STATE OF NEW JERSEY

In the Matter of Mark Moskal, *et al.*, Police Lieutenant, various jurisdictions	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket Nos. 2019-1319, *et al.*	:	Examination Appeal

ISSUED: February 25, 2019 (JH)

Mark Moskal (PM1933W), Bloomfield; Christopher Boller and Charles Morgan (PM1947W), Ewing; Peter Zanin (PM1967W), Hoboken; Joseph Scullion (PM1996W), Margate; Debbie Teixeira and Wyhidi Wilson (PM2013W), Newark; Alexander Castellon, Martin Grycuk and Michael Kisfalvi (PM2019W), Passaic; David Chasmer and David Dunlay (PM2036W), Union City; and Christopher Majewski (PM2040W), Weehawken; appeal the 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 11, 2018 and consisted of 80 multiple choice questions.

Castellon, Chasmer, Dunlay and Zanin contend 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, they 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 4 refers to the Attorney General Guidelines for the Retention of Evidence (Directive No. 2011-1), which outlines the retention schedule for criminal case evidence for all indictable offenses handled in Superior Court. Candidates were required to complete the following sentence, "According to the directive, in cases a request for destruction authorization may be submitted . . ." The keyed response is option a, "one year and one day after it has been submitted to the laboratory upon verification by the submitting agency that no prosecution has been instituted relating to the evidence." Moskal contends that option b, "six months after the agency has taken possession of it," is equally correct. In this regard, he refers to the Attorney General Guidelines on the Property and Evidence Function (October 1989) Model Policy section 7.6[1] and argues that "the Attorney General Guidelines unfortunately ha[ve] two different timeframes for the destruction of CDS with no prosecution or ownership." It is noted that the question specifically refers

[1] This section provides:

> 7.6 Disposition of Controlled Dangerous Substances with no prosecution
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> > 7.6.1 If the police department comes into possession of controlled dangerous substances, for example by finding, and a viable prosecution cannot be developed in relation to the drug, then it should be retained for at least 60 days. The controlled dangerous substance shall be destroyed within one year of its receipt. All aspects of the destruction shall be documented on the Uniform Destruction of Evidence Form. Notice to and approval of the Chief of the Trial Section or Narcotics Squad Prosecutor is not necessary in this situation unless a significant quantity or quality of controlled dangerous substance is involved. The term 'significant quantity' should at least mean enough controlled dangerous substance to support a charge of possession with intent to distribute if the owner or possessor were known.

to Directive No. 2011-1 which provides, under the heading "Timeframes for Evidence Destruction":

> 3. Narcotic Evidence
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> . . .
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> e. In cases where a controlled dangerous substance has been submitted to a Forensic Laboratory for analysis and has not been connected to any suspect or defendant and has been submitted as Found Property, a request for destruction authorization may be submitted one year and one day after it has been submitted to the laboratory upon verification by the submitting agency that no prosecution has been instituted relating to the evidence.

Moreover, the Model Policy does not address the circumstances presented in the question, *i.e.*, "where a controlled dangerous substance has been submitted to a Forensic Laboratory for analysis and has not been connected to any suspect or defendant and has been submitted as Found Property." As such, the question is correct as keyed.

Question 17 indicates that police officers respond to a two-story, single-family residence after neighbors made a 9-1-1 call stating that they heard shouting and the sound of breaking glass inside the residence. A husband and wife, both middle-aged, answer the door when the officers arrive at their house and allow the officers to enter their home. While standing in the living room, just inside the door, the officers see a controlled dangerous substance (CDS) in plain view. They seize the CDS and then a few seconds later, a young woman comes running down the stairs and asks the officers for medical assistance for a young man who is experiencing an overdose in an upstairs bedroom. The question asks, based on the Attorney General Directive to Ensure Uniform Statewide Enforcement of the "Overdose Prevention Act" (Directive No. 2013-1), for the statement that is true regarding the CDS observed and seized by the officers while in the living room. The keyed response is option b, "The immunity provision of this directive does not apply to the CDS observed and seized by the officers, since the possession of the CDS came to the officers' attention prior to the request for medical assistance."[2] Chasmer and

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[2] Directive No. 2013-1 provides, in pertinent part:

