 39 indicates that Jake and Deanna have been dating for several months. Jake lives in Cowtown, NJ and Deanna lives in nearby Appleville, NJ. They were traveling to Upland, NJ for a vacation. While driving through the town of Hampton, NJ they had a verbal argument in their car. After a few minutes of yelling, Jake struck Deanna in the face, causing a red mark and swelling. Jake then stopped the car and Deanna exited the vehicle and walked to the Hampton police station. Officer Krabs is called in to file a complaint for domestic violence. Officer Krabs is unsure where a victim can file a domestic violence complaint. The question requires candidates to complete the following sentence, "You advise Officer Krabs that, in this scenario, a domestic violence complaint can be taken in all of these locations, EXCEPT . . ." The keyed response is option d, "Upland." Caruso contends that "the victim was traveling to Upland, where she would be temporarily staying." Lazzarini asserts that Deanna "may have continued with her drive to Upland . . . and be staying there if the vacation was booked there. The question does not state that she cancelled her vacation due to the incident. Therefore, if she were to be temporarily staying there or sheltered there she should be able to file the TRO in that city as well." Rubio maintains that Deanna "could seek relief in ALL the listed locations . . ." The Domestic Violence Procedures Manual (June 2004) provides:

> 2.2.1 A victim may file a domestic violence complaint:
> A. where the alleged act of domestic violence occurred;
> B. where the defendant resides;
> C. where the victim resides; or,
> D. where the victim is sheltered or temporarily staying.

The question does not indicate whether Deanna plans to continue on to or stay in Upland and as such, Upland is speculative at this point. As such, the question is correct as keyed.

Question 41 indicates that Mike and John were arguing over a call made by the referee in last night's professional soccer match on television. They were both upset about the other's reaction and mutually engaged in a scuffle. A friend eventually stepped between them to stop the fight. Mike is still very upset and would like to sign a complaint against John. Officer Askalot, a new officer, calls you to the scene and requests assistance in determining the appropriate charge for John. Candidates were required to complete the following sentence, "You should advise Officer Askalot that the **MOST** appropriate *N.J.S.A.* 2C charge for John would be . . ." The keyed response is option b, "Simple Assault."[12] Ozorio, Papafilipakis and Smith present that option a, "Disorderly Conduct,"[13] is the best response. Specifically, Ozorio refers to *N.J.S.A.* 2C:33-2. Papafilipakis argues that "no[w]here did it say in the fact pattern that there were injuries consistent w[ith] simple assault or threatened injuries. Scuffle is too broad of a term to use[14] and can be defined as improper behavior consistent with disorderly conduct . . ." Smith refers to *N.J.S.A.* 2C:12-1 and argues that "the question does not give any information on the individuals' mental state . . ." and although the question indicates that the individuals entered into scuffle by mutual consent, "there are no elements of the simple assault statute that reflect any intent to cause injury or fear of imminent serious bodily injury." Smith refers to *N.J.S.A.* 2C:33-2 and asserts that "the only question is whether or not there was a public inconvenience, annoyance or alarm . . . I do not recall the exact setting except for people watching television . . . I believe that persons were affected as someone broke up the fight. In

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[12] *N.J.S.A.* 2C:12-1a (Simple assault) provides that a person is guilty of assault if he: (1) Attempts to cause or purposely, knowingly or recklessly causes bodily injury to another; or (2) Negligently causes bodily injury to another with a deadly weapon; or (3) Attempts by physical menace to put another in fear of imminent serious bodily injury. Simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

[13] *N.J.S.A.* 2C:33-2 (Disorderly conduct) provides, in pertinent part:

> a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he
>
> 1. Engages in fighting or threatening, or in violent or tumultuous behavior; or
> 2. Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor . . .
>
> 'Public' means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

[14] As noted previously, *N.J.S.A.* 2C:12-1a specifically uses the term, "scuffle."

[*State*] *v. Stampone* (2001),[15] the court struck down a disorderly conduct charge for a lack of public component because, as the court noted, no passers [by] noticed the conduct or were even present. Here not only was the conduct noticed but someone broke up the scuffle." It is noted that the question does not ask of what the individual would be convicted, since the trier of fact would be responsible for making that determination, but rather for the appropriate charges. In order to find a violation of *N.J.S.A.* 2C:33-2, as noted by Smith, there must be an element of public inconvenience, public annoyance or public alarm. It is noted that there is nothing in the question to indicate that the public was involved or even present. Furthermore, although Smith contends that "not only was the conduct noticed but someone broke up the scuffle," the question only indicates that "a friend eventually stepped between them." As such, option a is not the best response.

Questions 45 through 54 refer to a letter received by a police department's Internal Affairs Unit and an Internal Affairs Report form provided to candidates in the test booklet.

Question 51 requires candidates, according to the information provided in the letter, to determine whether box #24 of the Internal Affairs Report Form was completed correctly.[16] The keyed response is option a, "Yes; the complainant received medical attention, but did not provide the results." Carriere asserts that option b, "No; the complainant suffered a concussion as a result of the incident," is the best response since "the complainant stated [in the letter] that he went to the hospital and suffered a concussion." It is noted that in the letter, the complainant states, "I fell so hard I went to see Doctor Morris at the Felton Medical Center the next day to see if hitting my head caused a concussion." The complainant does not provide any information regarding a diagnosis. As such, the question is correct as keyed.

Question 54 requires candidates, according to the information provided in the letter, to determine the number of instances of conflicting information in the summary description of the incident provided in box #23 of the Internal Affairs

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[15] Smith does not provide a citation for this matter but it appears that he is referring to *State v. Stampone*, 341 *N.J. Super.* 247 (App. Div. 2001).

