B-12

STATE OF NEW JERSEY

In the Matter of Nicholas Breiner, *et al.*, Police Captain, various jurisdictions	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket Nos. 2017-1715, *et al.*	:	Examination Appeal
	ISSUED:	FEB 22 2017 (JH)

Nicholas Breiner (PM1311U), Belleville; Anthony Argento and Vincent Kerney (PM1315U), Bloomfield; Brian O'Hara (PM1345U), Newark; Jaime Navarro (PM1353U), Paterson; and Brian Murphy (PM1378U), Woodbridge; appeal the written portion of the examination for Police Captain (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject exam consists of two parts: a multiple-choice portion and an oral portion. The written portion was administered on October 27, 2016 and consisted of 70 multiple choice questions.

Messrs. Argento and Murphy argue that they were only provided with 30 minutes for review and they were not permitted to review their test booklets, answer sheets and the correct answer key. In addition, they contend that their ability to take notes on exam items was severely curtailed. As such, appellants request that any appealed item in which they selected the correct response be disregarded and that if they misidentified an item number in their appeals, their arguments be addressed.

Regarding review, it is noted that the time allotted for candidates to review is a percentage of the time allotted to take the examination. The review procedure is not designed to allow candidates to retake the examination, but rather to allow candidates to recognize flawed questions. First, it is presumed that most of the questions are not flawed and would not require more than a cursory reading. Second, the review procedure is not designed to facilitate perfection of a candidate's

test score, but rather to facilitate perfection of the scoring key. To that end, knowledge of what choice a particular appellant made is not required to properly evaluate the correctness of the official scoring key. Appeals of questions for which the appellant selected the correct answer are not improvident if the question or keyed answer is flawed.

With respect to misidentified items, to the extent that it is possible to identify the items in question, they are reviewed. It is noted that it is the responsibility of the appellant to accurately describe appealed items.

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

Question 5 indicates that Sergeant Bundy advises you that a woman, just arrested during a motor vehicle stop and expected to be lodged in county jail, has a young child in the car who is dependent on the woman for care. There are three other occupants in the car: the child's 43-year-old uncle, the child's 17-year-old brother, and an adult male who is not related to the family. Sergeant Bundy wants to make sure his officers take the proper steps to provide alternate care for the arrestee's dependent. The question asks, if the arrestee approves of all of these actions and all the occupants of the vehicle are willing to assume care of the child, which of the occupants are permitted, pursuant to the Attorney General's Model Policy for Alternate Care for Arrestee's Dependents, to assume care of the child. The keyed response, option b, included the child's 43-year-old uncle and adult male but did not include the child's 17-year-old brother. Mr. Breiner argues that "of course, the 17 year old is not an adult and therefore not eligible to take the child under the model policy,[1] but the other two adults may not be eligible either. The model policy calls for an 'appropriate adult.' We have no definition of an 'appropriate adult' by way of the model policy, nor has the exam question qualified the appropriateness of the two adults present." He also argues that while the Orientation Guide lists Attorney General Guidelines and Directives as potential source material, the model policy "is neither a guideline nor directive" and "this policy is not even legally required to be adopted by police departments."[2] Mr. Breiner further contends that "nowhere [in the model policy] does it state that mere consent of a person present during the arrest shall be sufficient to give custody of the dependent child over to said person. Social services agencies and family welfare agencies should have been consulted prior to any release of a dependent child . . ." The question requires candidates to make their determination based on the

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[1] It is noted that Mr. Briener selected option d which included all three occupants.

[2] It is noted that the Model Policy for Alternate Care for Arrestee's Dependents is clearly listed on the Attorney General Guidelines webpage (http://www.nj.gov/oag/dcj/agguide.htm).

language of the Model Policy. Given that the policy does not define the term, "appropriate adult," it is immaterial for the purposes of this question. Rather, the focus of the question is what would disqualify a person from taking the child into his or her care pursuant to the Model Policy. In this regard, the Model Policy provides:

> This department will provide persons taken into custody by this department a reasonable opportunity to arrange for the care of children or persons dependent upon the arrestee for their care, sustenance and supervision. When the arrestee is unable to arrange for the care of dependent persons, this department will notify the appropriate municipal, county and state agencies of the need for alternate care for the arrestee's dependents.

