STATE OF NEW JERSEY

In the Matter of James Burgess, *et al.*, Police Lieutenant, various jurisdictions	:	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket Nos. 2020-1298, *et al.*	:	Examination Appeal

ISSUED: January 16, 2020 (JH)

James Burgess, Paul Catalina, Jason Matthews and Lawrence Petrola (PM0916A), Brick; Brian Turner (PM0927A), Elizabeth; Ryan Uzunis (PM0947A), North Brunswick; Patrick Walsh (PM0950A), Ocean City; Michael Urena (PM0882A), Paterson; John Saltzman (PM0958A), Sea Isle City; and Lloyd McNelly (PM0962A), South Plainfield; appeal the examination for Police Lieutenant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject exam consists was administered on October 10, 2019 and consisted of 80 multiple choice questions.

Catalina, Matthews and Urena present that they were only provided with 30 minutes for review and they were not permitted to review their test booklets and scored answer sheets. 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 1 indicates that you have just entered police headquarters and you overhear Sergeant Harlan speaking to a woman who is making a complaint about one of your department's officers. Sergeant Harlan is attempting to informally resolve the minor complaint that is based on a misunderstanding of the officer's duties. Candidates are required to complete the following sentence, "Based on the N.J. Attorney General's Internal Affairs Policy and Procedures, you should . . ." The keyed response is option b, "allow Sergeant Harlan to continue, since supervisors should be authorized to resolve minor complaints, whenever possible, at the time the report is made."[1] Matthews argues that "the best answer choice would be that the supervisor can informally resolve the complaint, and the complainant must agree with the informal resolution and sign the form." It is noted that this was not one of the answer choices presented to candidates. However, option d, which Matthews selected, provides, "allow Sergeant Harlan to continue, as long as the complainant indicates on an Internal Affairs report form that she has authorized the attempted informal resolution of her complaint." The Policy does not require a complainant to authorize the attempted informal resolution process to take place. Rather, as indicated above, the Policy specifically provides that "supervisors should

[1] The Policy provides, in pertinent part:

> Supervisors should be authorized to informally resolve minor complaints, whenever possible, at the time the report is made. If the complainant is not satisfied with such a resolution, the complaint should be forwarded to internal affairs for further action as warranted. The process of informally resolving internal affairs complaints requires the exercise of discretion by supervisors. The proper exercise of discretion in such matters cannot be codified. Even if the citizen is satisfied with the informal resolution, the process should be recorded on an internal affairs report form. Regardless of the means of resolution, the integrity of the internal affairs process, particularly the receipt of citizen complaints, demands that all citizen complaints and inquiries be uniformly documented for future reference and tracking. The form should indicate that the matter was resolved to the satisfaction of the citizen and sent to internal affairs for review and filing.

be authorized to informally resolve minor complaints." As such, option d is not the best response.

Question 7 provides that the Chief has assigned you the responsibility of managing the storage and retention of recordings from your department's body worn cameras. Candidates were required to complete the following sentence, "According to the N.J. Attorney General Law Enforcement Directive Regarding Body Worn Cameras (BWCs) and Stored BWC Recordings (No. 2015-1), the minimum retention period for such recordings, assuming they do not fall into one of the special categories enumerated in the directive that have their own additional retention periods, shall not be less than . . ." The keyed response is option b, 90 days.[2] Saltzman presents that "under AG Directive 2015-1[,] BWC have different standards in reference to stored recordings. While no less than 90 days is referred to in the directive, the test question was not specific as to what type of incident was recorded. Therefore[,] any of the answers could have technically been correct and a specific instance would need to be referred to in order to arrive at the answer of 90 days." As noted above, the question specifically provides, "*assuming they do not fall into one of the special categories enumerated in the directive that have their own additional retention periods*" (emphasis added). Thus, Saltzman misremembered the question and his appeal of this item is moot.