[16] Box #24 provides:

> 24. **DESCRIPTION OF INJURIES**
> *As a witness to a robbery, the complainant was knocked down as the suspect fled. He sought medical attention for possible head injury. No definitive diagnosis was provided by the complainant.*

Report Form. The keyed response is option b, "2."[17] Benenati, Cabral, Cartas, Curran, Marks, Quarino, Roman, Rubel, Uzunis and Wang argue that option c, "3," is correct. In this regard, they note that the letter states, "the owner said he didn't have surveillance cameras." However, they argue that the report notes that "the store did not have functioning surveillance equipment," which would indicate that the store has surveillance cameras. Aviles and Hollo, who include the above noted discrepancy in their respective appeals, present that option d, "4," is correct. Specifically, Aviles contends that the fourth discrepancy "was in the letter where the complainant states how the officers laughed once the pizzeria owner explained that he did not have cameras. In the [Internal Affairs Report Form] they state the complainant 'mentioned.' During the course of an internal affairs investigation this is considered a factual statement made by the complainant to justify the officers' demeanor towards the victim . . . There is clearly a significant difference in making a factual statement and just merely mentioning something." It is noted that the letter states, "When the owner said he didn't have surveillance cameras, the officers laughed and said, 'good luck.'" The report form in box #23 provides, "The complain[a]nt even remarked that the officers 'laughed' at hearing that he did not have functioning surveillance equipment." As such, both the letter and the report indicate that the officers laughed. In this regard, the use of the term, "remarked," in the report does not diminish the factuality of the statement that the officers laughed. Hollo presents that "the [four]th [in]consistency is the location[:] nowhere in the complainant's letter did it deviate [*sic*] that the location of the incident was inside a RESTAURANT while the IA form listed the location as a STORE." It is noted that the websites for Papa John's (http://www.papajohns.com) and Domino's Pizza (http://www.dominos.com) use the terms "store" and "restaurant" interchangeably. As such, it is not clear what distinction Hollo is attempting to make. With respect to option c, as indicated above, the letter provides that the establishment "didn't have surveillance cameras," whereas the report implies that there is surveillance equipment but it is not functioning. Accordingly, 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.

For question 56, since Papafilipakis selected the correct response, her appeal of this item is moot.

Question 57 provides:

> Officers Columbus and Cleveland were on uniformed patrol, in an unmarked police van. They received a radio dispatch that stated an

[17] A review of the record finds that the test authors identified the number of officers (three) and the names of the officers (Brown and Patel) as discrepancies. Aviles, Benenati, Cabral, Cartas, Curran, Hollo, Marks, Quarino, Roman, Rubel, Uzunis and Wang include these discrepancies in their respective appeals.

> anonymous caller reported a 'man with a gun' was at Broad and Pearl Streets. The caller failed to describe the suspect further. When the officers arrived, they spotted four persons at the intersection, including BC, a juvenile male. Upon seeing the officers, BC jumped on his bicycle and began pedaling furiously away from the area. Officers Columbus and Cleveland pulled alongside BC in their van and drove beside him for a couple of blocks, without activating the lights and siren or telling BC to pull over. BC suddenly stopped and put his hands in his pockets. Officer Columbus jumped out of the van and immediately grabbed BC's pockets, trapping BC's hands inside. When Officer Columbus pulled BC's hands out of his pockets, a plastic bag containing marijuana fell out.

The question asks, based on the facts presented and relevant case law, for the true statement. The keyed response is option c, "Under the 'totality of the circumstances,' the flight, plus the anonymous tip, plus BC's thrusting his hands in his pockets provided a reasonable basis for the stop." Farinola, Meyer, Walsh and Wuelfing, who selected option d, "The officers never developed a reasonable suspicion that BC was 'armed and dangerous,'" argue that option c is incorrect. Specifically, Farinola argues that the question "state[s] that an officer got out of the car and grabbed the juvenile's hands. Had the juvenile been ordered to remove his hands, and failed to do so, the act of grabbing his hands and removing them from his pockets would have been justified for officer safety." Meyer provides, "[juvenile] stops and gets off bike, puts hands into pockets and police direct him to remove hands which he does not. Question missed key parts to make search good." Walsh asserts that "the officers did not have reasonable suspicion to stop the juvenile based on an uncorroborated anonymous tip . . . The police had very few details about the suspect or weapon, the credibility of the caller was not established, and they lacked sufficient information to established [*sic*] reasonable suspicion the juvenile was armed and dangerous." Wuelfing presents that "the search should not be allowed because the totality of the circumstances did not rise to the same level in the question as did in the case from which this question was developed. In the *State in the Interest of C.B.*,[18] the van used was a marked van, unlike the question that stated it was a[n] unmarked van. This fact is needed because the court stated a contributing circumstance was the reaction to the presence of police following the juvenile and his response by putting his hand in his pocket, which can be the same with an unmarked van . . . There is no case w[h]ere an officer just grabs a hand from a pocket without previously been given an order to remove his/her hand first . . ."

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[18] Although Wuelfing does not provide a citation, he appears to be referring to *State in the Interest of C.B.*, 315 *N.J. Super.* 567 (App. Div. 1998).

It is noted that this question is based on *State in the Interest of C.B., supra.* As indicated in *State in the Interest of C.B., supra*, an officer and his partner were on routine patrol in a marked police van when they received a radio dispatch, which was based on an anonymous tip that did not include any description of the actor, to investigate a report of a man with a gun at an intersection. Upon arriving at the intersection, the officers spotted three or four individuals, one of whom was C.B. The court further indicated:

> When [C.B.] saw the police approaching, he got onto a bicycle and fled the area. After following the juvenile for a block or two without activating their siren, the police drove their van alongside his bicycle. The juvenile stopped, got off his bicycle and put his hands into his pockets. The officers got out of their van, approached the juvenile and directed him to remove his hands from his pockets. At this point, [one of the officers] grabbed the juvenile's hands and pulled them out of his pockets; according to [the officer], he did this because he 'wanted to make sure that [the juvenile] was not going for a gun.' As the juvenile's hands came out of his pockets, a sandwich bag containing what was later determined to be marijuana fell to the ground. The officers then arrested the juvenile. *Id.* at 571.

