STATE OF NEW JERSEY

In the Matter of James Cullen, *et al.*, Police Lieutenant, various jurisdictions	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket Nos. 2025-914, *et al.*	:	Examination Appeal

ISSUED: April 9, 2025

James Cullen (PM3927F), West Orange; Anthony Damico (PM3828F), Belleville; Ryan Daughton (PM3888F), New Brunswick; Michal Gontarczuk and Benjamin Wuelfing (PM3865F), Kearny; Nicholas Haines (PM3880F), Middletown; Michael Kenna (PM3854F), Hamilton; Joseph Poole (PM3925F), Weehawken; Brian Rosas (PM3923F), Wallington; An Wang (PM3914F), South Amboy; and Andrew Wayne (PM3874F), Lopatcong; appeal the promotional examination for Police Lieutenant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject exam was administered on October 8, 2024 and consisted of 80 multiple choice questions. As noted in the 2024 Police Lieutenant Orientation Guide, which was available on the Civil Service Commission's 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, skills, and abilities (KSAs) that are necessary to perform the duties of a Police Lieutenant. As part of this verification process, information about the job was gathered through interviews and surveys of on-the-job activities of incumbent Police Lieutenants throughout the State. As a result of this process, critical KSAs were identified and considered for inclusion on the exam.

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

Question 6 indicates that Officer Nolan is equipped with a body worn camera (BWC) and asks for guidance regarding its use when transporting an arrestee. The question asks for the true statement according to the N.J. Attorney General's Body Worn Camera Policy. The keyed response is option c, If an officer activates his BWC for the transport of an arrestee to the police station, it shall remain activated at all times while the officer is in the presence of the arrestee and until the arrestee is secured in the holding cell or processing room.[1] Poole argues that option c "is also a false statement because activation IS required; however, the word IF in the answer choice leads the test taker to believe that an officer has the option to not activate the BWC or some other outcome which, in fact, the officer has no choice in the matter of activating the BWC. Per the policy, the officer MUST activate . . . and as per the first word in Section 5.3.2, for it to be a TRUE statement," '**WHEN**' not IF." Rosas argues that "[t]he current answer implies that activating a [BWC] is conditional ('if') when making an arrest, which is inconsistent with Section 5.2. According to Section 5.2, officers **shall** activate a BWC during arrests, making the hospital transport option[2] the correct choice. The officer is required – not given discretion – to activate the BWC when making an arrest. Therefore, the phrasing of the answer should reflect this mandatory requirement." The emphasis Poole and Rosas place on the use of "If" in

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[1] Specifically, Standards Governing the Activation of BWCs provides:

> 5.2 Circumstances When BWC Activation is Generally Required. Except as otherwise expressly provided in Section 7 or any other provision in this Policy, or by law, an officer equipped with a BWC shall be required to activate the device whenever the officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public, to include any of the following circumstances unless there exists an immediate threat to the officer's life or safety that makes such activation impossible or dangerous; in such situations, the officer must activate the camera at the first reasonable opportunity to do so and it shall remain activated until the encounter has fully concluded and the officer leaves the scene: . . . (k) the officer is transporting an arrestee to a police station, county jail, or other place of confinement, or a hospital or other medical care or mental health facility.
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> . . .
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> 5.3.2 When a BWC is activated pursuant to Section 5.2(k) (transport of arrestee), whether by an officer in uniform or in plain clothes, it shall remain activated at all times while the BWC-equipped officer is in the presence of the arrestee and until the arrestee is secured in the holding cell or processing room, or until custody of the arrestee has been transferred to county jail personnel, or until the arrestee is with hospital/medical/mental health personnel. BWCs may be deactivated in a hospital/medical/mental health facility setting. However, consistent with Section 6.8, in situations where an officer reasonably believes that the officer or another person is likely to use force, the BWC shall be re-activated as soon as it is safe and practicable to do so.

[2] *I.e.*, option b, Activation of a BWC is generally required when an officer is transporting an arrestee to a police station or county jail, but not to a hospital or other medical care or mental health facility.

option c is misplaced as Section 5.2 includes the following conditional language: "*Except as otherwise expressly provided in Section 7 or any other provision in this Policy, or by law*, an officer equipped with a BWC shall be required to activate the device . . ." Option c merely conveys that should an officer activate his BWC for the transport of an arrestee to the police station, then the BWC is to remain activated at all times while the officer is in the presence of the arrestee and until the arrestee is secured in the holding cell or processing room. This is not a material deviation from the policy from which the question was sourced. Option c also cannot reasonably be read to mean that an officer may choose not to follow the policy. Thus, use of "If" in option c does not render the question flawed, and option c remains the best response. Option b is not acceptable because activation of a BWC *is* generally required when an officer is transporting an arrestee to a hospital or other medical care or mental health facility. Accordingly, the question is correct as keyed.