The policy further provides, "If another appropriate adult is present with the arrestee, the arrestee will be permitted to place the dependent child or dependent person in the care of that adult." Thus, the Model Policy permits the arrestee to arrange for care without consulting "social services agencies and family welfare agencies." Accordingly, pursuant to the Model Policy, the question is correct as keyed.

Question 8 indicates that your Chief has assigned you the responsibility of being his designee for all bias incidents occurring within your jurisdiction and you have familiarized yourself with the Attorney General Guidelines on Bias Incident Investigation Standards. You were informed that someone has set fire to a religious symbol on the lawn of a house of worship in your town. The question requires candidates to determine, according to this guideline, which is not one of the appropriate actions you must take as a proper response to this incident. The keyed response is option c, "Have dispatch notify the appropriate municipal/county victim/witness representative to visit the victim of the bias incident." Mr. O'Hara misremembered the question as "instruct[ing] candidates to choose the response that is not a responsibility of a police captain at the scene of a bias incident according to this AG Guideline" and argues that option b, "Prepare accurate and timely public information news releases, as appropriate," is the best response.[3] In this regard, he asserts that the guidelines "lists the responsibilities of the 'Law Enforcement Chief Executive.' It is important to note that the Guideline clearly lists these responsibilities as being separate from those conducted at the scene. The next section is entitled 'Initial Law Enforcement Response to a Bias Incident' . . . and it

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[3] The Bias Incident Investigation Standards (Revised January 2000) provide, in the section entitled, "Summary of Bias Incident Investigation Standards," "The law enforcement chief executive shall conduct appropriate bias incident media relations and prepare accurate, timely public information news releases, as appropriate."

then lists the responsibilities of the responding officer and law enforcement supervisor . . ." As noted above, the question requires candidates to determined which action is not an appropriate action to take as a proper response to the incident. The Bias Incident Investigation Standards, *supra*, provide that "the law enforcement chief executive or a designee shall **personally** visit the victim of a Bias Incident and reassure the victim that appropriate investigative and enforcement methods will be utilized by the law enforcement agency to properly address the Bias Incident" (emphasis added). Thus, the question is correct as keyed.

Question 9 provides:

> You are the highest ranking officer on duty in your department when you are called to 520 Elm Street, on the report of an alleged domestic violence incident involving a law enforcement officer. When you arrive on scene, first responding Officers Reed and Malloy advise you that Ted Huntly, a police sergeant in another jurisdiction, became enraged when he came home to find his live-in girlfriend, Julia Child, studying for a college exam, instead of preparing dinner. Huntly grabbed all of Child's study materials and set them on fire in the outdoor barbecue pit. Huntly is now apologetic and promises to replace all of the materials. Child tells you she was never in any danger, nor did Huntly assault or threaten her in any way. She tells you she just wants him to go somewhere for a while and cool off.

The question asks, according to Attorney General Directive 2000-3 and the circumstances presented in this scenario, what can correctly be concluded. The keyed response is option a, Officers Reed and Malloy are "not required to seize Huntly's guns, unless they reasonably believe the presence of the guns would expose Child to a risk of serious bodily injury." Messrs. Kerney and O'Hara assert that option b, Officers Reed and Malloy are "required to seize Huntly's guns because this was an alleged domestic violence incident involving a law enforcement officer," is correct. Specifically, Mr. Kerney, who misremembered the keyed response as providing, "the weapons should not have been seized because there was no reasonable belief that they posed a danger," argues, in part, that the "Sergeant committed criminal mischief by intentionally burning his girlfriend's study materials in an outdoor grill. This meets the probable cause standard for an arrest under [*N.J.S.A.*] 2C:25-19 therefore the weapons should have been seized . . . I argue that any reasonable officer would believe that the presence of a weapon would expose the victim to a risk of serious bodily injury after the owner of those weapons acted in such a manner to take the victim[']s possession[s] and light them on fire in her presence. Any reasonable officer would feel that such a person would pose a risk to the victim and to himself after acting in such an irrational manner." Attorney General Directive 2000-3 provides, in pertinent part, that the weapons of an officer involved in a domestic violence incident "shall immediately be seized by

the law enforcement officer responding to the domestic violence call if the responding officer reasonably believes that the presence of weapons would expose the victim to a risk of serious bodily injury." Mr. O'Hara argues that "the fact pattern in this case unequivocally dictates that the weapon must be immediately seized . . . To suggest that, with the specific fact pattern given, it could be optional to seize the weapon under these circumstances presented is ridiculous. Any supervisor that doesn't immediately seize that weapon under these circumstances is negligent . . ." Since option b indicates that the officers do not have any discretion and that weapons must be automatically seized in every incident involving domestic violence, it is incorrect. Given that option a is in accordance with the provisions of Attorney General Directive 2000-3, the question is correct as keyed.