> 5. <u>Inapplicability of Statutory Immunity When Offense is Discovered Independent of a Request for Medical Assistance</u>
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> The immunity provisions of the statute apply only when the evidence for an arrest, charge, prosecution or conviction have been obtained as a result of the seeking of medical assistance. *N.J.S.A.* 2C:35-30(b)(2) and 2C:35-31(b). The immunity feature thus does not extend to simple possession drug offenses that

Wilson argue that option c, "In order to determine whether or not the immunity provision of this directive applies to the CDS observed and seized by the officers, one must first know if the CDS belonged to the young man who was experiencing an overdose," is the best response. In this regard, Chasmer asserts:

> The breaking of glass and shouting could easily be part of a chain of events related to the overdose, and also could easily be attempts to get attention and possibly summon help . . . [S]erious consideration as to what constitutes a request for medical assistance, and whether all of the circumstances concerned in this hypothetical situation are, in fact, part of the same 'call for service' . . . The issue in this scenario are whether the events are a fluid chain of the same event, where a female reports an overdose after the CDS is independently discovered; or is the entire scenario part of the same request beginning with the glass breaking and shouting.

Wilson presents that "the Attorney General Directive concerning heroin/opiate investigations, under subtitle c, there is a requirement to investigate immunity eligibility before making an arrest at any scene[3] . . . Despite the fact that the identity of the person making the call to 911 is unknown, there was in fact a service call to the police . . . We can't ignore that before the female was aware that the police were already inside of the residence, she attempted to provide medical assistance for the overdosing male. Therefore, based on the totality of the

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> come to the attention of law enforcement by any independent means. Thus, for example, a prosecution for a simple possession drug offense may proceed if the evidence of that offense had been discovered and seized prior to the call for medical assistance (*e.g.*, where police during an encounter see a controlled dangerous substance in plain view and a person on the scene thereafter tells police that he/she or another person is experiencing an overdose and needs medical assistance)."

[3] Wilson appears to be referring to Attorney General Law Enforcement Directive 2014-2 (October 28, 2014), "Directive Concerning Heroin and Opiate Investigations/Prosecutions," which contains the following section:

> c. **Requirement to Investigate Immunity Eligibility Before Making an Arrest**. An officer responding to a drug overdose shall not arrest to any person present at the scene for violation of any offense eligible for immunity under the Overdose Prevention Act unless the officer has investigated, when feasible, whether the person made or participated in a call for medical assistance. The officer shall make an arrest for violation of an offense enumerated in the Act only after determining, to the extent feasible, that the person is not entitled to immunity from arrest pursuant to the Act and/or Attorney General Law Enforcement Directive 2013-1.

circumstances, my answer must be considered as correct. In order to determine whether or not immunity applies to this fact pattern, the police would have to know whether or not the CDS belonged to the overdosing person. If it did, immunity would apply to all at the scene." Moskal[4] asserts that "the question cannot be properly answered without further investigation by on scene police officers . . . Did the party from upstairs know police were on scene, that police seized evidence and lastly is there truly an overdose occurring on premise? . . . Was the commotion over a true overdose? Were the residents unsure if calling for Medical Aid would lead to prosecution? Did the residents not call for Medical Aid due to the feeling of shame/guilt?" It is not clear why Chasmer and Moskal believe that the initial 911 call from neighbors due to "shouting and the sound of breaking glass" was a disguised call for medical assistance. Moreover, the situation presented in the question is clearly addressed by the above noted section of Directive No. 2013-1, *i.e.*:

> Thus, for example, a prosecution for a simple possession drug offense may proceed if the evidence of that offense had been discovered and seized prior to the call for medical assistance (*e.g.*, where police during an encounter see a controlled dangerous substance in plain view and a person on the scene thereafter tells police that he/she or another person is experiencing an overdose and needs medical assistance).

In addition, the Subject Matter Experts (SMEs) determined that the immunity provision does not apply regardless of who owns the CDS. Accordingly, the question is correct as keyed.

Question 25 indicates that Officer Coolridge used deadly force in the course of attempting to apprehend two people involved in a robbery. One of the suspects suffered serious bodily injury and the other suspect was not injured and fled the scene. Sergeant Inez, who is Officer Coolridge's supervisor, responded to the scene in about one minute and took over command of the scene. As the incident commander, he provided medical assistance to the injured suspect until the ambulance arrived, helped to secure the scene, and participated in a be-on-the-lookout search for the other suspect who had gotten away. The question asks, "Which of Sergeant Inez's actions, if any, violated the N.J. Attorney General's Supplemental Law Enforcement Directive Regarding Uniform Statewide Procedures and Best Practices for Conducting Police-Use-of-Force Investigations (issued July 28, 2015)[5]?" The keyed response is option a, "None of Sergeant Inez's

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[4] It is noted that Moskal selected option a, "The immunity provision of this directive applies to the CDS observed and seized by the officers, since the officers were asked to provide medical assistance to an overdose victim while inside the residence."