Question 10 indicates that the N.J. Attorney General's Use of Force Policy states that every officer has an affirmative duty to take steps to prevent any use of force that is illegal or excessive, if possible, before a fellow officer uses excessive, illegal, or otherwise inappropriate force. The question asks for the benefits that, according to the policy, such interventions that prevent improper use of force will lead to. The keyed response is option d, I. higher morale; II. fewer citizen complaints; III. a healthier working environment; and IV. preservation of the integrity of the law enforcement profession as a whole.[3] Gontarczuk's appeal presents a number of arguments. First, he argues that the question falls outside of this agency's focus on critical KSAs because "there is no justification for requiring memorization of the two sentences tested in this question. The ability to recall, word-for-word from memory, the subjective benefits predicted by then-Attorney General Grewal has no nexus to any duties performed by a Police Lieutenant." Second, the question represents a "[m]isapplication of [t]ier-based [q]uestions to [o]bscure [m]aterial," and if the question is included, "it will demonstrate that the position of [this agency] is to

[3] Specifically, Core Principle Five provides:

> Duty to Intervene and Report. Every officer, regardless of rank, title, seniority, or status, has an affirmative duty to take steps to prevent any use of force that is illegal, excessive, or otherwise inconsistent with such policies, regulations, and laws, if possible, before a fellow officer uses excessive, illegal, or otherwise inappropriate force. Every officer has a duty to immediately report any improper use of force.
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> 5.1 Duty to intervene. A law enforcement officer's duty to intervene is rooted in the commitment to protect public safety at all times. Interventions that prevent improper use of force will lead to fewer citizen complaints, fewer officer disciplinary matters, higher morale, and a healthier working environment. Preventing misconduct preserves the integrity of all officers and the law enforcement profession as a whole. Intervening to prevent improper use of force can assist fellow officers by preventing them from engaging in conduct that may be illegal, inappropriate, and in violation of this Policy.

require candidates to memorize, word for word, even items of the lowest importance – those with no bearing on decision making or the duties of police." Third, "[r]equiring candidates to memorize **non-actionable** phrases from policies with five-figure word counts undermines the purpose of the exam." Fourth, there is a strong parallel between this question and a question that appeared on the 2022 Police Sergeant exam that was later omitted from scoring:

> Question 48 indicates that while reviewing common motor vehicle offenses with your officers, you introduce the topic of an individual being classified as a "habitual offender." The question required candidates to complete the following sentence, "According to *N.J.S.A.* 39:5-30a, a habitual offender is defined as a person who has his license to operate a motor vehicle suspended . . ." Bachmann [and others] challenge the validity of this item. Specifically, they argue, in part, that "habitual offender" appears twice in Title 39, *N.J.S.A.* 39:5-30a and *N.J.S.A.* 5-30e, and only provides sentencing guidelines, "neither of which would be any function served by a law enforcement officer or any supervisor." They further note that the term "habitual offender" is not utilized in Title 2C and "it has no implication in any scenario when it comes to charging under Title 2C or Title 39." The Division of Test Development and Analytics contacted [subject matter experts (SMEs)] regarding this matter and they indicated that while the term "habitual offender" is a legitimate designation, it would not be commonly known or useful in the day to day activities of a Police Sergeant. Given this, the Division of Test Development and Analytics determined to omit this item prior to the lists being issued.

See In the Matter of Albert Herbert, et al., Police Sergeant, various jurisdictions (CSC, decided August 24, 2022). Fifth, Gontarczuk predicts that even the majority of incumbent Police Lieutenants would guess or would simply pick the answer that "sounds good . . . underscoring that the question does not meaningfully assess candidates' qualifications for the role of Police Lieutenant." And sixth, "[s]ince no scenario can be contrived in which a Police Lieutenant would be forced to rely on their memorization of the subjective benefits in question, it is asserted with confidence that SMEs will agree that [the question] fails to assess candidates' qualifications for promotion to Police Lieutenant."[4] Gontarczuk's attempt to discredit the question by arguing that it only concerns the subjective benefits predicted by a former Attorney General is not persuasive. That the Attorney General who promulgated the information is no longer in office is irrelevant. If the current Attorney General believed that the information represented a predecessor's mere prediction of subjective benefits and was no longer relevant, he could have revised the policy. This,