Question 23 indicates that one of your officers just marked fifteen years of service with your department. Her training records show that during the previous calendar year, she completed in-service training twice on the Use of Force Policy, once on the Vehicular Pursuit Policy, and once on Domestic Violence. The question

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[2] Attorney General Directive 2015-1 provides, in pertinent part:

> 8. Retention of BWC Recordings
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> The policy, standing operating procedure, directive, or order promulgated by a law enforcement agency pursuant to section 3 of this Directive shall specify the period of time during which a BWC recording shall be retained. The retention period shall not be less than 90 days, and shall be subject to the following additional retention periods:
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> a) when a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution.
> b) when a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or agency.
> c) when a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.

asks, "Assuming her training records are accurate, the frequency with which she completed in-service training last year in which of these areas did not comply with the N.J. Attorney General's Guideline on Mandatory In-Service Law Enforcement Training?" The keyed response is option b, "Vehicular Pursuit Policy only."[3] Matthews argues that while the Guideline requires semi-annual training in use of force policy and vehicular pursuit policy, it does not specify the number of hours of training but rather, the Guideline indicates that "all of this training usually occurs within an eight hour period or less." Matthews emphasizes that for domestic violence, however, the Guideline specifies that officers must receive "annual in-service training of at least four hours on domestic violence." Matthews argues that option d does not specify the number of hours of domestic violence training and "just attending training is not the same as attending a training that is mandated to be at least four hours long." The question specifically indicates that the officer ***completed*** in-service training once on domestic violence and not, as Matthews contends, "just attend[ed] training." Furthermore, the focus of the question is the *frequency* with which she completed in-service training. Accordingly, the question is correct as keyed.

Question 26 indicates that an officer tells you that he is aware that when a suspect is asked, in certain situations, by a law enforcement officer to provide or acknowledge a written statement in a stationhouse custodial setting, the investigating officer should, whenever feasible, arrange to electronically record the suspect's statement or acknowledgment so as to establish a permanent and

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[3] The Guideline on Mandatory In-Service Law Enforcement Training provides, in pertinent part:

> 1. Mandatory In-Service Training for All Law Enforcement Officers
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> All police officers are required to complete the following types of in-service training regardless of their duties or assignment.
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> a. *Firearms Requalification, Use of Force Policy and Vehicular Pursuit Policy*
> Requalification with the agency handgun is mandated annually by *N.J.S.A.* 2C:39-6j. An Attorney General's Directive issued in December of 1989 requires semi-annual requalification with all agency-authorized firearms that the officer may be required to use in the course of official duties. The Attorney General has also directed that all police receive semi-annual training on the laws and policies governing the use of force and vehicular pursuit. This training is usually given in conjunction with the firearms requalification. All of this training usually occurs within an eight hour period or less.
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> b. *Domestic Violence*
> *N.J.S.A.* 2C:25-20 requires annual in-service training of at least four hours on domestic violence. Officers transferring to a new agency must receive training within 90 days from the date of transfer. Initial training now occurs as part of the Basic Course for Police Officers.

objective record that the suspect had been advised of his/her constitutional rights and that any such incriminating statement or acknowledgment was actually made by the suspect. The officer is unsure, however, in what situations this should be done. Candidates are provided with four statements and required to complete the following sentence, "Based on the N.J. Attorney General's 2004 guideline regarding electronic recordation of stationhouse confessions, you should tell [the o]fficer that this should be done, when feasible, for an adult who is suspected of committing any . . ." The keyed response is option c, I, first degree crime, II, second degree crime and III, third degree crime.[4] Saltzman[5] refers to New Jersey Court Rule 3:17 and argues:

> Under paragraph B(vi) of R3:17 he would not need to be recorded if a statement is given at a time when the accused is not a suspect for the crime to which that statement relates while the accused is being interrogated for a different crime that does not require recordation an[d] in paragraph B(vii) the interrogation during which the statement is given occurs at a time when the interrogators have no knowledge that a crime for which recording is required has been committed. Furthermore[,] the crime of 'arson' is not listed as one of the items in Paragraph A of Rule 3:17. This means that not all 3rd degree crimes are considered.