[5] Supplemental Law Enforcement Directive Amending Attorney General Law Enforcement Directive No. 2006-5.

actions violated this directive." Dunlay and Zanin contend that option d, "Participating in a be-on-the-lookout search for the other suspect who had gotten away," is the best response. Specifically, Dunlay asserts that "the question never made any reference of the sergeant being properly relieved of his law enforcement obligation of maintaining a crime scene secure [*sic*] nor was any other person mentioned in the question who could have secured the crime scene. The Sergeant could not effectively manage control of the securing of the crime scene and be actively participating in a BOLO." Zanin refers to Attorney General Law Enforcement Directive No. 2005-2 ("Mandatory Training for All Law Enforcement Officers in the State of New Jersey for National Incident Management System Courses") (September 22, 2005) and presents that "the Incident [C]ommander can only transfer command when they brief their relief and there is a notice of change in incident command. The question does not state [that] the Sergeant, who is the incident commander, has been relieved, so the Sergeant, as Incident Commander should not be leaving the scene to perform a BOLO search." It is noted that the SMEs indicated that the question specifically refers to the supplemental directive and if an incident commander were to leave a scene without transferring command, this action would not be in violation of the subject directive. The SMEs added that participation in a BOLO search can include actions, especially when an officer of supervisory rank is involved, that do not require leaving the scene and thus, relief would not be needed. In this regard, the SMEs noted that "participating in a BOLO search" may include the following actions: organizing the BOLO search efforts, such as collecting or disseminating information for the BOLO; relaying descriptions of the suspect/vehicle to others as more information comes in/adding more information to the original BOLO notice; calling other towns or agencies with the descriptor information, or instructing someone to do that; directing officers to search specific regions/neighborhoods/sectors; or checking on the veracity of the information that has been disseminated as more information comes in. Accordingly, the question is correct as keyed.

Question 32 provides:

> In late April, police received an anonymous tip that Rose Laker was selling heroin from her home at 6 Belmont Court, as well as out of her burgundy Chevy Lumina. The caller stated that Laker was making trips in the Lumina to drop off and pick up heroin from a neighboring town. Accordingly, a 'patrol notice' was circulated to department officers.
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> A few days later, at about 11:30 p.m., an officer was patrolling the area. When he turned onto Belmont Court, his attention was drawn to a burgundy Chevy Lumina, which was parked in front of 6 Belmont Court, by the movement of a silhouetted figure within the vehicle. The officer pulled up and parked his patrol car seven to ten feet behind the

> vehicle and at a perpendicular angle, blocking in the Lumina, which was parked, front-end forward, in a space facing a curved curb. Because it was dark and neither the lights nor the engine of the Lumina were activated, the officer turned on the patrol car's rooftop, right alley light and aimed it at the vehicle. He did not activate any emergency lights. He observed the lone occupant – a woman who was sitting in the driver's seat. She looked back at the officer and then leaned toward the passenger's seat, scuffling around with something there. The officer became suspicious of what was happening, so he exited his car and approached her vehicle, going directly to the driver's side door.
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> The vehicle's driver's window was half open, and the officer asked the woman for identification and driver's license. After she produced her credentials, it was then that the officer recognized her as the subject of the patrol notice and he also recalled that he had arrested her on drug-related charges approximately six months earlier. The officer then asked the woman what she was doing, and she replied that she was smoking a cigarette, though the officer did not observe a cigarette or cigarette butt. The officer asked her why she began to scuffle around the passenger-seat area when he pulled his car up. The woman replied that she had been applying makeup and was putting it away in her purse. When asked how she could apply makeup in the dark, she did not reply. The officer then asked whether there was anything that he should know about in the vehicle. The woman responded by stating, 'yes, it's the same thing you arrested me for before in the past.' At that moment, the woman reached over to the passenger seat and pulled out a mitten, from which she produced an eyeglass case. She opened the case and the officer observed a white powdery substance (either heroin or cocaine) and drug paraphernalia. The officer ordered the woman out of the vehicle and placed her under arrest, later charging her with third-degree possession of a controlled dangerous substance.