[4] While the entirety of Gontarczuk's appeal has not been reproduced herein as he requested, his appeal was thoroughly reviewed.

however, did not occur. The information, moreover, is not "obscure" as it is contained within the policy's *Core Principle* Five, not in an introduction or other ancillary material. Gontarczuk's attempt to dismiss the information by calling it "non-actionable" is similarly unpersuasive because it inappropriately assumes that a Police Lieutenant need only know information relating to taking or not taking some action. Rather, the Police Lieutenant's role includes explaining policies and procedures to subordinates, and thus, if a subordinate was struggling to understand the need to intervene or why they should bother doing so, it would be necessary for the Police Lieutenant to be able to articulate the reasons why this duty to intervene is expected of them. Since the Police Lieutenant acts as a supervisor and a member of middle management, it is appropriate to ask candidates not only what actions need to be taken in certain situations but also why actions are necessary and what they can accomplish. Further, it is noted that during the review of the examination material prior to the administration of the examination, a panel of SMEs rated the question highly in terms of the extent to which the question accurately measures a critical KSA and the appropriateness of the question's inclusion on an examination for the rank of Police Lieutenant. Additionally, the Division of Test Development, Analytics and Administration (TDAA) contacted two SMEs regarding Gontarczuk's appeal, and both endorsed the appropriateness of the inclusion of this information on an examination for the subject supervisory rank. One SME also indicated that the information listed in the Roman numerals within the question should be easily recognizable to someone with knowledge of the Use of Force Policy. As such, the question is also distinguishable from the question that was ultimately omitted in *Herbert, supra*. Accordingly, the question is valid and correct as keyed.[5]

Question 12 indicates that Melanie Carlton's ex-husband punched her in the face earlier today, giving her a black eye. She got away from him and went to the house her sister, Cordelia, owns, which is located in Maple Grove, N.J. After convincing Melanie to go to the police and file a complaint, Cordelia is now driving Melanie to the Maple Grove Police Department headquarters. The question asks for the true statement based on the N.J. Domestic Violence Procedures Manual. The keyed response is option a, that Melanie may file a complaint with the Maple Grove Police Department.[6] According to Damico, "the question and the provided answer

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[5] Gontarczuk also asserted that "it is highly likely that [this agency] has mistakenly assigned this question a disproportionately high weight." Such speculation is unwarranted because each question was assigned the same weight.

[6] Specifically, Section V. Law Enforcement provides:

> The victim may file a civil complaint/TRO and/or may file a criminal complaint (CDR-1 or CDR-2) in any of the following locations pursuant to N.J.S.A. 2C:25-28(a):
> - Where the alleged act of domestic violence occurred;
> - Where the defendant resides; or
> - Where the victim resides or is sheltered.

choices did not delineate the dual meaning of the term 'complaint.' This resulted in an overly broad and ambiguous use of the term creating a discrepancy in the answer choices. Two of the four answer options will be discussed. The first option [(option a)] was that the victim may file the complaint with the [Maple Grove Police Department] (designated correct on exam review answer key). The second option was the victim may only file the complaint with the agency where the offense occurred.[7] [I] found the first answer option to be correct if referring to the initiation of the domestic violence process, but found the second option to be correct if referring to the appropriate criminal complaint . . . [T]he overly broad use of the term 'complaint[,]' which has two different meanings in the policy[,] and the resulting ambiguity in the answer choices resulted in [the question] being defective for failing to specify whether it was referring to the domestic violence case reporting process or the preparation of the criminal complaint." Wayne, who also selected option c, "feels[s] the question should have been more specific as to the type of complaint (TRO/DV complaint or criminal complaint). Again, if criminal, the charges would have to be signed where the assault occurred." The question is not ambiguous. It pertains specifically to where *Melanie, the victim*, may file a complaint. Knowledge of whether such complaint is a civil complaint/TRO or a criminal complaint is not necessary to answer the question because Melanie may file *either* type of complaint with the Maple Grove Police Department, where she is sheltered per the scenario presented, under the N.J. Domestic Violence Procedures Manual. Accordingly, the question is correct as keyed.

