



STATE OF NEW JERSEY

In the Matter of Joanna Kierce, *et al.*,
Police Sergeant, various jurisdictions

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

CSC Docket Nos. 2022-1976, *et al.*

Examination Appeal

ISSUED: May 3, 2023 (JH)

Joanna Kierce, represented by Michael A. Bukosky, Esq., Kevin Aviles, Megan Bara, Samantha Camacho, Dave Persad, Victor Ransom, Chanel Thomas, John Tomei and Arkadiusz Zylkiewicz (PM4569C), Jersey City; Steve Molina (PM4659C), Union City; and Cristo Dominguez and Juan Laffont (PM4672C), West New York; appeal the administration of the promotional examination for Police Sergeant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

By way of background, the subject two-part examination, which was administered on February 26, 2022, consisted of a video-based portion, items 1 through 20, and a multiple-choice portion, items 21 through 85.¹ Candidates were provided with 25 minutes for the video portion² and two hours and 30 minutes for the

¹ For the subject exam, it is noted that the Commission previously addressed exam item appeals in *In the Matter of Albert Herbert, et al., Police Sergeant* (CSC, decided August 24, 2022).

² It is noted that the video portion was guided. In this regard, candidates were instructed, in part, “During the video portion you will be shown a scenario requiring your attention . . . The narration in the video will instruct you to bubble your responses on your answer sheets . . . As the video progresses, questions will be presented for you to answer in the time provided. The questions will be clearly indicated as they appear on the screen and will be read aloud by the narrator on the video.” Candidates were also informed, “When responding to a question, you may turn back to a previous page to refer to notes you have made, but you are not permitted to move forward in your booklet. Please follow the instructions of the video narrator and do not skip ahead in your video exam booklet, as it may result in missing valuable information presented in the scenario.”

multiple-choice portion. As noted in the 2022 Police Sergeant Orientation Guide, candidates were tested in one of two sessions, the morning session (9:00 a.m.) or the afternoon session (12:30 p.m.). As further noted in the Orientation Guide, a period of sequestration was required for candidates in the first session, *i.e.*, all first session candidates were required to remain at the exam center until all candidates for the second session arrived.

The following appellants were scheduled to be tested at Bergen County College: Joanna Kierce, Megan Bara, Cristo Dominguez, Steve Molina, Juan Laffont and Arkadiusz Zylkiewicz; and at Hudson County College: Kevin Aviles, Samantha Camacho, Dave Persad, Victor Ransom, Chanel Thomas and John Tomei.³

Regarding the appellants who tested at Bergen County College, Kierce, in an appeal filed at the test center, presents that the video began “with no narration and . . . there was no audio. After the proctor made multiple attempts to rectify the issue, it then worked. With approximately 3 minutes left in the video, the connection timed out and yet again had to be addressed . . . The 25 minute video portion lasted 37 minutes with technical difficulties making it hard to concentrate on what other test takers received with no issues.” In a subsequent submission dated November 9, 2022, Kierce argues that the “sound on the video was not working. The proctor made multiple attempts to correct this issue, however, it continued and there was no sound for the video. As a result, because Officer Kierce was unable to hear the sound this had a detrimental effect on her examination and her final score.” Kierce requests that “all questions which pertain to that particular video be scored in [her] favor . . . We believe that this is the only appropriate equitable response under the circumstances.” Bara, in an appeal filed at the test center, asserts that the room monitor “was unable to be understood while giving instructions . . . Problems with video/audio[;] long wait between segments due to audio/video problems[;] class room start/finish was delayed causing disruption when people were leaving from other rooms[;] those finished were allowed to leave while test in progress. Caused loud disruptions.” Dominguez, in an appeal filed on March 1, 2022, maintains that the room monitor “was not attentive to the class,” “permitted discussions among the [candidates] during the exam,” and “did not secure the classroom during the timed session, causing me to have a significant distraction from all the noise coming from the hallway . . .” Dominguez adds that “the test was delayed approximately two hours and thirty minutes, the morning [candidates] who had finished their exam were comingling with some [afternoon candidates], as we waited to be allowed into our exam site.” Laffont, in an appeal filed on March 8, 2022, asserts that “after the first group was released, many of the second group test takers were asked to go back to their cars to get their negative Covid-19 test results or vaccine cards since they only had pictures of them on their cell phones. After they returned and showed proof of

³ The above-noted appellants who tested at Hudson County were scheduled to be tested during the a.m. session and all were assigned to testing room H.