The court determined:

> The police officers had the right – indeed arguably a duty – to travel to the location where an anonymous informant told them they would find a man with a gun, even though this information did not provide the individualized reasonable suspicion required for a *Terry* stop. [citation omitted]. Moreover, when one of those persons, who turned out to be the juvenile, fled at the sight of the police, the police officers properly exercised their law enforcement responsibilities by following him to determine whether he might be engaged in unlawful activity. [citation omitted]. It was only after the juvenile responded to this police action by stopping his bicycle and thrusting his hands into his pockets that the police grabbed his hands. We are satisfied that under the totality of the circumstances known at that time, which included the anonymous information concerning a man with a gun at the intersection of 9th and Pearl Streets, the juvenile's flight from that intersection, and the juvenile's thrusting of his hands into his pockets as the police approached, there was an objectively reasonable basis for suspicion that he was armed and dangerous. Therefore, the limited intrusion involved in the police officers pulling the juvenile's hands out of his pockets did not constitute an unconstitutional search or seizure. *Id.* at 576-577.

Given that the information in the question stem differs from that in *State in the Interest of C.B., supra,*[19] it is not clear whether the same or a different conclusion would be reached. As such, the Division of Test Development and Analytics determined to omit this item from scoring prior to the lists being issued.

Question 59 indicates:

> Arnold Curry, a murder suspect and drug addict, failed to appear for his polygraph appointment with the Bigtown Police Department. Members of the Bigtown Police Department and the County Prosecutor's Office went searching for him. After looking unsuccessfully at several well-known drug-dealing locations, the officers drove to 1198 Landover Avenue, the address of Craig Minor, Curry's close friend. The officers knew that Curry often frequented this address and decided to look for him inside. As they walked up to the premises, the officers noted that the building appeared to be vacant. Finding the front door unlocked and ajar, the officers entered and confronted Curry at the top of the stairs. Curry immediately told the officers that he knew that he was supposed to be at the detective bureau taking a polygraph, but he wanted to 'mellow out' first. He then asked the officers if he could give himself an injection. When the officer said, 'no,' Curry handed them a syringe and a drug spoon. The officers then confiscated a quantity of drugs, which were sitting on top of a bureau and placed Curry under arrest for the drug offenses.

The question asks, based on relevant case law, whether the arrest and seizure of narcotics from Arnold Curry was lawful. The keyed response is option c, "Yes. Their entry into the building was legitimate and rightfully reflected the objectively-reasonable actions of well-trained police officers. The drugs were recovered as a result of a plain-view seizure." Angelo, Caruso, Curran, Daughton, Diaz, Jankowski, Lazzarini, Lyszyk, Meyer, Ozorio, Papafilipakis, Pederson, Raslowsky, Roman, Scalcione, Velazquez, Walsh, Wang and Zeszotarski argue, in part, that critical information was not provided in the question stem. It is noted that this item is based on *State v. Perry*, 124 *N.J.* 128 (1991). In *Perry, supra,* Arthur Perry and Clark Miller reported that they had found a dead body in a home owned by Perry. Subsequently, both were scheduled for a polygraph test on the same day. The court noted:

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[19] For example, as noted by Wuelfing, the question indicates that the officers were in an unmarked van while the source material indicates that the officers were in a marked police van. Thus, it is unclear from the question whether BC left the intersection because he recognized or identified the occupants in the unmarked van as police officers.

> The police had assumed that [Perry] would arrive with Miller . . . When Miller arrived without Perry, the police asked Miller to find Perry and bring him back. Miller returned at noon without Perry. Miller informed [the officers] that Perry would not come to the station until after he had purchased and used drugs. Realizing that Perry's drug use would cause another postponement of the twice-delayed polygraph, [the officers] set out to find Perry before he could purchase or use drugs. After looking at several known Camden drug-dealing locations, they drove by Miller's 1189 Landsdowne Avenue address where they spotted Miller's car. Knowing Miller to be at the police station, they stopped to look for Perry. *Id.* at 139.

The court indicated that "the officers' right to be in a position to have a plain view arose out of the purpose of their entrance into the house . . . Here, the officers had no underlying design to find drugs linked to Perry or to make a drug arrest of Perry. Indeed, they hoped to deter Perry from taking drugs completely to protect the polygraph process from pollution." *Id.* at 148. Given that the question stem does not provide the above noted information and context, the Division of Test Development and Analytics determined to omit this item from scoring prior to the lists being issued.

Question 61 indicates:

> Officer Lanister conducted a traffic stop of a vehicle after he observed it drive past him at approximately 50 MPH in a 65 MPH zone. As the vehicle passed the officer's location, it further slowed to 45 MPH. After stopping and approaching the vehicle, Officer Lanister asked the driver for his license, registration, and insurance card. The driver produced appropriate documentation for the rented vehicle, but was unable to present a valid driver's license or insurance card. The driver identified himself as Bill Stackhouse, provided a local address, and also described what he said were the number of points against his license. When Officer Lanister checked those items via radio, both the address and the point information proved to be false.
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> Officer Lanister asked the driver if there was any type of identification inside the motor vehicle. When the driver said, 'No,' Officer Lanister asked the driver if he could 'take a look inside the passenger's compartment to look for identification.' After informing Officer Lanister he had no problem with allowing the search, the driver completed and signed a 'consent to search' form that referred to authorization to conduct a complete search of the vehicle. Officer Lanister also wrote on the form 'all packages and compartments

> within.' The form clearly provided that the person signing had been advised of his right to refuse and understood his right.
>
> Upon completion of the 'consent to search' form, Officer Lanister entered the passenger compartment where he found a container with the name 'Kyle Browner.' He asked the driver if his name was Kyle Browner, and the driver said he was not. Officer Lanister then continued his search, and when he looked in the vehicle's trunk, he immediately smelled marijuana. A search of a large duffle bag revealed approximately 30 pounds of marijuana.