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

Question 21 provides:

> Jack Daniels and Jim Beam were standing on a street, working road construction with several others when a shooting occurred. Daniels and Beam heard several shots, but froze while the other workers dove for cover. They saw a man, later identified as Scott Marshall, chase another man out of an alley. The man jumped into a passing taxi that quickly sped away. Marshall fired three more shots at the fleeing taxi, then stood on the sidewalk, holding his smoking 9mm handgun. Marshall then tucked the gun into his waistband and walked away. Moments later, a blue Honda Accord arrived out of the alley and picked up Marshall and drove off. Officers arrived on the scene within a few moments and obtained a complete description of Marshall from Daniels and Beam, as well as a description of the driver (Joe Adams), and a partial plate number of the Honda. Less than an hour later, Officer Hall spotted the Honda in a motel parking lot, only a block from the shooting, and observed a parking validation ticket inside the windshield which indicated that the car had been parked there a few minutes earlier. The car hood was still warm to the touch. Officer Hall went inside and spoke to the front desk clerk, who told him that two men came into the motel office shortly before and paid to park the car. Officer Hall viewed video surveillance footage that had recorded the transaction and determined Marshall and Adams' direction of travel on foot. Daniels and Beam were transported to the motel parking lot, where they positively identified the Honda. Meanwhile, Officer Hall apprehended Marshall and Adams a few blocks away and brought them to the motel parking lot. After the police car pulled up with Marshall and Adams handcuffed in the backseat, Daniels and Beam positively identified Marshall as the gunman and Adams as the

> driver. Marshall and Adams were arrested. Officers used car keys found in Marshall's pocket to open the Honda. A 9mm handgun was found under the driver's floor mat.

The question asks, based on relevant New Jersey court decisions, for the true statement regarding the arrest of Marshall and Adams and search of the car for the handgun. The keyed response is option b, "Both the arrest and search were lawful. Show-up identifications made within a reasonably short time at the scene of a crime are permissible and there were exigent circumstances and probable cause justifying the warrantless search of the car." Mr. Navarro argues that "in *State v. Witt*[4] the courts decided to abandon the exigent circumstances prong, reversing decisions in *Pena-Flores*[5] as well as other cases similarly decided under the aforementioned prong. The new case reverted to the 1981 standards set forth in a case known as *State v. Alston*,[6] requiring probable cause and a readily mobile [*sic*]." It is noted that in *State v. Witt*, 223 *N.J.* 409 (2015), the court determined that the exigent-circumstances test in *Pena-Flores*, *supra*, "no longer applies. We return to the standard set forth in *Alston*[, *supra*,] for warrantless searches of automobiles based on probable cause. Going forward, searches on the roadway based on probable cause arising from unforeseeable and spontaneous circumstances are permissible. However, when vehicles are towed and impounded, absent some exigency, a warrant must be secured."[7] *Id.* at 450. It is noted that the question is based on *State v. Wilson*, 362 *N.J. Super.* 319 (App. Div. 2003) which was decided prior to *Pena-Flores*, *supra*. Moreover, Mr. Navarro has not demonstrated that the determination in *Witt*, *supra*, invalidates option b given the circumstances presented in the question.

Question 22 indicates that your superior has assigned you to conduct a series of roll-call training sessions on search and seizure issues, focusing particularly on issues where there seems to be some confusion among your department's staff.

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[4] While Mr. Navarro does not provide a citation, it appears that he is referring to *State v. Witt*, 223 *N.J.* 409 (2015).

[5] While Mr. Navarro does not provide a citation, it appears that he is referring to *State v. Pena-Flores*, 198 *N.J.* 6 (2009).

[6] While Mr. Navarro does not provide a citation, it appears that he is referring to *State v. Alston*, 88 *N.J.* 211 (1981).