the Covid-19 card, they were again asked to return to their cars so they could secure their phones in their cars. During this time many of the first group test takers were already outside of the college and could have easily discussed questions and answers with friends/co-workers that were about to take the test . . . I do not find the test fair if me and other officers from different departments studied, sacrificed countless hours away from their families, and spent months preparing for this exam, so that other candidates could have received test questions and answers beforehand.” Molina, in an appeal received on March 18, 2022, presents that he had “understood from the provided directions that no vaccine cards or test results would be permitted to be displayed from a cell phone and only hard copies would be excepted [*sic*]. I witnessed proctors/test administrators allow people to return to their vehicles and retrieve their cell phones in order to show their proof of vaccination or test results. Those same people did not return to their vehicles to leave their cell phones after the requirement was satisfied in a manner that was not be allowed.” Molina maintains that after he entered the testing room, staff was “attempting to give directions for the test and everyone else was talking with each other” and “the instructions given by the proctors were unclear and the proctor did not say anything in order to take control of the classroom.” Molina further presents that during the test, “several people got up to utilize the restroom without permission from the proctor and the proctor did not challenge those who left the room” and one of those individuals “left their test completely exposed allowing the person behind them to see their answer sheet.” Molina claims that the room monitor was focused on knitting and her seat “was located behind a computer obstructing her view from the test taker.” Finally, Molina claims that he “observed people in the back of the room talking with each other, giving me a sense that this test was being taken in a group setting.” Zylkiewicz, in an appeal filed on March 23, 2022, maintains that it was difficult to understand the room monitor and she did not inform candidates that “we would have to appeal once the test was complete at the site . . .” Zylkiewicz presents that candidates had “full conversations without the proctor’s intervention along with bringing their cellphones into class and smart watches using the excuse of their covid tests.”

With respect to the appellants who tested at Hudson County College, in appeals filed at the test center, Aviles asserts that the testing staff “were completely unprepared and very inconsistent with their directions. They started the video prematurely and then had to stop it. They could not answer basic questions. They handed out booklets where [candidates] wrote their social security numbers and then had to ask for the booklets back. In the beginning there were not enough tables and chairs for the amount of [candidates]. This created heightened an[xi]ety and made it even more difficult to focus and concentrate in an already stressful situation.” Camacho argues that testing staff “were not properly prepared to monitor this exam. We started an hour late and when the video portion began the monitor was still talking. We were not handed our test booklets until after the video beg[a]n. Their instructions were inconsistent to what they were actually handing out to us.” Camacho also contends that the test booklets were handed out without matching

them to the answer sheets given to candidates. Camacho adds that there were not enough chairs or desks. Persad presents that there were not enough desks and chairs; the video started before test booklets were given out; the test started 45 minutes late; the monitor randomly gave out test booklets to candidates; the monitor was not prepared; and all of this “led to a stressful testing environment.” Ransom asserts that “the administration of the test was wrought with mistakes that were time consuming. The classroom was full beyond capacity causing the test to begin at 1050 hrs. The monitor did the not appear to understand the rules of how to properly administer the test . . . The test material was given out incorrectly (video book and written book did not match) this le[d] to further confusion and delay.” Ransom also claims that that candidates “were told the video portion was 45 min but were given 25 min.” Ransom further notes that while they were ultimately given the correct amount of time for the written portion, “the confusion made it difficult to properly focus.” Thomas argues that “staff was unfamiliar with proper testing guidelines. Classrooms were not properly equipped with enough desks and chairs . . . We received conflicting instructions. Test booklets were distributed, collected and redistributed due to receiving incorrect booklets which had already been signed by other test takers.” Thomas also indicates that the “video portion of exam began without notice and prior to booklets being distributed. From the beginning, I was told there was no answer sheet for me. Test started so late, we were disturbed and could hear loud noises coming from candidates outside the building, as well as those exiting from taking test.” Tomei contends that that the “test monitors not prepared[;] not enough chairs [and] tables for test[;] started late[;] given wrong book[;] people already signed and erased books SS# and names . . .” Tomei adds that candidates were not allowed to “read pages just said go to page #3” at the beginning of the video portion; “tab given at end of exam ripped in half then corrected given full tab[;] monitor eating during class[;] afternoon phase of test allowed in before my phase 1st phase was completed[;] did not get into building until after time posted on card[;] was not allowed in with long line outside[;] was given wrong second book[;] finish time for test 1:40 p[.]m[.]”

CONCLUSION

N.J.A.C. 4A:4-6.4 states that appeals pertaining to administration of the examination must be filed in writing at the examination site on the day of the exam. The Division of Test Development and Analytics was contacted regarding this matter and indicated that all monitors were provided with the same set of instructions and they were directed to read the instructions to the candidates as written. In this regard, the monitor instructions provide, after check-in is completed and prior to the test administration, in pertinent part:

Any objections to the manner in which the examination was administered must be made in writing immediately following the completion of the examination by completing a Comment or an Appeal of Civil Service Commission Examination Form prior to leaving the

examination center. This form can be obtained from the Center Supervisor. No appeal relating to the manner in which the examination was administered shall be permitted after the test date.