Question 20 provides:

> - "Sheltered" means any police department from which the victim seeks help. Therefore, victims should not be referred to another county or department.
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> A criminal complaint shall be investigated and prosecuted in the jurisdiction where the offense is alleged to have occurred.
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> If the criminal complaint is reported in a jurisdiction other than where the offense occurred, the law enforcement agency shall take appropriate photographs and statement of the victim. The agency shall also generate all appropriate investigative reports and shall immediately contact the law enforcement agency where the offense occurred. The law enforcement agency shall immediately transmit electronically, or hand deliver, all photographs, statements, and reports to the law enforcement agency where the offense occurred. That law enforcement agency where the offense occurred shall prepare the appropriate criminal complaint and present the complaint to a judicial officer for appropriate action. In mandatory arrest cases, the agency receiving the documentation shall arrest the suspect in accordance with domestic violence procedures.

[7] It is presumed Damico is referring to option c, that Melanie may only file a complaint with the Maple Grove Police Department if the act of domestic violence occurred in Maple Grove, which he selected.

> On a February morning, at approximately 2:30 a.m., two of your officers were on patrol when they received a radio report from dispatch that headquarters had gotten an anonymous tip that "an individual in a green Explorer with a N.J. temporary tag was flashing a gun at the 1300 block of Clinton Avenue." Your officers responded in separate marked patrol vehicles and arrived at the scene, which was [described] as a well-lit business district. As the officers approached the green Explorer, they noticed that it had dark-tinted windows, making it difficult to see inside and as a result, they executed a "high risk traffic stop." The driver and passengers were ordered out of the vehicle and they complied. A pat-down search of the driver and passengers did not turn up any weapons. Additional officers arrived at the scene. After the driver and passengers were taken to a secure location, several officers searched the vehicle for weapons. A gun was found under the front passenger seat. The driver and passengers were then arrested.

The question asks, according to relevant New Jersey case law, for the true statement. Option a provided that the investigatory stop of the vehicle was lawful based on the community caretaking function of the police; however, the *Terry* pat-down searches of the driver and passengers and the search of the vehicle violated the Fourth Amendment. Option b provided that while the investigatory stop of the vehicle was unlawful, exigent circumstances provided justification for the *Terry* pat-down searches of the driver and passengers. Option c provided that the totality of the circumstances, including the anonymous tip, provided justification for the *Terry* pat-down searches of the driver and passengers; however, the search of the vehicle was unlawful. Option d provided that the investigatory stop, *Terry* pat-down searches of the driver and passengers, and the search of the vehicle were all unlawful and violated the Fourth Amendment. The keyed response is option a. Wang argues that "[b]ased on the totality of the circumstances presented in the question, I believe the best answer is [option c] where the totality of the circumstances, *i.e.*, time of day, the investigative detention of suspects in a heavily tinted vehicle, the [possibility of] occupants outnumbering initial responding officers, coupled with an anonymous tip of a person in a green Ford with a gun, the investigative stop of the vehicle and frisk of the driver and passenger were proper, but the further search of the vehicle was unlawful. Therefore, I believe this question should be eliminated or have the keyed answer changed." Wuelfing notes that the question's fact pattern "closely resembles *State v. Matthews*[, 398 *N.J. Super.* 551 (2008)][;] however, in [*Matthews, supra*,] the vehicle police converged on was on the side of the road. [The question] does not indicate how the police converged on it. Was it a motor vehicle stop, parking lot, side of road, *etc.*? Because [the question] does not indicate the vehicle was on the side of the road or driving slowly like in *State v. Goetaski*[, 209 *N.J. Super.* 362 (App. Div. 1986)] [option a] stating the vehicle stop was valid for community caretaking should not be the answer. The nature of this stop, in which officers converged is not consistent with a community caretaking stop." Wuelfing continues that "[a]nother

point about community caretaking from *State v. Martinez* [260 *N.J. Super.* 75 (App. Div. 1992)] suggests a reasonable concern (a) something might be wrong with the car [or] (b) something might be wrong with its driver[,] which is not indicated in the fact pattern of [the question.]"

It is noted that this item was sourced from *Matthews, supra*, where the court explained:

> The propriety of the investigatory stop also involves the community caretaking function and the common law right to inquire based upon the belief that criminal activity may be involved. Generally, investigatory stops of automobiles are justified by a reduced expectation of privacy by an occupant of an automobile. A police officer may stop a motor vehicle where there is a reasonable or articulable suspicion that a motor vehicle violation has occurred.
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> The community caretaking function may also be implicated where something abnormal is observed concerning the operation of a motor vehicle. Such abnormal situations may be suggested by a number of objectively reasonable concerns:
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> > (a) something might be wrong with the car; (b) something might be wrong with its driver; (c) a traffic safety hazard is presented to drivers approaching from the rear when an abnormally slow moving vehicle is operated at night on a roadway without flashers; (d) there is some risk that the residential neighborhood is being "cased" for targets of opportunity.
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> We also recognized that the first three concerns triggered the "community caretaking function," while the fourth implicated the "common-law right to inquire" based upon a founded suspicion that criminal activity might be afoot (citations omitted).