[7] Despite Mr. Navarro's claim that the court in *Witt*, *supra*, "revers[ed] decisions in *Pena-Flores* as well as other cases similarly decided under the aforementioned prong," the court in *Witt*, *supra*, specifically noted that "today's decision is a new rule of law that we apply purely prospectively because to do otherwise would be unfair and potentially offend constitutional principles that bar the imposition of an 'ex post facto law'" [citation omitted]. *Id.* at 449. In this regard, the court further noted, "this decision is a new rule of law and will be given prospective application from the date of this opinion. For the purposes of this appeal, *Pena-Flores* is the governing law." *Id.* at 450.

During training, you are asked about the search of digital information on cell phones seized incident to a lawful arrest. The question asks for the true statement. The keyed response is option b, "A warrant is generally required to search a cell phone seized incident to arrest." Mr. Argento contends that the correct answer to this item is "search warrants are always required."[8] In this regard, he contends that while the keyed response is correct pursuant to *Riley v. California*, 573 *U.S.* ___ (2014)[9] and under the Fourth Amendment to the U.S. Constitution, this question "does not specify whether it is being asked under federal case law (4th Amendment to U.S. Constitution) or N.J. case law (Article I, Paragraph 7 of N.J. Constitution)." He refers to *State v. Earls*,[10] 214 *N.J.* 564 (2013) and argues that "the N.J. Constitution provides greater protection against unreasonable searches and seizures than the U.S. Constitution." In *Earls*, *supra*, the issue before the court was whether an individual has a constitutional right to privacy in cell-phone location information.[11] *Id.* at 568. As such, the case cited by Mr. Argento does not address the issue presented in the question, *i.e.*, the search of digital information on cell phones. Thus, Mr. Argento has not demonstrated that "search warrants are always required" in regard to the search of digital information on cell phones seized incident to a lawful arrest.

Question 23 provides:

> You assigned Detectives Ford and Pinto from your Detective Unit to investigate a jewelry store robbery that resulted in the killing of the store owner and his aunt. The detectives identified Chris Brinkly as

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[8] It is noted that "search warrants are always required" was not provided as an answer choice to candidates. It is further noted that Mr. Argento selected option a, "A search warrant must always be obtained to search any cell phone seized incident to arrest."

[9] In *Riley*, *supra*, the Court considered two matters presenting a common question: whether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested. The Court held that officers must generally secure a warrant before conducting such a search. The Court explained, "our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest . . . Moreover, even though the search incident to arrest exception does not apply to cell phones, other case-specific exceptions may still justify a warrantless search of a particular phone."

[10] Although Mr. Argento does not provide a citation for this matter, he provides the following internet address: http://njlaw.rutgers.edu/collections/courts/supreme/a-53-11.opn.html.

[11] In *Earls*, *supra*, after obtaining an arrest warrant for Earls, the police contacted T-Mobile which provided information about the location of a cell phone the police believed Earls had been using. The court held that "police must obtain a warrant based on a showing of probable cause, or qualify for an exception to the warrant requirement to obtain tracking information through the use of a cell phone . . . We emphasize that no warrant is required in emergency situations or when some other exception to the warrant requirement applies." *Id.* at 588-589.

> the suspect and obtained warrants for his arrest. These were executed by the detectives at 7:30 a.m. on February 5 at Brinkly's Brooklyn, N.Y. apartment, with the assistance of the New York City Police Department and the FBI. At the time of the arrest, an FBI agent read Brinkly his *Miranda* rights and informed him of why he was being arrested. They transported Brinkly to the FBI's office and at 9:16 a.m., he was re-advised of his constitutional rights and was handed a federal "Advice of Rights" form, which contained full *Miranda* warnings. Immediately following these warnings, the form contained the following, under the heading 'Waiver of Rights': 'I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.' This was followed by a line for Brinkly's signature. Since the only place provided for a signature came after the 'waiver' section, the purpose of the signature was not to acknowledge receipt of one's rights, but rather to indicate a waiver of those rights. Brinkly told FBI Agent Reacher that he did not wish to make a statement. The agent told Brinkly that if he did not want to make a statement at this time, to strike that particular item and initial it, which Brinkly did. He was asked no questions at that time, but proceeded to be fingerprinted and photographed. At 10:43 a.m., FBI Agent Reacher re-entered the interview room where Brinkly was being held, and said he'd like Brinkly to reconsider and told him that now was the time if he was going to make a statement. Brinkly asked what he wanted to know, and FBI Agent Reacher, without re-*Mirandizing* him, asked him personal background questions, followed by questions about the jewelry store robbery. Brinkly gave a full confession but refused to sign the typed statement. Immediately afterwards, your detectives re-*Mirandized* Brinkly and questioned him. Brinkly signed a waiver at that time and gave them a full confession. However, he again refused to sign his statement.