As such, the appeals from Dominguez, Molina, Laffont and Zylkiewicz are clearly untimely. However, even assuming that the above noted directions were not read aloud to candidates, any claim that candidates were not so informed or that candidates were unable to locate staff in order to file an appeal are rendered moot as these appeals are addressed herein.

With respect to the starting time of the test, candidates are notified that the test arrival time is the time the candidates are expected to be at the test center, and is not the “start time” of an examination. In this regard, there are several steps, which include processing candidates and providing testing instructions, that must be accomplished before candidates may open their test booklets. Thus, the indicated time on the notification to appear for examination is not the time at which candidates open their test booklets but rather when candidates must arrive at the testing center so that the testing process may begin. In other words, the scheduled session times, *i.e.*, 9:00 a.m. to 12:30 p.m. or 12:30 p.m. to 3:30 p.m., were not designed, as indicated above, for solely test taking purposes. In this regard, as also noted previously, candidates were provided with 25 minutes for the video portion and two hours and 30 minutes for the multiple-choice portion. In addition, candidates were also informed that they should expect to spend several hours at the testing center.

Regarding the testing environment, it is noted that this agency uses examination centers throughout the State. These centers have been chosen for both their suitability as test sites and their location near transportation routes. The above noted test sites were determined to be suitable examination centers that satisfied these criteria. In addition, since the test sites are rented by the Civil Service Commission (Commission), test staff do not have the authority to regulate the amenities of the facility, including heating or air conditioning, nor can staff change the size of seating or the distance between fixed seating. In addition, while testing staff makes every effort to ensure that the environment for testing is comfortable and free of extraneous distractions, circumstances can occur which are beyond the staff's control. Furthermore, test centers are under the supervision of Center Supervisors. As such, the appellants had the opportunity to address any concerns they had regarding the room monitor, including how the room monitor managed the room or administered the test, or testing conditions with the Center Supervisor on the test date. There is no record of the appellants complaining of these issues to the respective Center Supervisors *during* the test administration when a remedy, if necessary, could have been provided.

With regard to the claims by Dominguez, who tested in room L, and Molina and Zylkiewicz, who both tested in room J, that candidates were speaking in the test

rooms, the room monitors were not intervening and/or not observing the room, and that “several people got up to utilize the restroom without permission from the proctor and the proctor did not challenge those who left the room,” there is no record that the appellants reported these issues to the Center Supervisor during or after the administration of the test. Nevertheless, the Center Supervisor was contacted regarding these issues and indicated that when addressing the video issue in room J, as discussed below, “candidates began talking and I told them to stop talking because the exam was in progress. As far as candidates using the restroom, monitors and hall monitors were told that only one candidate was allowed out of a room at a time. Throughout the exam that day, I walked up and down the two hallways that we used. I did not observe multiple [candidates] coming out of a room at one time to use the restroom while the exam was being administered. I also was not told by any of the hall monitors/room monitors that this occurred.”

Regarding the number of desks and chairs available at the Hudson County College test site, as noted in the Center Supervisor report, “Room H had insufficient chairs and desks for the candidates. Staff in the building helped to move chairs and the desk[s].” Thus, all candidates in room H were provided with desks and chairs.

With respect to the assertion that candidates who tested at Hudson County College in room H during the morning session were not provided with the correct test booklets, the monitor instructions directed monitors to distribute certain materials including an answer sheet to each candidate during check-in. After check-in was completed, the monitors were to ask candidates to “please verify that you have been given the correct answer sheet by looking on the upper right side of the answer sheet for your name and [Social Security number].” The monitors were further directed to instruct candidates, “Below your [Social Security number] is the booklet number. This number will correspond with the booklet number that appears on the booklets I will pass out later.” The Center Supervisor report indicates:

Room H (Per candidates room) [*sic*]. We have a total of 13 appeals, the candidates were frustrated, and upset, and they approach[ed] the supervisor . . . and stated that the [proctor] of the room w[as] disorganized and unprofessional. They also stated that the proctor in the room w[as] poorly prepared to administ[er] the exam. The book[le]ts were incorrectly distributed and recollected and were dispensed with the candidates’ social security and name. They stated that the proctor was ta[l]king during the test and was a distraction. I really had an associate, she has to assist the monitor in Room H.

While it would have been ideal for candidates to initially receive the correct answer sheet along with the corresponding test booklet, as outlined in the monitor instructions, this misstep was remedied in the test room by redistributing the test

booklets. Thus, candidates did receive the correct corresponding test booklet after the redistribution.

With respect to the assertion by Camacho, Persad and Thomas that they were not provided with test booklets until after the video portion had started, although the Center Supervisor report does not indicate that video portion began prior to the distribution of test booklets, it is noted at the outset that monitors were to instruct candidates, prior to the administration of the video portion and of the multiple-choice portion:

The center of the booklet states how many numbered pages are contained in your [test] booklet. Without looking at test content, please verify that your booklet contains all numbered pages in the correct order by checking the numbers at the bottom of each page. After you have verified that your booklet is complete, read the front cover of the booklet and sign where it says, 'Candidate Signature.'