The court concluded:

> In the present case, the police officers received a dispatch that headquarters had gotten an anonymous tip that someone in a burgundy Durango with a temporary tag was flashing a gun at a certain location. It was 2:30 a.m. When they arrived at the location, they found the vehicle, as described, parked, with three occupants inside. *Under their community caretaking function, the police were justified, absent the tip, in conducting an investigatory stop to determine if help was needed based on the circumstances of an occupied vehicle parked on the roadway in the*

> *wee hours of the morning*. Beyond that, the existence of the tip, the lateness of the hour, and the confirmation of the type, color, and location of the vehicle reported in the tip justified an investigatory stop to permit the police to inquire as to what the occupants of the Durango were doing.
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> Where we part company with the State is with its contention that the tip provided justification for *Terry* pat-down searches and the search of the vehicle. The pat-down searches of the driver and occupants and the search of the Durango were based solely on an unidentified anonymous tip. There are simply no other facts in the record demonstrating that the police had an objectively articulable and reasonable basis to believe the subject of the stop was armed and dangerous. The circumstances also did not present a well-grounded suspicion that a crime had been or was about to be committed. Similar to the circumstances in [*Florida v. J.L.*, 529 U.S. 266 (2000)], all the police had to go on was the "bare report of an unknown, unaccountable informant" that someone was seen flashing a gun. There is nothing in the record before us establishing the required indicia of reliability to justify the more intrusive pat-down or vehicular searches (citations omitted) (emphasis added).

Given that the court's conclusion that the police could conduct an investigatory stop pursuant to the community caretaking function was based in part on the fact of an occupied vehicle parked on the roadway and that this fact was missing from the question stem, there was not enough information provided in the stem for the entirety of option a to be correct. Options b, c, and d were also incorrect based on the source material. As such, TDAA determined to omit this item from scoring prior to the lists being issued.

Question 22 was sourced from *State v. Elmore*, 205 *N.J. Super.* 373 (App. Div. 1985). While Daughton does not dispute this, he proffers that "this Police Lieutenant [e]xam is supposed to be on 'current' [caselaw]. This [caselaw] was published in 1985. Since this case was ruled on, there have been numerous further cases that establish similar legal precedent, for example *State v. Chew*[, 150 *N.J.* 30 (1997)], *State v. Reed*[, 133 *N.J.* 237 (1993)], and *State v. P.Z.*[, 152 *N.J.* 86 (1997)], which is closer to our current year . . . Further, this [caselaw] would not be interpreted by a Police Lieutenant[;] it would be interpreted by a Police Sergeant to their subordinate, to ensure they are following all legal [precedent]. This [caselaw] is not relevant to the knowledge, skills and abilities of a Police Lieutenant in [New Jersey]." Daughton's contention that *Elmore, supra*, is no longer "current" caselaw is unpersuasive. The mere fact that the case was decided decades ago does not in itself render it no longer "current." In this regard, his appeal does not demonstrate that any subsequent case overruled *Elmore*, thus rendering it no longer good law. As such, *Elmore*, which concerned, in pertinent part, the right of one who has been brought in for questioning to counsel, remained "current" in the sense that it continued to be applicable to police

work. In addition, TDAA contacted an SME regarding the contention that this caselaw would only be interpreted by a Police Sergeant to that individual's subordinate. The SME rejected the notion that once one becomes a Police Lieutenant, one no longer needs to know information that a Police Sergeant would be expected to know. The SME indicated that one should be building up one's base of knowledge while moving up the ranks. The SME further agreed that even if a Police Officer asked the Police Sergeant for help in understanding when a citizen invokes the right to counsel, it is entirely possible that the Police Sergeant may need clarification and would come to the Police Lieutenant for assistance, and the Police Lieutenant would be expected to be able to provide the correct information. Accordingly, the caselaw is relevant to the job of a Police Lieutenant, and the question is valid.