The question asks, based on relevant State case law, for the true statement. The keyed response is option b, The officer's actions were "unlawful, since reasonable and articulable suspicion was not present when the investigative detention began." Boller, who selected option c, "lawful, since the corroborated anonymous tip created the required reasonable suspicion for the field inquiry and investigative detention," asserts:

> The fact pattern listed in the scenario chooses to include certain details similar to that of *State v. Rosario*[6] while omitting others. I believe that there were crucial details left out of the scenario given in question #32 that would amount to a different finding by the NJ Supreme Court, primarily that the patrol officer in this scenario was provided with a 'patrol notice' indicating that a tip had been received about narcotics distribution at a specific address and from a specific car (color, make and model). What was left out of the scenario was that the officer did not immediately recognize the vehicle from the patrol notice prior to blocking the vehicle in and initiating an investigative detention. Absent that information, one would conclude that the officer was provided with the patrol notice and was in that area due to the activity described therein and subsequently stopped to investigate the vehicle because it was a match to the vehicle detailed in the notice parked in front of the address given in the notice.

It is noted that the scenario presented in the question is taken almost verbatim from *State v. Rosario*, *supra*.[7] However, it is noted that while the court indicated,

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[6] Boller does not provide a citation but it appears that he is referring to *State v. Rosario*, 229 *N.J.* 263 (2017).

[7] In State v. Rosario, *supra*, the court noted:

> [Officer Campan] explained that, before he encountered defendant in her car, the police had received an anonymous tip, on April 27, 2013, that defendant was selling heroin from her home at 6 Parker Pass, located in a residential development known as 'the Grande,' as well as out of her 'older burg[undy] Chevy Lumina.' The caller stated that defendant was making trips in the Lumina to drop off and pick up heroin from an address in Jackson Township. The officer testified that he became aware of the tipster's information through a 'patrol notice' shared with officers at the beginning of each shift on April 27th. A few days later, on May 1, 2013, at about 11:30 p.m., Campan was patrolling in the Grande. Campan testified that he turned onto Parker Pass and his attention was drawn to a moving silhouette in a parked burgundy Chevy Lumina. Campan later testified that although he did not make an immediate connection between the parked car and the anonymous tip that had been called into the police, he did make that connection when he realized that the Lumina was parked in front of 6 Parker Pass. Campan testified that he pulled up and parked his patrol car seven to ten feet behind defendant's vehicle and at a perpendicular angle. The Lumina was parked, front-end forward, in a space facing a curved curb. As a result, the cruiser's positioning blocked in defendant's car. According to Campan, because it was dark and neither the lights nor the engine of the Lumina were activated, he turned on the patrol car's rooftop, right alley light aimed at the parked vehicle. He did not turn on the siren or emergency lights. The alley light revealed a woman sitting in the driver's seat of the Lumina. Campan testified that the woman, later identified as defendant, looked back at him and then leaned toward the passenger's seat and was 'scuffling around' with something there. Campan testified that defendant's movement in the dark vehicle made him suspicious. He exited his car and approached her vehicle, going directly to the driver's-side door. Finding the driver's window half-open, he addressed defendant by asking for

"Campan later testified that although he did not make an immediate connection between the parked car and the anonymous tip that had been called into the police, he did make that connection when he realized that the Lumina was parked in front of 6 Parker Pass," *id*. at 267, the scenario indicates, "After she produced her credentials, it was then that the officer recognized her as the subject of the patrol notice and he also recalled that he had arrested her on drug-related charges approximately six months earlier." While Boller claims that this is a crucial detail, it is noted that the court determined:

> In considering whether the reasonable and articulable suspicion standard was met here, we note that the State has conceded that the anonymous tip accusing defendant of drug distribution is entitled to little weight in our analysis. We have long recognized that an anonymous tip, standing alone, inherently lacks the reliability necessary to support reasonable suspicion because the informant's 'veracity . . . is by hypothesis largely unknown, and unknowable.' [citation omitted]. The fact that the tip accurately identified defendant and her vehicle is of no moment because a tipster's knowledge of such innocent identifying details alone 'does not show that the tipster has knowledge of' concealed criminal activity.' [citation omitted]. Here, we have no corroborated criminal activity. We have only Campan observing defendant (identified later in the exchange) in her own car parked in front of her residence. His recognition that the location was connected to the anonymous tip does not support reasonable and articulable suspicion. *Id*. at 276.

