



STATE OF NEW JERSEY

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

In the Matter of John Delaney, *et al.*,
Sheriff's Officer Sergeant (various
jurisdictions)

Examination Appeal

CSC Docket No. 2019-609, *et al.*

ISSUED: NOVEMBER 21, 2018 (ABR)

John Delaney (PC2608V), Hudson County; and Jeffrey Iannacone, Chinere Mills and Brian Weitzman (PC2610V), Passaic County; appeal the promotional examination for Sheriff's Officer Sergeant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on July 26, 2018 and consisted of 80 multiple choice questions.

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

Iannacone argues that candidates were not given adequate time to read Bruce B. Tepper and Ida M. Halasz, *Supervision: A Handbook for Success* (1998), the source material for Questions 16 through 30 on the subject examination. He submits that with the subject examination, candidates were initially informed that a different textbook would be utilized as a source for questions, but that approximately five months later, they were told that Tepper and Halasz, *supra*, would replace it as the source. As a result, he states that candidates only had five weeks to review the new source textbook. He maintains that the five weeks they received to study the textbook was far less than the six months candidates received to review source materials for prior examinations. Agency records indicate that the subject examination was originally scheduled to be administered on May 3, 2018, but postponed after this agency selected a new textbook for the subject examination. On June 6, 2018 candidates were notified about this change via email. As noted

above, the examination was subsequently administered on July 26, 2018. Thus, candidates were given seven weeks to familiarize themselves with the new material. The Civil Service Commission (Commission) notes that this change impacted all candidates for the examination in a like manner. Moreover, because each examination is considered a separate entity, it is permissible for this agency to change the textbook utilized as a source for test questions and to alter the amount of time that candidates receive to review source material prior to an examination. Finally, the Commission notes that the appellant has not specified a remedy. Therefore, based upon the foregoing, Iannacone's appeal of questions 16 through 30 is moot.

In Question 50, Officer Perkins and Officer Willow initiate a traffic stop on a vehicle reported stolen and believed to have two occupants. Before the vehicle comes to a complete stop, the front passenger jumps out of it and flees into the woods. The question asks "[h]ow should the officers **BEST** handle this situation?" The keyed response is option d, that "Officer Perkins and Officer Willow should approach the vehicle and not chase the fleeing suspect." On the examination, Delaney selected option c, that "Officer Perkins should call for back-up while Officer Willow approaches the vehicle." On appeal, Delaney maintains the proper course of action would be for one of the officers to request additional units, update the command center about the status of the stop and its location, and call the driver out of the vehicle while remaining a safe distance away from it. Delaney contends that the scenario constitutes a high-risk motor vehicle stop/felony stop and because there is additional risk to officer safety from the passenger who fled the vehicle, their training calls for them to use a minimum of three officers to make contact, call the driver out of the vehicle and make an arrest. He notes that after one officer secures the suspect, the other two can call any other suspects out of the vehicle and clear it. However, as noted above, candidates are instructed to choose the "best" answer, *i.e.*, the best response among the options listed for this specific question. Here, examinees must decide whether it is best to have both officers separate to simultaneously address the driver in the vehicle and the fleeing passenger or to have the officers remain together and only address one of the two. It is noted that option a has Officer Perkins chase the fleeing suspect while Officer Willow approaches the stopped vehicle. Options a and c are both flawed because they have the officers separate and act alone without adequate backup. A much safer course of action is to have the officers remain together, as is the case with options b and d. Option b, which has both officers remain together and chase the fleeing suspect, is not the best response because it leaves the stopped vehicle and the driver within it unattended. It is more prudent for both officers to attempt to apprehend the driver, as provided in option d. If the vehicle is actually stolen, the driver has clearer culpability for the vehicle theft under the New Jersey Code of Criminal Justice, thereby making his or her arrest the priority. Moreover, if the driver is apprehended, it allows for the recovery of the stolen vehicle. In contrast, leaving the vehicle unattended to chase the fleeing passenger makes it easy for the driver to

escape apprehension and it potentially prevents the recovery of the vehicle. Thus, Question 50 is correct as keyed.