The question specifically refers to the "N.J. Attorney General's 2004 guideline regarding electronic recordation of stationhouse confessions." As such, it is not clear why Salzman refers to New Jersey Court Rule 3:17 to support his argument. Furthermore, it is noted that subsequent to the 2004 guideline, two Attorney General directives issued in 2006 discuss New Jersey Court Rule 3:17, which was

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[4] The 2004 guideline provides, in pertinent part:

> If a person who is suspected of committing any first, second or third degree crime, is asked by a law enforcement officer to provide or acknowledge a written statement in a stationhouse custodial setting, the investigating officer should, whenever feasible, arrange to electronically record the suspect's statement or acknowledgment so as to establish a permanent and objective record that the suspect had been advised of his or her constitutional rights and that any such incriminating statement or acknowledgement was actually made by the suspect. Electronic recordation of the final statement or acknowledgement may be done on notice to any with express permission of the suspect, or may be done without notice to the suspect. The electronic recordation of the suspect's final statement or acknowledgment may be in addition to or in lieu of having the suspect sign a traditional written statement.

[5] It is noted that Salzman selected option d, which included I, II, III, and IV, fourth degree crime.

adopted on October 14, 2005, while maintaining the recording requirement for all first, second and third degree crimes.[6] As such, the question is correct as keyed.

Question 33 indicates that you are supervising several officers who are conducting a Distracted Driving Enforcement initiative. An officer asks for your assistance after conducting a motor vehicle stop on a driver who, while operating her vehicle, was observed holding her cell phone in one hand while steering her car with the other. During the stop, the driver states that, at the time she was observed holding her phone, she was doing so in order to end a phone call. The officer verifies that her phone is equipped for use in "hands-free wireless mode." The officer asks your advice on whether the driver's actions constitute a violation of *N.J.S.A.* 39:4-97.3 (Use of Wireless Telephone While Driving).[7] Candidates are

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[6] In this regard, Attorney Directive 2006-2 (issued January 17, 2006) provides, in pertinent part:

> Thereafter, on October 14, 2005, the New Jersey Supreme Court adopted the recommendations of its Special Committee on the Recordation of Custodial Interrogations. Most significantly, the recommendations included a requirement that police electronically record the entirety of all custodial interrogations occurring in a place of detention for cases in which the adult or juvenile being interrogated is charged with an offense requiring the use of a warrant pursuant to R. 3:3-1c. The effective dates for that requirement are staggered so as to go into effect for all covered homicide cases on January 1, 2006, and for all other offenses specified in R. 3:3-1c on January 1, 2007 . . .
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> It is hereby adopted that, consistent with the Supreme Court's actions of October 14, 2005, law enforcement officials shall electronically record the entirety of all custodial interrogations occurring in a place of detention. This recording requirement shall apply to all first, second and third degree crimes. Also, it shall apply to adults and juveniles alike.

Attorney General Directive 2006-4 (issued October 10, 2006) indicates:

> Directive 2006-2, which mandated the electronic recordation of all custodial interrogation conducted in a place of detention for all first, second and third degree crimes, for adult and juvenile suspects alike. That directive set up its own staggered implementation schedule which differed in some ways from that established by R. 3:17. Upon review of these two sets of requirements, the Attorney General and the County Prosecutors' Association have determined that having differing time frames in the Court Rule and the Attorney General Directive may be difficult to implement and may cause confusion in the law enforcement community.

As a result, Directive 2006-4 attempted to harmonize the different implementation dates while continuing to maintain the recording requirement for all first, second and third degree crimes.