'identification and driver's license.' After she produced them, he recognized her as the subject of the anonymous tip. Campan testified that he also recalled, at that moment, that he had arrested defendant on drug-related charges approximately six months earlier. Thereafter, the following exchanges took place. Campan asked defendant what she was doing, and she replied that she was smoking a cigarette. Campan testified that he did not observe a cigarette or cigarette butt. Campan asked her why she began to scuffle around the passenger-seat area when he pulled his car up behind hers. Defendant replied that she had been applying makeup and was putting it away in her purse. When Campan asked how she could apply makeup in the dark, she did not reply. He testified that he did not think her story made sense. Campan then asked defendant whether there was "anything he should know about" in the vehicle. Campan testified that the question was intended to refer to anything illegal that might be in the car. According to Campan, defendant responded by stating something along the lines of 'yes . . . it's the same thing you arrested me [for] before in the past.' Then, according to Campan, defendant, unprompted, reached over to the passenger seat and pulled out a mitten from which she produced an eyeglass case. Defendant opened the eyeglass case and Campan observed a white powdery substance that he identified as drugs - either cocaine or heroin - and drug paraphernalia. Campan ordered defendant out of the vehicle and placed her under arrest. Defendant was charged with third-degree possession of a controlled dangerous substance, in violation of *N.J.S.A.* 2C:35-10(a)(1). *Id*. at 267-269.

As such, the point at which the officer realized the occupant was the subject of the patrol notice is immaterial. Thus, the question is correct as keyed.

Question 43 refers to Michael Carpenter and Roger Fulton, *Law Enforcement Management: What Works and What Doesn't* (2010), and indicates that you have a task that you want to delegate to one of your subordinates. Your first step in the delegation process will be choosing which employee you will delegate the task to. Candidates are presented with four statements and are required to determine which the employee needs to have. The keyed response is option d, which includes all four statements: I. knowledge to properly do the job; II. experience to properly do the job; III. temperament to properly do the job; and IV. time and willingness to get the work done by the deadline.[8] Castellon, who selected option a, I and II only, refers to the above noted section of the text and argues that "selecting the right subordinate is a two-step process according the authors of this text. The FIRST STEP being the employee you select has the knowledge, experience, and temperament to do the job. The SECOND STEP being sure that the employee has the time and the willingness to get the work done by the deadline." The authors indicate that the right subordinate must possess all four factors. Thus, whether the selection process is a one-step, two-step, three-step or four-step process is immaterial. As such, the question is correct as keyed.

Question 44 refers to Carpenter and Fulton, *supra*, and indicates that your department requires every lieutenant to submit a status report to their supervisor at the end of every week. Lieutenant Kilarney was three days late in submitting his report to you. You know you need to address this, so you call him into your office to give him some constructive criticism. The question asks, based on the text by Carpenter and Fulton, for the statement that would be most appropriate for you to say to Lieutenant Kilarney to give him constructive criticism regarding this matter. The keyed response is option b, "You missed the deadline for turning in the status report last week." Kisfalvi, Moskal and Teixeira assert that option c, "I know you've had a lot of other work to do lately, but you still need to try to submit the status report on time," is the best response. Specifically, Kisfalvi asserts that the statement "should start with some type of a positive opening." Moskal refers to the text, under the heading, "Section 4 – 'You've Made a Mistake' – How to Criticize Effectively."[9] Moskal contends that being specific is getting right to the point of the

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[8] Carpenter and Fulton, *supra*, in "Section 5 – Delegate – But Do It Right!," under the heading, "Select the Right Subordinate," provide: "Be sure the employee you select has the knowledge, the experience, and the temperament to do the job. Also, be sure that the employee has the time and the willingness to get the work done by the deadline."

[9] This section provides, in part:

Be Specific

mistake but constructive criticism should have something positive included to in [*sic*] an effort to make light of the mistake." Teixeira argues that the text does not present anything "specific about 'constructive criticism'" and maintains that "starting in a positive way can lead to positive outcomes, this is what 'constructive criticism' is about." It is noted that option c is not specific, as discussed in the text as noted above,[10] and neither answer choice offers solutions to address the problem. As such, the Division of Test Development and Analytics has determined to double key this item to option b and option c.