Question 53 describes a response to a call from a school involving a physical altercation between multiple students. Staff members were unable to quell the melee before the examinee arrived on scene with four other officers. The question asks for the best way to handle the situation. The keyed response is option c, to direct “two officers to restrain the students still involved in the altercation and the other two officers to move the students who aren’t involved away from the scene.” Weitzman argues that because the fact pattern does not state that there are any bystanders observing the fight, the best answer is option a, to “[i]nstruct your four officers to break up the altercation.” As such, Weitzman maintains that “it would be nothing more than an assumption that other students and/or staff were present, observing the altercation.” Here, it is evident that the question is meant to put the examinee in a frame of mind of an officer immediately responding to a call about a fight. The first part of the question relays the information provided by the caller. It is recognized that a call to law enforcement may communicate only basic information about a disturbance and leave out certain pieces of information. Additionally, it is understood that events at a scene can change very rapidly. For example, the number of participants in a fight may fluctuate even in a brief window, with some ceasing to fight sooner than others. Further, because schools generally have a large number of students, there is a reasonable likelihood that if a brawl occurs, a crowd of onlookers may gather even in the short amount of time that elapses between the call and the arrival of officers on scene in this scenario. Therefore, it was reasonable for candidates to assume that there would be students observing the fight at the scene. Accordingly, the question is correct as keyed.

Question 56 indicates that Sergeant Senegal is stationed at the court security office when a judge’s clerk calls to report that a civilian visitor is complaining of chest pains. Sergeant Senegal immediately hangs up the phone and dispatches officers to the area within the courthouse where the judge’s chambers are located. However, the civilian visitor is not in that area, and time is lost attempting to locate the victim. The question asks candidates to consider the following:

- I. Whether the victim had any health complaints during past visits to the courthouse.
- II. Nature of the victim’s health complaint
- III. Description of the victim (e.g., age, gender, etc.)
- IV. Exact location of the victim

It then asks “[w]hat information Sergeant Senegal should have gathered about the victim before hanging up the phone.” The keyed response is option c, “II, III and IV only.” Weitzman argues that the best response is option b, “III and IV only,” as it was unnecessary for Sergeant Senegal to ask about the nature of the victim’s health

complaint, given that the judge's clerk already informed him that the victim was experiencing chest pains. Here, it is noted that the question does not ask what *additional* information Sergeant Senegal should have gathered. Rather, it asks candidates to consider the items listed and identify which among them Sergeant Senegal should have obtained. Viewed in this light, because the appellant acknowledges that the nature of the victim's health complaint is pertinent information and that items III and IV are also relevant, it is evident that the question is correct as keyed.

Question 61 presents a fact pattern where Aaron, an 18-year-old tenant, touches the intimate parts of Lisa, the 13-year-old daughter of the landlord, while she was home alone and asleep on a couch in the living room. The question asks what the most appropriate charge is for Aaron according to Title 2C of the New Jersey Statutes Annotated (Title 2C). The keyed response is option c, "criminal sexual contact." Mills and Weitzman argue that the best response is option d, "aggravated criminal sexual contact." Mills maintains that under *State v. Rush (Rush)*, 278 *N.J.Super.* 44 (App. Div. 1994), a sleeping victim could be found to be physically helpless with respect to sexual contact that occurred when she was awake. Weitzman similarly argues that the Lisa would be considered "physically helpless" under New Jersey case law, as she was totally unconscious and touched prior to awakening. It is emphasized that the Appellant Division did not find as a matter of law in *Rush* that a sleeping victim was "physically helpless" within the meaning of *N.J.S.A. 3C:14-3b*. Rather, it was a question of fact to be resolved by the jury in each individual case. *See Rush*, 27 *N.J.Super.* at 49. As a result, a jury could find that Lisa *was not* "physically helpless" within the meaning of the aggravated criminal sexual assault statute, *N.J.S.A. 2C:14-3a*. Conversely, there is no question that Aaron has committed an act of criminal sexual assault under *N.J.S.A. 2C:14-3b*, as he engaged in sexual contact with Lisa, who is 13 years old, and he, at age 18, is at least four years older than Lisa. Accordingly, Question 61 is correct as keyed.

Question 64 asks candidates to consider which of the following describes simple assault under *N.J.S.A. 2C:12-1*:

- I. Abraham pushed through a crowd of people as he was running from an officer. No one in the crowd was injured.
- II. Liam is always having problems with his cable TV. He calls the cable company to report the same problem he's been having. Aiden, a representative from the cable company, was sent out to resolve the issue. Liam is already frustrated when Aiden arrives. Aiden is attempting to resolve the issue when he makes a general statement that Liam took personally and provoked Liam to punch Aiden resulting in a bruise on Aiden's face.