The question asks, based on relevant New Jersey court decisions, for the true statement. The keyed response is option d, "Both statements will be inadmissible in court. FBI Agent Reacher's failure to issue fresh *Miranda* warnings violated Brinkly's right to remain silent and any subsequent confession is inadmissible." Mr. Murphy argues that "the question is ambiguous when clarifying the suspect invoking his rights. Full MIRANDA warnings must be specific, knowingly and intelligent. The fact that the question was unclear as to if the suspect fully understood these rights is left unsatisfied." Mr. Navarro presents:

> In the fact pattern, the Federal Bureau of Investigation investigator improperly re-approached the defendant as oppose[d] to the defendant being the one to re-initiate conversation. Here, I do agree that the statement provided was inadmissible due to the aforementioned reasons. However, the fact pattern leads you right into the NJ investigators [M]irandizing the defendant, who subsequently provides incriminating statements. At no time does the fact pattern provide information that the NJ investigators were aware of the previous statement or any suggestion that the federal agents and [S]tate investigators were engaging in what is known as beachheading. In addition, as in the decision in *State v. O'Neill*,[12] the courts concluded that each case is visited on a case-by-case basis after considering several factors.

The subject question is based on *State v. Hartley*, 103 *N.J.* 252 (1986) in which the issues before the court were "whether the federal authorities 'scrupulously honored' defendant's previously invoked right to silence . . . and if not, whether the statement to New Jersey authorities is tainted because of its relationship to the 'federal' statement." *Id.* at 255-256. With regard to the first issue, the court noted:

> When a defendant waives his privilege against self-incrimination, as he surely is entitled to do, the government has the 'heavy burden' of demonstrating that such a waiver was made 'voluntarily, knowingly, and intelligently' [citations omitted]. However, the question of waiver is an inquiry separate and apart from the first question that engages our attention in this appeal: whether the defendant's right to remain silent has been properly respected in the first instance [citations omitted]. *Id.* at 260-261.

The court determined that "the failure to honor a previously-invoked right to silence smacks so inherently of compulsion that any statement following that failure is involuntary by definition. So here, FBI agent['s] failure to readminister *Miranda* warnings was a violation of the obligation scrupulously to honor Hartley's asserted right to silence, and therefore amounted to a violation of defendant's fifth-amendment and state common-law right not to be compelled to be a witness against

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[12] Although Mr. Navarro does not provide a citation, it appears that he is referring to *State v. O'Neill*, 193 *N.J.* 148 (2007). Unlike the situation presented in the subject question, in *O'Neill*, *supra*, while in official custody, O'Neill was subjected to a 95-minute interrogation in which detectives elicited from O'Neill incriminating statements that linked him to the killing of a taxi cab driver. Only then, for the first time, did the detectives advise O'Neill of his *Miranda* rights. Without any significant break, the detectives resumed the interrogation, questioning the O'Neill for approximately five more hours, taking two taped statements, which directly connected him to the shooting death of the taxi cab driver. *Id.* at 154.

himself." *Id.* at 278. With respect to the second issue, *i.e.*, the admissibility of the statement given to New Jersey authorities which was preceded by fresh *Miranda* warnings, the court noted that "although the State treats the two interviews as separate and distinct, it is apparent that they comprise a single continuing event" and determined that this second statement was also inadmissible. *Id.* at 279. The court concluded that "this result is compelled either (1) because the second statement was obtained through a process that was in fact part of the same illicit procedure that produced the first statement, or (2) because it was the product of an unconstitutional interrogation -- and this despite the readministering of *Miranda* warnings to defendant before the second statement." *Id.* at 256. As such, the question is correct as keyed.