The question asks, according to relevant State case law, whether the search of the vehicle was lawful. The keyed response is option c, "No, the search of the trunk exceeded the scope of the consent provided by the driver." Farinola contends that the keyed response is incorrect "due to the fact that there was no reasonable articulable suspicion to ask for a consent to search. Furthermore, the consent form stated[,] 'all packages and compartments within.' Searches for proof of ownership, registration or driver's licenses are restricted to places where those items are commonly stored, such as glove boxes, center consoles or visors." Ozorio presents, "Answer should be search exceeded scope of consent.[20] [I]n *State v. Yanovsky* (2001)[,][21] officers are not permitted to ask for consent to search in the absence of a reasonable articulable suspicion that the search would yield evidence of illegal activity." McKeand and Scalcione argue that option a, "No, the officer did not possess the required probable cause to request consent to search the motor vehicle," is the best response. McKeand refers to *State v. Carty*[22] which "states[,] 'During a motor vehicle stop, before asking for consent to search, the officer must have a reasonable and articulable suspicion that the search will reveal evidence of criminal wrongdoing." McKeand also refers to *State v. Lark*[23] which "states[,] "A driver's fabrication of the information contained within the drivers license or the location of the driver's license does not establish that there is or was criminal activity or wrongdoing afoot." Scalcione refers to "*State v. Carty* which was decided by the

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[20] Ozorio appears to be arguing for the keyed response. However, it is noted that Ozorio selected option d, "Yes, the consent was knowing and voluntary and the driver understood his right to refuse."

[21] It is noted that Ozorio does not provide a citation for this matter but he appears to be referring to *State v. Yanovsky*, 340 *N.J. Super.* 1 (App. Div. 2001).

[22] It is noted that McKeand does not provide a citation for this matter. As such, it is not clear whether she is referring to *State v. Carty*, 170 *N.J.* 632 (2002), or *State v. Carty*, 332 *N.J. Super.* 200 (App. Div. 2000).

[23] It appears that McKeand is referring to *State v. Lark*, 319 *N.J. Super.* 618 (App. Div. 1999).

Supreme Court of New Jersey on June 23, 2000"[24] and maintains that "the ruling . . . specifically forbids the officer from entering the vehicle to conduct a search for a license and goes on to also specifically forbid the officer from requesting a written consent to search the vehicle unless he has reasonable articulable suspicion that the search will reveal evidence of illegal activity." Sweitzer, Valentino and Wang maintain that option d is the best response. In this regard, Sweitzer contends that "the driver was advised that he has the right to refuse the consent and can stop the search at any time, in which he did not. Consent forms do not list individual areas on the vehicle to be searched. The driver was acting very suspicious and would not provide any identification." Valentino argues that "it is acceptable to check the trunk for credentials after a consent form was signed off on."[25] Wang contends that "in *State v. Tarshon A. Awkward* (2014) facts of a similar nature are shown . . . [T]he court ruled that the search of the trunk and evidence found admissible . . ." Wang maintains that *Awkward*, *supra*, "contradicts and rules against facts from *State v. Leslie* (2001)."[26] Wuelfing argues that "in the question, it is implied that the officer is asking for consent to search for documents, which since *State* [*v.*] *Carty* (2002), you can no longer do . . . *State* [*v.*] *Carty* established that you must have reasonable and articulable suspicion of criminal wrongdoing and that it would retrieve evidence as such, which finding a registration would not reveal evidence of a crime . . . This question should be dismissed, because to allow it will set up a false precedent that you can ask for consent to search for documents." It is noted that this item is based on *State v. Leslie*, 338 *N.J. Super.* 269 (App. Div. 2001), which held that "the search to which defendant consented could not be reasonably construed as including the trunk of his vehicle. Thus, even assuming the validity of the vehicle stop and the officer's follow up actions in questioning defendant, requesting this consent to search, and then obtaining a signed written consent to search, the evidence in question must be suppressed and the conviction and the sentence reversed." *Id.* at 273. As such, option d is clearly incorrect. Furthermore, as indicated above, the court in *Leslie*, *supra*, did not address whether the request

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[24] It is noted that the *Carty* matter decided on June 23, 2000 was before the Appellate Division of the Superior Court. *See State v. Carty*, 332 *N.J. Super.* 200 (App. Div. 2000).

[25] It is noted that Valentino, who selected option a, states in his appeal that "my answer is D."

[26] Although he does not provide a citation, it appears that Wang is referring to *State v. Awkward*, Docket No. A-2770-12T1 (App. Div. April 24, 2015). In *Awkward*, *supra*, at a sobriety checkpoint, the police "greeter" smelled a strong odor of marijuana coming from Awkward's vehicle and Awkward was directed to an area for investigation. The court indicated that "based on the marijuana odor, the time of night, and the vehicle's status as a rental," the police directed Awkward to step out of the car and subsequently asked to search the vehicle. As such, this matter is not similar to the situation presented in the question. Furthermore, the court referred to *Carty*, 170 *N.J.* 632 (2002), *supra*, and noted that *Carty* court emphasized that its holding "should not be 'overextend[ed]' to 'roadblocks, checkpoints and the like.'" [citation omitted]. Thus, Wang's reliance on this matter is misplaced.

for consent was valid. In this regard, in 2002, the court in *State v. Carty*, *supra*, established a new rule of law: "in order for consent to search a motor vehicle and its occupants to be valid, law enforcement personnel must have a ***reasonable and articulable suspicion*** of criminal wrongdoing prior to seeking consent to search a lawfully stopped motor vehicle." (emphasis added). *Id.* at 635. It is not clear from the question whether Officer Lanister had a reasonable and articulable suspicion of criminal wrongdoing in requesting consent. As such, option c is not clearly correct. Option a is not the best response since it indicates the incorrect standard of "probable cause" rather than "reasonable and articulable suspicion," as indicated in *Carty*, *supra*. Given this, the Division of Test Development and Analytics determined to omit this item from scoring prior to the lists being issued.