Question 46 refers to Carpenter and Fulton, *supra*, and indicates that your supervisor, Captain Brinkley, asked you to research the number of fatal motor vehicle accidents that occurred in your jurisdiction last calendar year. You calculated this number and emailed it to her. Today, Captain Brinkley emailed you back to thank you and you can see that she also copied Captain Smart on the email, since he will now use that number you provided in a report he is composing. A while later, you realize that the number that you provided was incorrect. You want to send an email correcting the number. Candidates were provided with three statements. The question asks, based on the text, to whom should you send your email containing your admission that you made a mistake and the corrected number. The keyed response is option c, I, Captain Brinkley, and II, Captain Smart. Grycuk argues that the question "was not specific enough in clearly asking the question as it did not ask in the question specifically why both captains should be notified. [The subject text] clearly states that you 'may' also need to advise anyone else[.] [H]owever[,] it does not state that you 'must' notify anyone else. Therefore[,] notifying your supervisor of the situation (one captain) through email is sufficient enough based on the way the question was asked." The focus of the question was for candidates to determine to whom your email should be sent. In this regard, in the section, "Handling Mistakes," the text notes, "accept responsibility for the mistake and advise your supervisor of the situation. You may also need to advise anyone else who will be directly affected by it as well. However, that's about it! There is no sense in broadcasting a mistake to the entire organization if it's not necessary." The question clearly indicates that you have emailed the information to your supervisor, who "also copied Captain Smart on the

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> Be sure that you address conduct at the date, time, and place it occurred. A phrase such as, 'You are always late with your reports,' is not acceptable. A phrase such as, 'You missed the April 20th deadline for your report,' is more acceptable . . .
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> **Say Something Positive**
> 'I know you had a difficult situation that night that you would normally handle well . . .' or 'You are a good sergeant who I can normally depend on . . .' Positive openings such as these can be very helpful in reinforcing the overall worth of the individual to the department, while still allowing you to get to the specific problem area . . .

[10] Despite Donovan's contention, option b does refer to the report that was due "last week."

email, since he will now use that number you provided in a report he is composing." As such, it would be both efficient and prudent to notify those individuals of whom you are aware have received and are using that information. Thus, the question is correct as keyed.

Question 63 indicates that you have been tasked with developing a Driving While Intoxicated (DWI) prevention program in an effort to reduce the number of people who engage in this dangerous behavior, and therefore by extension, reduce the number of DWI arrests in your jurisdiction. Because there is a limited amount of funding, you have been told to direct your prevention program toward a particular demographic. Specifically, you are to group people into age ranges and then direct your prevention program toward those who were responsible for half of your jurisdiction's DWI arrests last year. To accomplish this task, you first collected data on all of the DWI arrests that occurred in your jurisdiction last year. Of these 500 DWI arrests, you then counted up the number of arrestees falling into various age ranges. Lastly, you calculated what percentage of the total DWI arrests were attributed to arrestees in each age range. Your research produced the following chart:

DWI Arrestees for Previous Year

Age	Number	Percentage
Less than 21 years old	50	10%
21-29 years old	150	30%
30-39 years old	100	20%
40-49 years old	105	21%
50-59 years old	50	10%
60-69 years old	30	6%
70 years old and higher	15	3%

The question requires candidates to complete the following sentence, "Based solely on the information presented above and not any other considerations, you would successfully complete your assigned task if you developed a DWI prevention program that is directed towards people who are . . ." The keyed response is option c, "21-39 years old." Morgan,[11] who selected option b, "21-29 years old," argues that "the question wanted the test taker to choose the group with the highest amount of DWI's. The [keyed response] merged groups 21-29 and 30-39 (now a group of 21-39)." Morgan contends that in order to arrive at the keyed response "the test taker must look at the chart and add groups together. The highest group in the chart was 21-29. Use of the term 'group'[12] was confusing and implied that choices were

[11] It is noted that Morgan misidentified this item as question 62.

[12] As indicated above, "group" is used as a verb in the question stem. Moreover, the sentence that candidates are required to complete does not refer to "age group" or "group."

limited to the pre-established singular groups in the chart." The question clearly indicates that you are to "direct your prevention program toward those who were responsible for **half** of your jurisdiction's DWI arrests last year" (emphasis added). As such, candidates were required to determine which of the provided answer choices would total at least 50 percent of DWI arrests. In this regard, option a, 16-29 years old, accounts for 40 percent of arrests; option b, 21-29 years old, accounts for 30 percent of arrests; option c, 21-39 years old, accounts for 50 percent of arrests; and option d, 30-49 years old, accounts for 41 percent of arrests. Accordingly, the question is correct as keyed.

