

CONCLUSION

The scenario involved an accident with an officer in unmarked vehicle. The officer saw a green sedan driving erratically. It sideswiped a parked car, nearly struck two pedestrians, and drove away. The officer activated his vehicle's emergency lights and audible device, and attempted a motor vehicle stop. However, the driver would not stop, but increased his speed. Dispatch notified the officer that the car was stolen. He initiated pursuit with his supervisor's approval. One minute later, the officer lost control of his vehicle and traveled onto the sidewalk where he struck a man standing at a bus stop. The candidate reports to the scene and sees the man, who has sustained severe injuries, being placed into an ambulance. Question 1 asked for specific actions to take, or ensure are being taken, in response to the incident from the time the candidate arrives on-scene through the investigative process.

After reviewing his test materials, the appellant disagreed with his score for the technical component. The appellant received a score of 4, and the assessors indicated that the appellant missed the opportunity to identify/gather/interview witnesses (question 1). On appeal, the appellant states that he notified individuals and agencies who would take this action, and free him to assume command and initiate the Incident Command System. He argues that other actions he took implied that he took the noted action. Further, he states that instructing officers under his command to interview witnesses contradicts Attorney General Law Enforcement Directive No. 2004-2, Joint Crash Investigative Protocol – Division of State Police and County Prosecutors (No. 2004-2), which states that the investigation shall proceed as directed by the County Prosecutor. He maintains that the accident would be covered by Attorney General Supplemental Law Enforcement Directive No. 2006-5, Supplemental Law Enforcement Directive Regarding Uniform Statewide Procedures and Best Practices for Conducting Police Use-of-force Investigations. This Directive provides that investigations to determine the lawfulness of police use-of-force are conducted by an under the direct supervision of a County Prosecutor or the Division of Criminal Justice, but not police agencies.

In reply, regarding notifications, the appellant received credit for notifying the County Prosecutor's Office, the Internal Affairs Division, the County Fatal Response Team, and the Department's Investigation Unit. He further received credit for preserving in car video, body worn cameras, and other relevant video from businesses. Identify/gather/interview witnesses was a separate action that the appellant did not take, and he did not mention those agencies in relation to witnesses. The question asks for specific actions. Further, instructions to candidates included, "In responding to the questions, be as specific as possible. Do not assume or take for granted that general actions will contribute to your score." The appellant specifically described how he would ensure that video footage from

the police vehicle, officer's body worn camera, and businesses' cameras would be gathered and secured. He did not just assume that the notified agencies would take care of this as part of their duties. Based on his argument, there would have been no reason for him to choose to specify those actions if he thought that just calling the agencies to the scene would be enough to imply that various tasks would be performed through those units. In order to receive credit, the appellant needed to identify/gather/interview witnesses.

Next, as to Directive No. 2004-2, the appellant does not provide the details or arguments as to how this relates to credit for the missed PCA or how this could invalidate the PCA. The Police Department would not simply call the County Prosecutor's Office, then depart the scene and let them take all the necessary actions. Page 6 of the Directive states that "Assistance shall also be provided with other investigative tasks such as interviewing and the taking of statements from drivers, passengers, witnesses, and victims, as needed." This directive does not absolve the Police Department from taking such basic steps as identifying, gathering, and interviewing witnesses. Instead, it says that "assistance" shall be given. The candidate, as the Captain, has arrived on scene and must go about taking various actions, and the appellant called the County Prosecutor's Office to respond. Witnesses are a vital resource in learning what happened and the Captain would not want the witnesses to dissipate and become unaccounted for in the time it takes for members of the County Prosecutor's Office to arrive. There is no reason why a Captain should not identify who on the scene was a witness to the incident as well as gather them to make sure that statements could be obtained. There is an interval of time between the Captain's arrival and the County Prosecutor's Office reporting to the scene, and it would be irresponsible not to identify and gather the witnesses in the intervening time. This Directive does not state that the Captain and his personnel would not be involved in the interviewing of witnesses, unlike the other directive that expressly prohibits it in use of force investigations.

Further, this was not a use-of-force investigation, as suggested by the appellant. The responding officer's vehicle hit a man waiting at a bus stop when the officer lost control of the vehicle. Thus, the scenario presented to the candidates did **NOT** involve a police officer's use of force against a civilian. As a result of this appeal, four Police SMEs were asked if use of force had taken place, given the basic facts of the scenario of a police officer losing control of his vehicle while engaged in a vehicular pursuit and driving off the roadway and striking and killing a bystander civilian. All four responded unequivocally that no use of force took place. They explained that for an action/incident to be classified as a "use of force," the action has to have been taken with the intent and purpose for it to be a use of force. They said that if an innocent bystander is killed because of a vehicular pursuit, it is simply an unfortunate accident. To have it be use of force, the officer purposefully would have had to run over the person or to use the police vehicle intentionally to ram into the person. The SMEs further stated that the Prosecutor's Office would

conduct an investigation to see if there were any liability issues on the part of the officer or the department, but that was not a use of force investigation. Lastly, they stated that the fact that a death took place because of loss of control of a patrol vehicle by an officer during a pursuit would not classify the incident as use of force. It should be further noted that in the Attorney General's Use of Force Policy, "Deadly force is force which a law enforcement officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing, death or serious bodily harm." The officer did not purposely cause the civilian's death, and would not have any reason to anticipate that the civilian could die because of a vehicular pursuit. In this case, the appellant's entire performance was reviewed, and he missed the actions noted by the assessors. His score of 4 is correct.

A thorough review of appellant's submissions and the test materials indicates that the appellant's test score is amply supported by the record, and appellant has failed to meet his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal 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
THE 6th DAY OF SEPTEMBER, 2017



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