[7] *N.J.S.A.* 39:4-97.3 provides, in pertinent part:

> b. The operator of a motor vehicle may use a hand-held wireless telephone while driving with one hand on the steering wheel only if:

provided with three statements and required to complete the following sentence, "Based on relevant N.J. case law, a motorist is permitted to hold a wireless cell phone, which is equipped with a hands-free device, in one hand, with the other hand on the steering wheel, when the motorist is . . ." The keyed response is option d, I, answering a phone call, II, ending a phone call, and III, dialing a phone number.[8] Urena argues that option b, I or II only, is the best response and presents:

> The common sense interpretation of the terms 'activate' and 'deactivate' . . . a telephone, would clearly encompass making and ending a call, respectively. Conversely and significantly, a common sense interpretation of the phrase, 'initiate a function of the telephone' would not clearly be construed to mean dialing a phone. Though [*State v. Malone*, *supra*,] does interpret this particular statute to include dialing a phone, the question clearly refers to the statute as the source material. Furthermore, the aforementioned case law is an unpublished opinion. As I am sure you are aware, these types of opinions are treated as merely advisory, and are NOT binding.

> (1) The operator has reason to fear for his life or safety, or believes that a criminal act may be perpetrated against himself or another person; or
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> (2) The operator is using the telephone to report to appropriate authorities a fire, a traffic accident, a serious road hazard or medical or hazardous materials emergency, or to report the operator of another motor vehicle who is driving in a reckless, careless or otherwise unsafe manner or who appears to be driving under the influence of alcohol or drugs. A hand-held wireless telephone user's telephone records or the testimony or written statements from appropriate authorities receiving such calls shall be deemed sufficient evidence of the existence of all lawful calls made under this paragraph.
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> As used in this act: . . .
> 'Hands-free wireless telephone' means a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a conversation without the use of either hand; provided, however, this definition shall not preclude the use of either hand to activate, deactivate, or initiate a function of the telephone. . . .
> 'Use' of a wireless telephone or electronic communication device shall include, but not be limited to, talking or listening to another person on the telephone, text messaging, or sending an electronic message via the wireless telephone or electronic communication device.

[8] In *State v. Malone*, Docket No. A-6176-09T4 (App. Div. July 1, 2011), the court concluded that "the only circumstance in which a motorist is permitted to hold a wireless cell phone in one hand, with the other hand on the steering wheel, is when the motorist is activating, deactivating or initiating a function of the telephone, which includes answering the phone, ending the phone call or dialing a phone number."

Uzunis maintains that option a, II only, is the best response and contends:

> The question is misleading. It mixes the words and concepts of distracted driving enforcement with the statue of 39:4-97.3. There is no distracted driving law or citation, however[,] there are examples of what distracted driving is on the NJ state website at https://www.nj.gov/oag/hts/phone_down_overview.html. [K]ey facts and statistics on the website[,] specifically bullet number 8[,] state that dialing a number is considered distracted driving . . . According to the Legislature[,] Chapter 70 of 39:4-97.3 addresses hands-free equipped devices but does not specifically use the language used in the choice of answers that were supplied in question 33 . . . *State v. Malone*, [*supra*,] is the most recent unpublished court decision addressing the holding of a handheld phone equipped with hands-free. Being that the decision is unpublished and used the choice answers used in the question 33 has no reference on the legislature[']s language of the statute.

As noted above, the question specifically asks, "*Based on relevant N.J. case law . . .*" (emphasis added). In this regard, as indicated by the court in *State v. Malone*, *supra*, "the Legislature did not define the terms 'activate, deactivate, or initiate a function [pursuant to *N.J.S.A.* 39:4-97.3],' nor did the Legislature expressly permit or prohibit dialing. The statute is also silent on whether a motorist is permitted to press a button or buttons to 'activate, deactivate, or initiate a function.'" It is noted that one of the functions of the courts is to interpret State statutes and laws.[9] In this regard, the court in *State v. Malone*, *supra*, thoroughly explains how it arrived at its conclusion that activating, deactivating or initiating a function of the telephone pursuant to *N.J.S.A.* 39:4-97.3 "includes answering the phone, ending the phone call or dialing a phone." It is noted that Urena does not provide any support beyond his own opinion as to how he arrived at his "common sense interpretation" of *N.J.S.A.* 39:4-97.3. Although both Uzunis and Urena note that *State v. Malone*, *supra*, is an unpublished case,[10] neither appellant has provided a published case or

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[9] As noted on the New Jersey Courts website (https://njcourts.gov/public/process.html?lang=eng):

> Appellate courts review the decisions of lower courts to determine whether those decisions were correct under the law. In reviewing lower-court decisions, appellate courts, like the trial courts, interpret the New Jersey and United States constitutions. They also interpret statutes, or laws enacted by the State Legislature . . . If either side in a case is unhappy with the outcome in the Appellate Division, it may appeal the case to the New Jersey Supreme Court . . The Supreme Court, like the Appellate Division, often must interpret laws that are unclear or that conflict with other laws.