Question 66 refers to the Citizen Ride-Along Program provided in the test booklet. The question indicates that Officer Rodriguez wants to have his minor child ride along with him as part of the citizen ride-along program during his shift next week. He tells you this and then asks you how to go about getting his son signed up for the program. The question asks, based on the policy, what your response to Officer Rodriguez should be. The keyed response is option b, "Tell him that his son may not ride along with him." Moskal argues that option a, "Ask him how old his son is," is correct. In this regard, Moskal presents that the program "clearly shows that minors, 16 or 17 YOA, may participate in the ride along program.[13] The question does not state the age of the child in question." It is noted that the program provides, under the section, "VI. The Ride-Along," that "officers will not take on a ride-along anyone with whom they have a significant domestic relationship. This includes a spouse, a domestic partner, and any children." As such, the question is correct as keyed.

Question 77 refers to the Citizen Ride-Along Program, *supra*. The question indicates that while reviewing the packet that the Clerk forwarded you concerning Nolan Matthews' request to participate in the citizen ride-along program, you notice that the Citizen Observer Ride Request and Waiver is missing Nolan's signature. You contact Nolan and inform him that he will need to come back to your Department's headquarters to sign his Citizen Observer Ride Request and Waiver. Nolan is upset and says he does not have time to come back to headquarters and that it should not matter whether his signature is there or not. He says that if he is approved, then he can just sign the Citizen Observer Ride Request and Waiver before his ride-along begins. The policy does not allow for that, however. The question asks for the statement that would be most appropriate to say to Nolan in response. The keyed response is option b, "I understand that coming back to headquarters is inconvenient for you, but your request for a ride-along cannot be approved unless your Citizen Observer Ride Request and Waiver contains a

[13] The program provides, under the section, "II. Citizen Requirements for Participation," that juveniles who are 16 or 17 years old may participate only if they (a) have written permission of their parent/guardian; (b) can provide a valid reason or justification for the request . . . ; and (c) receive approval from the Patrol Captain.

signature." Chasmer, Kisfalvi, Majewski and Scullion maintain that option d, "The Clerk was supposed to review your completed Citizen Observer Ride Request and Waiver before you left headquarters, so it was his mistake, not yours, but I will need you to fix this." In this regard, they refer to the program under the section, "III. Application Procedures," which provides, "Before the citizen leaves headquarters, the Clerk will verify that the form is completely filled out and signed, and that the photo ID is valid. The Clerk will make a photocopy of the ID. The applicant will be contacted at a later time regarding whether or not he/she has been approved for the ride-along." Specifically, Chasmer maintains that "by merely apologizing for the inconvenience but telling the citizen they need to come in, the blame is transferred to the citizen . . . [The keyed response] places the failure of the clerk to adhere to the policy on the citizen and essentially covers up the department's failure." Kisfalvi contends that option d "was the best possible answer [since] the clerk failed to review, which was in the policy." Majewski argues that "nothing in the policy lists the correct procedure for notifying candidates who did not sign the application. The policy never specifically addresses not to advise the candidate of the clerk's error." Scullion refers to Carpenter and Fulton, *supra*, which "states that one of the things modern policing is about is 'customer service.' The keyed answer does not support this and the correct answer should be one that makes the department accountable for its mistake and should be more accommodating to the person submitting the request." It is noted that Carpenter and Fulton, *supra*, indicate that "when in a position of leadership, everything that occurs is your responsibility, even the errors. You job is to minimize the damage, correct the problem, and assure that it doesn't happen again. Placing blame on others shows you are a weak commander." Option b neither places blame on the citizen[14] for failing to sign the form nor on the Clerk for failing to ensure it was signed. Rather, the keyed response addresses the core issue, *i.e.*, the form must be signed, from a neutral and professional stance. Given that option d publicly places the blame on a member of your staff, it is not the best response.

CONCLUSION

A thorough review of appellants' submissions and the test materials reveals that the appellants' examination scores, with the exception of the above noted scoring change, 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.

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[14] *See e.g.*, option c, "It was your responsibility to fill out the Citizen Observer Ride Request and Waiver correctly and completely . . ."

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 20TH DAY OF FEBRUARY, 2019

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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