Question 25 indicates that a member of your department is preparing an affidavit for the issuance of a search warrant. The affidavit contains hearsay statements made by an informant. You are aware that New Jersey permits reliance on hearsay for the purpose of establishing probable cause but insists that the affidavit provide the warrant-issuing judge with a substantial basis for crediting the hearsay. The question asks, "According to relevant case law, a hearsay informant's information may be credited by a showing of" which factors? The keyed response, option c, includes I. basis of knowledge; II. veracity; and IV. reliability; but does not include III. articulateness. Daughton argues that "[a]ccording to Law Enforcement Handbook Vol. #1 as it relates to sources of information from [c]riminal [i]nformants (pages 206-207), it mentions hearsay can be credited for a search warrant affidavit when the information holds credibility, reliability and the basis of knowledge is known. There is no mention anywhere under this section of the word 'veracity.' It does further mention that the final ingredient to credit hearsay is independent corroboration. Veracity per NJ legal definition is the quality of being truthful or accurate in a person or statement. The closest mention of the word 'veracity' is under the Totality of the Circumstances Test in *Illinois v. Gates*[, 462 U.S. 213 (1983)], which is not where the answer to this question can be located, nor is it closely related." It is noted that this item was sourced from *State v. Novembrino*, 105 *N.J.* 95 (1987), where the New Jersey Supreme Court said:

> In *Illinois v. Gates*[, 462 U.S. 213 (1983)], the [United States Supreme] Court abandoned its exclusive reliance on the *Aguilar-Spinelli* two-pronged test for evaluating information provided by an informant, adopting in its place "the totality-of-the-circumstances analysis that traditionally has informed probable cause determinations." However, the [United States Supreme] Court took pains to point out that
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> > an informant's "*veracity*," "reliability," and "basis of knowledge" are all highly relevant in determining the value of his report. We do not agree, however, that these elements should be understood as entirely separate and

> independent requirements to be rigidly exacted in every case . . . . Rather, . . . they should be understood simply as closely intertwined issues that may usefully illuminate the commonsense, practical question whether there is "probable cause" to believe that contraband or evidence is located in a particular place.
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> [F]or guidance to trial and appellate courts and law enforcement officials, we acknowledge our intention to apply a totality-of-the-circumstances test analogous to that set forth in *Illinois v. Gates, supra*, 462 U.S. at 238,[8] to test the validity of search warrants under the probable-cause standard set forth in article I, paragraph 7 of the New Jersey Constitution. (citations omitted) (emphasis added)[9]

Accordingly, the question is correct as keyed.

For question 29, since Rosas selected the correct response, his appeal of this item is moot.

Question 31 indicates that your subordinate is confused about when a charge of Aggravated Arson is appropriate. You go over with her the conditions under which Aggravated Arson would be the correct charge and test her knowledge by presenting her with different scenarios. The question asks, "In which of these situations is Aggravated Arson the **MOST** appropriate N.J.S.A. 2C charge?" The keyed response is option c, that an actor starts a fire on another person's property with the purpose of destroying a building on that property.[10] Cullen asserts that "as it is written the

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[8] "[W]e conclude that it is wiser to abandon the 'two-pronged test' established by our decisions in *Aguilar* and *Spinelli*. In its place, we reaffirm the totality-of-the-circumstances analysis that traditionally has informed probable-cause determinations. The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "*veracity*" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates,* 462 U.S. at 238 (citations omitted) (emphasis added).

[9] The *Novembrino* Court noted: "The 'totality-of-the-circumstances' test that we endorse and apply in this case is a principle of state constitutional law used to test determinations of probable cause pursuant to article I, paragraph 7 of the New Jersey Constitution. We assume that the application of this standard will be substantially consistent with the criteria set forth in *Illinois v. Gates, supra*, 462 U.S. at 238." *Novembrino*, 105 *N.J.* at 122, n.11.

[10] *N.J.S.A.* 2C:17-1 provides, in pertinent part:

question has multiple correct answers . . . such as the following: (1) starts a fire on another person's property with purpose of destroying a building or structure of another, 2C:17-1a(2); (2) starts a fire purposely placing another person in danger of death or bodily injury, 2C:17-1a(1); [and] (3) with the purpose of destroying or damaging any forest, 2C:17-1a(5)." However, *N.J.S.A.* 2C:17-1a(1) and *N.J.S.A.* 2C:17-1a(5) are not in fact answer options for this question. Rather, option a, that an actor purposely starts a fire on another person's property, thereby *recklessly* placing another person in danger of death or bodily injury, *N.J.S.A.* 2C:17-1*b*(1), and option b, that an actor purposely starts a fire, thereby *recklessly* placing a forest in danger of damage or destruction, *N.J.S.A.* 2C:17-1*b*(5), both refer to *arson*, not aggravated arson. Therefore, since Cullen misremembered the answer options, his appeal is misplaced. Daughton first contends that the question was not properly written. Specifically, he presents that "Police Sergeants make charging decisions for their subordinates and not the Police Lieutenant." In Daughton's view, the question should have read, "Your sergeant is looking to you for advice/legal guidance on the charge of Aggravated Arson, [and] you tell him that the charge of Aggravated Arson has been met if," followed by the four choices to choose from. Daughton further argues that "[o]nce it is determined that a possible charge of Aggravated Arson is on the table, since it is a [second] degree charge, it must be screened by an Assistant Prosecutor,

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a. Aggravated arson. A person is guilty of aggravated arson, a crime of the second degree, if he starts a fire or causes an explosion, whether on his own property or another's:

(1) Thereby purposely or knowingly placing another person in danger of death or bodily injury; or
(2) With the purpose of destroying a building or structure of another; or
(3) With the purpose of collecting insurance for the destruction or damage to such property under circumstances which recklessly place any other person in danger of death or bodily injury; or
(4) With the purpose of destroying or damaging a structure in order to exempt the structure, completely or partially, from the provisions of any State, county or local zoning, planning or building law, regulation, ordinance or enactment under circumstances which recklessly place any other person in danger of death or bodily injury; or
(5) With the purpose of destroying or damaging any forest.

b. Arson. A person is guilty of arson, a crime of the third degree, if he purposely starts a fire or causes an explosion, whether on his own property or another's:

(1) Thereby recklessly placing another person in danger of death or bodily injury; or
(2) Thereby recklessly placing a building or structure of another in danger of damage or destruction; or
(3) With the purpose of collecting insurance for the destruction or damage to such property; or
(4) With the purpose of destroying or damaging a structure in order to exempt the structure, completely or partially, from the provisions of any State, county or local zoning, planning or building law, regulation, ordinance or enactment; or
(5) Thereby recklessly placing a forest in danger of damage or destruction.

since it is a charge that goes on a presumed criminal complaint warrant . . . Real world application of this from a Police Lieutenant to a subordinate, or to a Police Sergeant, would advise them to screen this [second] degree charge by an Assistant Prosecutor, prior to typing up a criminal complaint warrant to be sent to a judge and making sure you have the requisite probable cause for same." Daughton's opinion that the question should have been written differently does not render the question invalid. In this regard, such opinion does not establish that the question was unclear as to what was being asked or that candidates' ability to choose the correct answer was negatively impacted. In addition, TDAA contacted an SME regarding Daughton's suggestion that the item is not relevant to the job of a Police Lieutenant because Police Sergeants, not Police Lieutenants, make charging decisions for their subordinates and Police Lieutenants thus would not need to know the elements of aggravated assault. The SME disagreed with that suggestion. The SME indicated that a Police Lieutenant should be prepared to answer any inquiries from a Police Sergeant or provide clarification and guidance when needed. The SME also indicated that it would be absurd for a Police Lieutenant to tell a Police Sergeant seeking guidance about a charge that he, the Police Lieutenant, no longer needs to have such knowledge since he is now a Police Lieutenant. Regarding Daughton's reference to the Assistant Prosecutor's role, the SME acknowledged the fact of prosecutorial review of charges but indicated that the most common method for doing so is to enter the proposed charges for the prosecutor's office to review. The SME noted that while one could reach out to the Assistant Prosecutor for help in deciding what charge is most appropriate before sending it for review, one would still be expected to offer one's thoughts, not just blanketly ask what the charge should be. The SME further stated that the fact that the charges will be reviewed at some point during the charging process, either prior to entering the charges electronically or not, does not negate the fact that a Police Lieutenant and everyone below that Lieutenant, should have an understanding of what constitutes various crimes. Accordingly, the question is valid and correct as keyed.