Question 54 refers to Kären M. Hess and Christine Hess Orthmann, *Management and Supervision in Law Enforcement* (6th ed. 2012). The question indicates that your department uses performance appraisals to evaluate its employees. These appraisals are based on job descriptions and performance standards. The question asks, according to Hess *et al.*, for the true statement regarding performance standards. The keyed response is option d, They "should be related to the department's mission, be measurable, and be attainable." Mr. Argento maintains that option c, They "ensure that supervisors will be consistent and fair in their ratings," is the best response. In this regard, he refers to the text which provides, "without performance standards, supervisors may be inconsistent and unfair in promotions, awards, and discipline. Performance standards allow supervisors to be consistent and fair." He notes that while the text states, "Performance standards should be mission related, measurable, attainable, and practical to monitor. Such standards let officers know what to expect, remove personality from ratings, and provide a basis for objective appraisal with minimal inconsistency," this "shows that answer choice 'D' is partially correct, but not more correct than answer choice 'C.'" He explains that "where [the text] states that such standards should be 'mission related,' answer choice 'D' states that such standards 'should be related to the *department's mission*.' As such, answer choice 'D' imposes additional requirements on performance standards, specifically that they be related to the '[*d*]*epartment's mission*' as opposed to '*mission related*' as it states in the text." As noted in the text, police departments "have always had a mission, whether stated or unstated . . . Police missions change as departments and the communities they serve change . . . Traditionally, ... the mission of the police was to enforce the law . . . Today, however, many departments have changed their focus to providing services while other departments seek a combination of the two. It is important for departments to clearly articulate their mission or overriding core purpose in writing. A mission statement is a clearly written explanation of why an organization exists and is the driving force for that organization, providing a focus for its energy and resources." Mr. Argento has not demonstrated that there is any other mission imposed on the police department beyond the police department's mission or that any other such mission is in conflict with the police department's

overall mission. With respect to option c, as indicated above, while "performance standards *allow* supervisors to be consistent and fair," the text does not indicate that performance standards will ensure that a supervisor will be consistent and fair. As such the question is correct as keyed.

Question 58 refers to the Willow Township Police Department Information Technology Policy presented to candidates in the test booklet. The question provides:

> The following four officers have used the Willow Township Police Department's communication networks for personal reasons:
>
> - Officer Conway spends 30 minutes accessing the Internet and checking news websites every morning after reporting for duty, first thing after roll call.
> - Officer Hawke spends 45 minutes reading emails on his personal email account today during his lunch period.
> - Officer Luther spends 35 minutes accessing the Internet today to check the latest sports scores during his afternoon break time.
> - Officer Stark spends 50 minutes accessing his personal email account to perform political campaign activities, after his shift has ended for the day.

The question asks for the officer who has not appeared to have violated the Information Technology policy. The keyed response is option b, Officer Hawke. Mr. Murphy argues that the policy indicates that "the user cannot put the system at RISK. Clearly a personal email system can put a major network at risk." He indicates that while he does not agree with any of the answer choices, "checking the news can be argued that it is necessary to be up on current events in the Police field . . ."[13] It is noted that Section IV of the policy provides:

> <u>Incidental Personal Use Permitted</u>
>
> The department offers employees access to its communications networks for business purposes. Limited personal use is permitted if it does not:
>
> - Interfere with work duties.
> - Consume significant resources.
> - Constitute any use prohibited by this policy.

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[13] It is noted that Mr. Murphy selected option a, Officer Conway. It is noted that the question does not indicate that Officer Conway was checking the news sites for business purposes. Thus, option a is clearly incorrect as Officer Conway accessed the Internet for personal reasons while on duty.

- Interfere with the activities of others.
- Put the network or systems at risk.
- Violate any department policies.

> Employees may only use the department's communication networks for personal reasons during authorized 15-minute break times, 60-minute lunch periods, or before or after an employee's scheduled shift. More than limited incidental personal use may subject an employee to discipline or denial of future Internet access.

There is nothing in the question which indicates that Officer Hawke's reading of his personal email is putting the network or systems at risk. Moreover, candidates are instructed in the test booklet to "choose the single best answer among the options." Officer Hawke's actions are clearly within the parameters of the policy. Accordingly, the question is correct as keyed.

CONCLUSION

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

ORDER

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 22ND DAY OF FEBRUARY, 2017

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