For question 62, since Curran selected the correct response, his appeal of this item is moot.

For question 63, since Curran selected the correct response, his appeal of this item is moot.

Question 64 indicates that Officer Lang has picked up a juvenile for a petty disorderly persons offense. While Officer Lang does not want to sign a formal complaint against the juvenile, he is unsure about the criteria for proceeding with a stationhouse adjustment. The question indicates that the department's juvenile officer is unavailable, so Officer Lang comes to you for guidance on how to proceed. The question asks, according to the Attorney General Stationhouse Adjustment Guidelines, for the true statement. The keyed response is option b, "The adjustment cannot continue over the objection of the victim." Velazquez presents that "my only concern with this question is the way the answer was listed. It was something to the effect of 'over the objection of the victim.' When reading the guideline it specifically states you should not conduct a station house adjustment over the objection of the victim UNLESS the complaint is completely frivolous." The Attorney General Guidelines for Stationhouse Adjustments of Juvenile Delinquency Offenses (revised March 2008), under the section, "Minimum Required Procedures," provides:

> If there is a known victim of the alleged offense, the victim must be notified and agree to the process . . . A stationhouse adjustment may proceed without the active participation of a victim, but shall <u>not</u> proceed over the objection of a victim. A victim who objects to a stationhouse adjustment should be permitted to sign a juvenile delinquency complaint, unless the complaint is clearly frivolous or lacking in probable cause, in which case, the police officer has the discretion pursuant to *N.J.S.A.* 2B:12-21(b) to refuse to accept the complaint.

Thus, it is not clear why Velazquez believes that an officer would perform a stationhouse adjustment based on a "complaint [that] is completely frivolous." As such, Velazquez' argument is misplaced.

Question 65 indicates that Officer Cooper picked up a juvenile for a disorderly persons offense. The juvenile was found outside a row of businesses that had been vandalized earlier that morning. The officer had reason to believe the juvenile was involved in the incident. He comes to you and asks if he is permitted to fingerprint the juvenile for the purpose of comparing his prints to latent fingerprints found at the scene of the vandalism. Candidates were required to complete the following sentence, "You should tell the officer that fingerprinting the juvenile in this case may . . ." The keyed response is option c, "be completed with the consent of the juvenile and his parent/guardian." Since Lazzarini selected the correct response, her appeal of this item is moot. Lyszyk contends that "just because the juvenile was arrested for a [disorderly persons offense], not specified, and because he is in the same area that the vandalism occurred earlier that morning, no timeframe specified so it can be 23 hours and 59 minutes ago, would put too much time in between the vandalism and the time the juvenile was picked up. More importantly, . . . [t]he question did not state his age . . ." The focus of the question is whether the juvenile may be fingerprinted. In this regard, *N.J.S.A.* 2A:4A-61a(1) provides that the fingerprints of a juvenile may be taken:

> Where latent fingerprints are found during the investigation of an offense and a law enforcement officer has reason to believe that they are those of a juvenile, he may, with the consent of the court or juvenile and his parent or guardian fingerprint the juvenile for the purpose of comparison with the latent fingerprints. Fingerprint records taken pursuant to this paragraph may be retained by the department or agency taking them and shall be destroyed when the purpose for the taking of fingerprints has been fulfilled.[27]

As such, the question is correct as keyed.

Question 66 indicates that a 15-year-old juvenile was brought into the station by Officer Gomez. The juvenile was involved in a fight and Officer Gomez tells you the juvenile will be charged with simple assault. Officer Gomez is unsure about the procedures for documenting the arrest. The question requires candidates to complete the following sentence, "You should inform Officer Gomez that for criminal identification purposes, the juvenile should be . . ." The keyed response is option c,

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[27] It is noted that *N.J.S.A.* 2A:4A-61 does not designate a timeframe in which the fingerprints must be collected. Furthermore, as indicated above, *N.J.S.A.* 2A:4A-61a(1) does not cite the age of the juvenile as a factor.

"finger printed and photographed."[28] As indicated in Procedures for Collecting Juvenile Fingerprints and Photographs (February 1998) (Procedures), under the heading, "Responsibilities of a Law Enforcement Agency which Files Delinquency Charges (Charging Agency)," provides that when a juvenile who is 14 or older is charged with an offense that would be a crime[29] if committed by an adult, the charging agency shall take all reasonable steps to fingerprint the juvenile. *See N.J.S.A.* 2A:4A-61a(3). However, as also noted in the Procedures:

> Caution: . . . In addition, juveniles who are charged with disorderly persons offenses or petty disorderly persons offenses may not be fingerprinted under *N.J.S.A.* 2A:4A-61a(3) . . .

Given that simple assault is a disorderly persons offense,[30] the Division of Test Development and Analytics determined to rekey this item to option b, "photographed only" prior to the lists being issued.

For question 67, since Lazzarini selected the correct response, her appeal of this item is moot.

Question 71 provides:

> Officers Reed and Malloy are responding to ABC Liquors for a report of an armed robbery when they confront Charles Krug on the street running from the liquor store. The officers observe that Krug is carrying what appears to be a .45 caliber semi-automatic handgun in his right hand. Both officers draw their service weapons and order Krug to halt and drop his gun. Instead, Krug runs toward a house, occupied by Susie Byrnes and her three small children. Krug yells for Susie to open the door, and begins banging on the door with the handle of his gun. After determining that there was no danger of hitting the occupants of Byrnes' house, Reed and Malloy both fire one shot at Krug, killing him.

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[28] It is noted that Aviles misidentified this item as question 32 in her appeal.