- III. Steve, a law enforcement officer, and Derek, a teacher, were having dinner at home. They got into an argument and Steve ended up wrestling Derek to the ground resulting in Derek twisting his ankle.

The keyed response is option b, “I and III only.” Weitzman and Mills argue that the question should be removed from the examination, as the correct answer is “III only,” which was not an option on the examination. Weitzman contends that because fact pattern I states that “no one was injured,” it was an example of harassment and obstruction. Specifically he cites *N.J.S.A. 2C:33-4*, which provides that the petty disorderly offense of harassment, includes, in part, a person “with purpose to harass another . . . subject[ing] another to striking, kicking, shoving or other offensive touching, or threatens to do so.” Mills argues that because fact pattern I does not state that Abraham attempted to cause or did cause injury, it would not constitute a simple assault. Instead, Mills argues that this would constitute obstructing administration of law or other governmental function in violation of *N.J.S.A. 2C:29-1*. A review of Question 61 demonstrates that Abraham’s conduct constitutes a simple assault, as he “*attempts to cause . . . bodily injury to another*” in violation of *N.J.S.A. 2C:12-1*. Thus, even though Abraham does not cause injury to others, his act of pushing through the crowd would constitute an attempt to cause bodily injury and thus a simple assault. Further, intent may be inferred from the defendant’s actions as established by the evidence. See *State v. Hundley*, 134 *N.J. Super.* 228 (App Div. 1975). Thus, it is unnecessary for fact pattern I to explicitly state that Abraham intended to cause bodily injury. Accordingly, the question is correct as keyed.

Question 65 indicates that an 18-year-old high school senior posted photographs and videos of himself pointing a gun at a local school on social media. Based upon the posts, law enforcement officers responded to the scene and all schools in the municipality were closed for the day. The resulting investigation did not reveal any active security threat to the schools. The question asks for the most appropriate charge under Title 2C based upon this fact pattern. The keyed response is option a, false public alarms. Mills argues that the question should be double keyed, as option d, terroristic threats, was also correct. Here, it is noted that to be convicted under the terroristic threats statute, *N.J.S.A. 2C:12-3*, a person must “threaten to commit a crime of violence.” Under this fact pattern, the 18-year-old has not made a clear threat against the local school or anyone inside. Rather, he posted photographs and videos which foreseeably caused public inconvenience and alarm and triggered an immediate and heightened response by law enforcement and the closure of all schools in town. *N.J.S.A. 2C:33-3*. Because his actions “initiate[d] . . . a report or warning of an impending . . . crime, catastrophe, emergency or other incident” that he knew was baseless and it is reasonable to expect that those reports would cause an evacuation, public inconvenience or alarm, it may be considered a false public alarm under *N.J.S.A. 2C:33-3a(1)(a)*. Further, because it triggered an immediate and heightened response by law enforcement, it

may rise to the level of a second-degree crime pursuant to *N.J.S.A. 2C:33-3a(1)(b)*. Accordingly, the question is correct as keyed.

Question 73 notes that the “Attorney General Medical Marijuana Enforcement Guidelines for Police” (AG Guidelines) require state-issued registry identification cards (ID cards) to contain the name and photograph of the patient, caregiver or employee. It asks examinees to identify which of the following items the AG Guidelines requires to be stated on the ID cards:

- I. Address of the patient, caregiver, or employee
- II. Identification number
- III. Issuance date
- IV. Expiration date

The keyed response is option b, “II and IV only.” Iannacone argues that page four of the AG Guidelines state that the ID cards must contain a photograph of the patient or caregiver, the name of the patient or caregiver and a unique identification number. Accordingly, Iannacone appears to suggest that because “II only” was not an option, the question has no correct answer and it should be removed from the examination. However, Section 4.1 of the AG Guidelines states that each card provides the following information:

a photograph of the patient, caregiver or employee; the name of the patient, caregiver, or employee; a unique identification number; an ultraviolet imbedded picture of the cardholder viewable only under a black light; an expiration date (two years after issuance) after which the card is null and void.

Thus, based upon the foregoing, the keyed response is the correct response.

CONCLUSION

A thorough review of the 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 burdens 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 21ST DAY OF NOVEMBER, 2018

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