Question 35 refers to Michael Carpenter and Roger Fulton, *Law Enforcement Management: What Works and What Doesn't* (1st ed. 2010) and indicates that Sergeant Muldoon submitted a report to you this morning when it was due yesterday afternoon. Submitting work late was unusual behavior for him. Later in the day, when you had time in your schedule, you met with Sergeant Muldoon to address the fact that he missed the deadline for submitting the report. While attempting to criticize him effectively, you said something positive about his overall worth to the department, told him that you were concerned by his tendency to submit work late, and asked if he had an explanation for his behavior. The question asks, based on the text, for the true statement. The keyed response is option a, that you should have been more specific in describing the conduct that you found to be problematic.[11] Rosas

[11] The text, under the heading, "Be Specific," provides:

> Be sure that you address specific conduct at the date, time, and place it occurred.

and Wang argue that the best response is option d, that you correctly followed Carpenter and Fulton's guidelines for how to criticize someone effectively. Rosas argues that "[a]fter the employee begins having issues with meeting deadlines, you would address the situation as stated in the question (likely option D, indicating the correct action was taken). However, if the employee continues to miss deadlines, more specific guidance may be needed. The question lacks clarity regarding when the intervention should occur or when the employee has been addressed for this behavior." Wang asserts that "[t]he question states that Sergeant Muldoon submitted a report late which has started to become his usual tendency . . . Although the question did not address all the steps [in the text], the missing steps were not an option in the answer choices . . . Based on the question, choice D should be the best choice over the keyed answer of Choice A, because the issue of the Sergeant's tendency to submit reports late was addressed . . . The question states that you addressed that the Sergeant has a tendency to submit reports late which is accurate and specific to the scenario. Therefore, based on the question text and answer options, I believe the question should be eliminated or changed to choice D, that the steps were followed according to the [text]." Option d is not an acceptable response. The text clearly indicates that a phrase such as, "You are always late with your reports," is not acceptable. The question clearly indicates that submitting work late was "unusual behavior" for Sergeant Muldoon, yet you told him that you were concerned by his "tendency" to submit work late, which is incorrect. Rather, per the text, you should have been more specific in describing the problematic conduct. Accordingly, the question is correct as keyed.

Question 61 indicates that you aim to be vigilant in detecting signs of stress in your subordinates so that you can offer assistance when needed. While performing the job of a law enforcement officer involves a certain degree of stress due to the nature of the work, you have found that some people seem to thrive on stress while others suffer from mental or physical problems because of it. The question asks, according to Carpenter and Fulton, *supra*, "which of these can contribute to the level of stress one experiences and/or their reaction to it?" The keyed response is option d, I. degree of job training one has received; II. general positive or negative attitude one exhibits; III. ability to maintain an appropriate sense of humor; and IV. performance standards that have been set by one's commander. Kenna argues that the text states that the " 'dual demands of police work and management' lead to stress. The lack of any reference to management or command is a critical divergence, and the answers can no longer be supported by the text . . . The omission of 'commander or manager' from the question is a major deviation from the [text,] and it renders the answers into incompatible groups that cannot all apply to either officers or commanders." The text

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A phrase such as, "You are always late with your reports," is not acceptable. A better phrase such as, "You missed the April 20th deadline for your report," is much more acceptable.

discusses how *commanders* may minimize their stress. Given that the question stem did not specify that the "subordinates" were themselves commanders, TDAA determined to omit this item from scoring prior to the lists being issued.

Question 76 was based on a fictional police department's Department Owned Vehicles Policy. The question indicates that the department vehicle that Officer Patel was assigned today needs to be taken out of service for repairs. Officer Patel asks the shift commander if there is any action that needs to be taken. The keyed response is option a, that the shift commander should instruct Officer Patel to remove department equipment from this vehicle and transfer it to a spare vehicle.[12] Haines argues that "[a]ny vehicle requiring maintenance that [is] not 'routine' require[s] a SM-18 form to be completed. The question['s] fact pattern does not imply or indicate that an initial SM-18 form was filed for the 'service repairs' . . . The first step ought to be completing the proper SM-18 . . . I believe this was [option b] instead of [a]." Option b was that the shift commander should instruct Officer Patel to fill out *Form SM-5E* with information about the vehicle. Form SM-5E, under the fictional policy, pertains to requests for permanent vehicle *assignments*.[13] Therefore, since Haines misremembered option b, his appeal is misplaced.

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.

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.

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[12] The fictional policy provides, in pertinent part, that "[w]hen a vehicle is taken out of service for repairs, the shift commander shall ensure that department equipment is removed from the vehicle and transferred to a spare vehicle."

[13] Specifically, I.A.2. provides that "[a]ll requests for permanent vehicle assignments shall be made on a Department Memorandum (Form SM-5E) with substantiating reasons forwarded through the chain of command to the Deputy Chief of the Administration Bureau."

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9TH DAY OF APRIL, 2025

Allison Chris Myers

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Chairperson
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