[29] *N.J.S.A.* 2C:1-4a provides that an offense defined by this code or by any other statute of this State, for which a sentence of imprisonment in excess of 6 months is authorized, constitutes a crime within the meaning of the Constitution of this State. Crimes are designated in this code as being of the first, second, third or fourth degree.

[30] *N.J.S.A.* 2C:12-1a provides that simple assault is a disorderly persons offense unless committed in a fight or scuffle entered into by mutual consent, in which case it is a petty disorderly persons offense.

Candidates are required to complete the following sentence, "According to the New Jersey Attorney General Guidelines and Directives, Reed and Malloy's use of deadly force would . . ." The keyed response is option b, "be justified, due to the presence of imminent danger to the officers and the occupants of the house if he was able to gain entry." Fabula, Farinola, Roman, Walsh and Zeszotarski contend that option a, "not be justified, as Krug never pointed his gun at the officers, placing them in imminent danger of death or serious bodily injury," is the best response. Specifically, Fabula contends that "the scenario provided in this item falls short of creating immediacy of a threat." In this regard, Fabula argues:

1. There is no immediate threat to the officers since the suspect had his back to them and was banging on the door with the butt of his gun.
2. The officers outnumbered the suspect.
3. The suspect was yelling to Su[sie] for help to open the door which establishes they are familiar with one another and would appear to the test taker that there is a decreased chance of a threat to Su[sie].
4. There is nothing to suggest that Su[sie] would not be coming to the door to open it thereby creating a substantial risk that Su[sie] could be seriously injured or killed by one of the officers . . .
5. The suspect did not commit an offense in which he caused or attempted to cause death or serious bodily harm prior to fleeing as outlined in the authorizations section of the use of deadly force in the Attorney General Guidelines on the Use of Force.

Farinola presents that "at no time were the officers in imminent danger of death or seriously [*sic*] bodily injury, nor were the occupants of the home. Had the suspect turned in the officer[s'] direction or had he been entering the home by forcing the door open or by going through a window, the threat would be imminent." Roman asserts that "there was not imminent threat to the people in the home, because the actor never attempted to gain entry, he never, kicked, punched, or shot at the door, he simpl[y] yelled for Susie to let him in while 'banging' on the door. The officers were not in imminent threat because the [actor] never ever turned toward them as a threat." Walsh presents that it is unclear whether the suspect poses a threat to the occupants, the suspect "did not point a firearm at police or anyone else during his flight," the suspect "was not attempting to forcibly enter the property," and the suspect "made no threats to anyone after leaving the scene to place them in imminent danger." Zeszotarski argues that "there is no indication that the officers feared for their safety . . . [T]he question does not state that he fired or even pointed [the gun at] anyone, so at this point I'm not even sure he has an actual gun . . . [The suspect] was not kicking the door or attempting to break it down . . . Even if the person inside did open the door, she wouldn't open it if she believed there was an imminent threat of danger to her or her children inside." Jankowski maintains that option c, "not be justified, since Krug never pointed his gun at the Byrne[s], placing

them in imminent danger of death or serious bodily injury," is the best response. In this regard, Jankowski asserts that "based off of the limited information in the question you can conclude that Krug never pointed his gun at the police because he used the butt of his gun to bang on the door. You also ca[nn]ot say that there was a foreseeable imminent danger had he made entry into the residence because you don't know if he knew the occupants and friends or family [*sic*]. If he was forcibly trying to gain entry into the residence by kicking the door while stat[ing,] [']if you don't let me in I will kill you,['] which would elevate to the CSC answers reasoning [*sic*] that imminent danger was likely." It is noted that the Division of Test of Development and Analytics contacted SMEs regarding this matter who noted that the Attorney General Use of Force Policy (revised June 2000) provides, under the section, "Use of Deadly Force":

> 2. A law enforcement officer may use deadly force to prevent the escape of a fleeing suspect
>   a. whom the officer has probable cause to believe has committed an offense in which the suspect caused or attempted to cause death or serious bodily harm; and
>   b. who will pose an imminent danger of death or serious bodily harm should the escape succeed; and
>   c. when the use of deadly force presents no substantial risk of injury to innocent persons.

The SMEs noted that the question clearly indicates that Krug is fleeing the scene of an armed robbery while holding a weapon. The SMEs indicated that since armed robbery is a first-degree crime[31] and Krug is still holding the weapon, the criteria is met for substantial risk of harm. They added that under the section, "Imminent Danger," that "the threatened harm does not have to be instantaneous, for example, imminent danger may be present even if a subject is not at that instant pointing a weapon at the law enforcement officer, but is carrying a weapon and running for cover." The SMEs further noted that a lone individual with a weapon is capable of causing death or serious bodily injury and thus, carries a substantial risk regardless of how many officers are responding to the threat. The SMEs stated that despite the appellants' claims, there is no indication in the question whether Krug knew Susie Byrnes. However, the SMEs noted that even if Krug knew Susie, it would not change the justification or authority for the officers to use deadly force. The SMEs emphasized that familiarity with the homeowner would not reduce the risk of imminent danger or substantial risk of bodily harm should Krug gain entry into the home. In this regard, they noted that if Krug were able to gain entry, the officers could then be facing a hostage situation with three small children. In addition, the SMEs also indicated that the question states, "After determining that there was no danger of hitting the occupants of Byrnes' house, Reed and Malloy

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[31] *See N.J.S.A.* 2C:15-1.

both fire one shot at Krug . . .," and thus, it is clear that there was no threat of harm to the individuals in the house by the officers. As such, the question is correct as keyed.