Monitors themselves were instructed, "Allow the candidates to check the bottom of each page to verify that they have a complete booklet. DO NOT allow candidates to read the test questions at this time." Thus, candidates were not permitted to review their test booklets prior to the administration of the video portion but rather, they were only permitted to check the numbers at the bottom of the pages. In this regard, it is noted that Camacho, Persad and Thomas do not indicate on appeal that their test booklets had page number issues and there is no record that they complained of this issue at the test center. In addition, for the video portion, monitors were to inform candidates:

During the video portion you will be shown a scenario requiring your attention. While it will be important that you hear the instructions and dialogue associated with each scenario, a close visual inspection of the screen is not necessary. The scenario will begin with relevant background information on the situation about to be presented. As the scenario plays out, you will be asked questions on how you should respond and what actions you should take to deal with the events described in the scenarios.

Again, while it would have been ideal for candidates to have their test booklets when the video portion started, as noted above, candidates were not permitted to review the material in the test booklet, which did not include the dialog presented in the scenario, prior to the start of the video portion. Furthermore, as noted above, the video portion of the exam was guided. In this regard, monitors were to inform candidates, "Please follow the instructions of the video narrator and do not skip ahead in your video exam booklet, as it may result in missing valuable information presented in the scenario." In addition, candidates were further instructed, "As the

video progresses, questions will be presented for you to answer in the time provided. The questions will be clearly indicated as they appear on the screen and will be read aloud by the narrator on the video.” Moreover, Camacho, Persad and Thomas do not indicate on appeal that they did not receive their test booklets by the time the questions were read and appeared on the screen.

With respect to the video portion in room J at the Bergen County College site, a review of the Center Supervisor report finds that during the morning session, there were issues with the video. Specifically, the Center Supervisor report indicated that “when playing the video, there was no sound, the room monitor called me and I had to restart the computer[.] Sound stopped working but I was able to get it to work again without restarting the computer[.] The video then cut out at question 14 and the room monitor called me back in the room I had to restart the computer and the projector.” The Center Supervisor was contacted regarding this matter and further indicated that “because the video kept turning off in that room, I had to keep restarting the computer and continue where it left off.” Given that the video was restarted at the point where an issue occurred, testing staff determined that remedial action, *e.g.*, extra time, was not required.⁴ Regarding Kierce’s proposed remedy, it is noted that the Division of Test Development and Analytics was contacted regarding this matter and indicated that the candidates who tested in Kierce’s room, which was comprised of PM4569C candidates only, had a video portion mean score of 16.24 whereas all candidates for PM4569C, not including the candidates in room J at the Hudson County site, had a video portion mean score of 16.00. As such, if test conditions were sufficiently egregious to have an adverse impact on candidates in that room, the Commission would be compelled to grant additional correct responses to those candidates who tested in the same room as Kierce. Nevertheless, the Commission concludes based on the mean scores noted above that, on the whole, the candidates were not harmed by the video disturbance. Thus, under the totality of the circumstances, no change of Kierce’s score or rank is warranted.

Regarding cell phones at the Bergen County College site, monitors were to inform candidates:

Candidates are NOT permitted to bring electronic or recording devices, such as laptop computers or tablets, into the test center. Cell phone use is prohibited in any area of the test center, including hallways, rest rooms, holding areas, and classrooms. Any candidate who has a cell phone that is seen or heard (*i.e.*, rings or vibrates) after being admitted to the test center will be disqualified.

⁴ It is further noted that during the video portion, the scenarios were presented twice. In this regard, the video test booklet informed candidates that “some information will be presented twice to ensure that you are able to record the details you feel are important.”

Monitors themselves were instructed to notify the Center Supervisor if they became aware that a candidate was in possession of a prohibited item. The Center Supervisor report does not indicate that any candidate was reported or found in possession of a cell phone. Nevertheless, the Center Supervisor was contacted regarding this matter and indicated that “Bergen was one of the sites that still required proof of vaccination” and “candidates had the proof of vaccination on their phones. These candidates were allowed to show Bergen County’s two public safety personnel their proof on their phones and then instructed to put their phones back in their cars since cell phones are not allowed.”

With regard to Laffont’s allegation that candidates from the afternoon session who were returning their phones after showing proof of vaccination had the opportunity to discuss test material with morning session candidates, it is noted that Laffont does not indicate that he observed such activity and in this regard, does not provide the names or descriptions of any individuals who engaged in such activity. Thus, without specifics, the Commission cannot pursue this matter further.

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 3RD DAY OF MAY, 2023

Allison Chris Myers

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