Question 72 indicates:

> Officers Leahy and McGuire pursue Karl Riley, a known felon wanted for kidnapping, into an apartment building at 100 Main Street. During the pursuit, Officer McGuire points his gun at Riley and states, 'Stop, or I'll shoot.' Riley ignores the order and runs into apartment 4G, locking the door behind him. Officer Leahy, armed with the radio car's 12-gauge shotgun, loads two breaching rounds in the shotgun and blows the hinges off the door, knowing full well that Riley is inside the apartment. Both officers enter the apartment and Officer Leahy spots Riley in the living room. Riley is in the process of drawing a handgun from his waistband. Officer Leahy, knowing that the next round in the breech of the shotgun is a bean bag round, fires at Riley, knocking him into the bathroom. Officer Riley shuts the bathroom door and yells, 'You'll never take me alive.' After hearing what sounds like Riley chambering a round in the handgun, Officers Leahy and McGuire fire their handguns through the bathroom door, killing Riley.

Candidates are presented with four actions and were required to determine, according to the Attorney General Guidelines and Directives, which action(s) constituted the use of deadly force by Officers Leahy and McGuire. The keyed response is option d, IV, "Officers McGuire and Leahy firing their handguns through the bathroom door," only. Ozorio, who selected option d, maintains that "the correct answer should be only the officers who fired the rounds through the bathroom door used deadly force." As such, Ozorio appears to be arguing for the keyed response. Angelo, Carriere, Caruso, Fabula, Heater, Munoz, Otero, and Quarino present that while the question indicates that the suspect's name is Karl Riley, it later provides, "Officer Riley shuts the bathroom door . . ." They argue that this error creates confusion and the question should be omitted from scoring. Caruso also argues that "a police officer can not [*sic*] use a shotgun and have a less lethal round loaded in the weapon as stated in the question." Aksdal, Antinori, Fabula, Hudak, Lazzarini,[32] and Tsimpedes assert that statement II, "Officer Leahy firing two bre[a]ching rounds into the door hinges of an apartment occupied by Riley," and statement III, "Officer Leahy firing a bean bag round at Riley, striking him," are correct. With regard to statement III, the Attorney General Use of Force Policy (revised June 2000) provides, "Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be constitutes deadly force." The policy also notes that "under current

[32] It is noted that Lazzarini misidentified this item as question 67 in her appeal.

state statutes the discharge of any projectile from a firearm is considered to be deadly force, including less lethal means such as bean bag ammunition or rubber bullets." However, effective January 4, 2006, *N.J.S.A.* 2C:3-11(b) was amended to provide, in pertinent part, "Purposely firing a firearm in the direction of another person or at a vehicle, building or structure in which another person is believed to be constitutes deadly force *unless the firearm is loaded with less-lethal ammunition* and fired by a law enforcement officer in the performance of the officer's official duties" (emphasis added). Subsequently, the Attorney General Supplemental Policy on Less-Lethal Ammunition (March 19, 2008), which "supplements the Attorney General's Use of Force Policy by providing express criteria for the use of less-lethal ammunition," indicates that the policy applies to the use of less-lethal ammunition, as defined in *N.J.S.A.* 2C:3-11(f), that is ejected from a firearm and that is targeted at a person." It is noted that *N.J.S.A.* 2C:3-11(f) provides, "Less-lethal ammunition" means ammunition approved by the Attorney General which is designed to stun, temporarily incapacitate or cause temporary discomfort to a person without penetrating the person's body. The term shall also include ammunition approved by the Attorney General which is designed to gain access to a building or structure and is used for that purpose. It is noted that the Attorney General's Approved List of Less-Lethal Ammunition (December 2010) includes bean bag ammunition. As such, statement III does not constitute deadly force. With regard to statement II, on April 4, 2013, the Attorney General issued a memorandum, "Clarification of Attorney General's Use of Force Policy with Respect to 'Door Breaching' Ammunition and Tear Gas/Pepper Spray Canisters Launched from a Firearm." This memorandum provides, in part, with regard to "door breaching ammunition that is used to fragment a door lock or hinges to facilitate police entry into a room or structure," that "the Attorney General's Use of Force Policy should be interpreted and applied to treat these kinds of projectiles as a form of *mechanical force*, rather than deadly force, provided that they are not targeted to directly strike a person." Accordingly, statement II does not constitute deadly force. However, it appears that this memorandum is not available on the Attorney General's website or any other website. Given that the question specifically refers to Attorney General Guidelines and Directives and the lack of availability of the April 14, 2013 memorandum, the Division of Test Development and Analytics determined to omit this item from scoring prior to the lists being issued.[33]

Question 75 indicates that Officer Johnson arrested Steve Smith for simple assault during a domestic violence related incident where the victim exhibited signs of injury. During the arrest, Smith refused to place his hands behind his back because he felt that Officer Johnson did not have probable cause to arrest him. Officer Johnson advised Smith that he was under arrest, and if he did not place his hands behind his back, he would also be charged with resisting arrest. After

[33] Given that this item has been omitted from scoring, the remainder of the arguments will not be addressed herein.

handcuffing him, Officer Johnson placed Smith in the patrol vehicle and transported him to the police station. The question asks, in accordance with the Attorney General's Use of Force Policy (Revised June 2000), what Officer Johnson utilized in effectuating the arrest. The keyed response is option b, "Physical Contact." Winowski presents, "I believe the appropriate answer to be constructive authority[34] . . . While the act of handcuffing would certainly be physical contact[,] the question hinged on what level of force 'effectuated' the arrest . . . [I]t was the officer's verbal command to assert his authority that made the male subject compliant on the arrest, the handcuffing is merely a byproduct of this constructive authority." It is noted that "constructive authority" was not one of the answer choices provided to candidates. As such, Winowski's argument is misplaced.

Question 80 indicates that while holding training on Title 39, you provide the officers with the following description: "Driving a vehicle without due caution and circumspection, in a manner so as to endanger, or be likely to endanger a person or property." The question asks, "This definition **MOST** closely describes which *N.J.S.A.* Title 39 violation?" The keyed response is option c, "Careless Driving."[35] Caruso, who selected option a, "Reckless Driving,"[36] misremembered the keyed response as option d, "Distracted Driving." As such, his appeal of this item is moot.

Question 87 indicates that an officer discovers that an individual is in possession of approximately five ounces of marijuana. The individual informs the officer that the marijuana is for medical purposes and produces a valid Compassionate Use Medical Marijuana Act (CUMMA) Registration card. The card allows the qualifying patient to receive a maximum of two ounces in a 30-day period. The question asks, according to the Attorney General Medical Marijuana Enforcement Guidelines for Police, for the true statement. The keyed response is option d, "A qualifying patient's possession of more than 2 ounces is not illegal unless there is probable cause to believe it was obtained through an illicit source or was possessed with the intent to distribute unlawfully." Valentino maintains that option b, "A qualifying patient found to be in possession of any amount over the acceptable 2 ounces is in violation and subject to a charge of Simple Possession, or greater, depending on the amount in excess of the acceptable limit," is the best

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[34] It is noted that Winowski selected option a, "Constructive Force." It is further noted that the Use of Force Policy, *supra*, does not utilize the term "constructive force."

[35] *N.J.S.A.* 39:4-97 (Careless Driving) provides that a person who drives a vehicle carelessly, or without due caution and circumspection, in a manner so as to endanger, or be likely to endanger, a person or property, shall be guilty of careless driving.

[36] *N.J.S.A.* 39:4-96 (Reckless Driving) provides that a person who drives a vehicle heedlessly, in willful or wanton disregard of the rights or safety of others, in a manner so as to endanger, or be likely to endanger, a person or property, shall be guilty of reckless driving

response.[37] He contends that "any possession of excess cbs [*sic*] under CUMMA should be charged with possession. They should not accept additional medical marijuana if they still not have consum[e]d current amount." While Valentino offers his opinion on this matter, as noted above, the question specifically refers to the Attorney General Medical Marijuana Enforcement Guidelines for Police. In this regard, it is noted that the Attorney General Medical Marijuana Enforcement Guidelines for Police (issued December 6, 2012) provides:

> 2.7 Statutory Limitation on Amount of Medical Marijuana That May Be Dispensed
>
> CUMMA generally provides that an Alternate Treatment Center may only dispense two or less ounces of usable medical marijuana to a qualifying patient or primary caregiver at any one time . . . This is the maximum amount of medical marijuana that may be lawfully dispensed to the patient or caregiver in a thirty-day period. *See N.J.S.A.* 24:6I-10. However, the statute does NOT impose a limit on the total amount of medical marijuana that the patient or caregiver may possess at any given time.
>
> As with other medications, it is conceivable that a person obtaining a monthly supply from an Alternative Treatment Center may have left-over medical marijuana from a prior lawful acquisition, in which the person might now be in actual or constructive possession of an aggregate amount well exceeding the two-ounce-per-month dispensing limit.
>
> In other words, possession of more than two ounces is not illegal *per se*, and should not result in an arrest or seizure unless there is probable cause to believe that some of the marijuana had been obtained from an illicit source, or there is probable cause to believe that the person possessed the marijuana with intent to distribute it unlawfully.

Accordingly, option b is incorrect.

CONCLUSION

A thorough review of 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 burden of proof in this matter.

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[37] It is noted that Valentino, who selected option b, misidentified this answer choice as option d.

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 18TH DAY OF APRIL, 2018

Deidre' L. Webster Cobb

Deidre L. Webster Cobb
Chairperson
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William Vendrell (2018-1445)
Ryan Kimble (2018-1451)
Michael Curran (2018-1448)
Andrew Alvarez (2018-1483)
Robert Marks (2018-1536)
Jason Smith (2018-1482)
Joseph Winowski (2018-1424)
David Bacsik (2018-1487)
Eirnvn Papafilipakis (2018-1488)
Matthew Quarino (2018-1449)
Anthony Caruso (2018-1492)
Robert Roman (2018-1491)
Luke Zeszotarski (2018-1455)
Sean Greenberger (2018-1421)
Michael Kelly (2018-1477)
Vincent Rubio (2018-1478)
John Fabula (2018-1481)
Michael Farinola (2018-1452)
Jason Ward (2018-1442)
Benjamin Wuelfing (2018-1555)
Christopher Di Biase (2018-1480)
Stephen Meyer (2018-1479)
Justin Pederson (2018-1420)
Brian Murphy (2018-1624)
Jason Sweitzer (2018-1476)
Sean Cahill (2018-1423)
Ryan Daughton (2018-1415)
Erika DiMarcello (2018-1486)
David Hudak (2018-1425)
Anthony Scala (2018-1456)
Ryan Uzunis (2018-1489)

Jason Zier (2018-1490)
Christopher Vivarelli (2018-1475)
Patrick Walsh (2018-1454)
Kevin McKeon (2018-1474)
Stephen Jankowski (2018-1473)
An Wang (2018-1422)
William Heater (2018-1261)
Charles Antinori (2018-1417)
Michelle Aviles (2018-1444)
Yalinett Cartas (2018-1411)
Patricia Lazzarini (2018-1472)
Samantha Martinez (2018-1453)
Joseph Rubel (2018-1470)
Peter Simon (2018-1625)
Salvatore Valentino (2018-1533)
Annmarie McCormick (2018-1418)
Joseph Angelo (2018-1469)
Richard Hilliard (2018-1450)
Andrew Lyszyk (2018-1441)
Edward Cunningham (2018-1369)
Gregory Hollo (2018-1471)
Diane Otero (2018-1289)
Edward Benenati (2018-1484)
Jorge Cabral (2018-1446)
David Haverty (2018-1485)
Richard Hernandez (2018-1414)
Valerie Carriere (2018-1494)
Lydiana Diaz (2018-1535)
Sanny Fernandez (2018-1497)
Maciej Kuzmicki (2018-1552)
Luz Rojas (2018-1419)
Matthew Scalcione (2018-1496)
Juan Velazquez (2018-1493)
Jimmy Michel (2018-1443)
George Tsimpedes (2018-1447)
Michael Johnson
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