[10] New Jersey Court Rule 1:36-3 (Unpublished Opinions) provides:

refer to any other authoritative source that supports their interpretation of *N.J.S.A.* 39:4-97.3. Thus, the question is correct as keyed.

Question 35 indicates that in late January, at 10:45 p.m., two plain-clothed police officers, Detectives Carroll and Morda, observed Art Kruk standing in front of a fast-food restaurant that was scheduled to close at 11:00 p.m. The officers were investigating a number of recent fast-food restaurant hold ups, all occurring when the target restaurant was about to close for the night. At the time, Kruk was wearing a three-quarter length coat, a scarf, and a hat, and was walking back and forth in front of the restaurant and peering inside. The officers watched as Kruk walked around the corner of the building, entered a vestibule extension of the building, and covered his face with his scarf and hat so that only his eyes were visible. As Kruk entered the restaurant, the officers followed. Present in the restaurant were a patron and a cashier, who were having a conversation. The officers observed Kruk walk toward the restaurant counter and place his hand into his right coat pocket. At this point, the officers immediately grabbed Kruk, and Detective Morda removed a loaded revolver from Kruk's right coat pocket. The question asks for the most appropriate *N.J.S.A.* 2C charge for Kruk. The keyed response is option d, Attempted Robbery.[11] Burgess argues that option c, Robbery, is the best response since: "1) the charge that will appear on the criminal complaint is 'robbery' in violation of *N.J.S.A.* 2C:15-1a with an auxiliary offense of 'criminal attempt' in violation of 2C:5-1[; and] 2) there is no statute in 2C titled 'attempted robbery' . . ." It is noted that the Division of Test Development and Analytics contacted Subject Matter Experts (SMEs) regarding this matter and they indicated that while Kruk is correct in regard to the statutes that would be referenced in the paperwork, his conclusion that the most appropriate charge is robbery is incorrect. The SMEs indicated that when referring to the charge, it would be called attempted robbery and would not be simply called robbery. In this regard, in *State v. Farrad*, *supra*, the court noted that "the initial complaint charged the defendant with

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> No unpublished opinion shall constitute precedent or be binding **upon any court**. Except for appellate opinions not approved for publication that have been reported in an authorized administrative law reporter, and except to the extent required by res judicata, collateral estoppel, the single controversy doctrine or any other similar principle of law, no unpublished opinion shall be cited by any court. No unpublished opinion shall be cited to any court by counsel unless the court and all other parties are served with a copy of the opinion and of all contrary unpublished opinions known to counsel. (emphasis added)

Uzunis and Urena do not explain why they emphasize this fact given that the instant matter is not before a court of law governed by New Jersey Court Rules. Thus, the unpublished status of this case is not relevant for the purposes here.

[11] It is noted that this item is based on *State v. Farrad*, 164 *N.J.* 247 (2000), in which the court held that attempted robbery is a crime under the New Jersey Code of Criminal Justice. *Id.* at 263.

attempted robbery as follows: Within the jurisdiction of this court [defendant did] attempt to commit the crime of robbery by entering the Roy Rogers family restaurant 193 Essex Street at closing time after adjusting his hat and scarf to partially conceal his face and while armed with a .38 caliber revolver in violation of New Jersey State Statute 2C:5-1; 2C:15-1." *Id.* at 267-8. The SMEs further added that option c is not the best response since the situation presented in the question did not meet all of the elements for robbery, *i.e.*, Kruk did not progress to the point of actually carrying out the crime of robbery.[12] As such, the question is correct as keyed.

Question 40 refers to Michael Carpenter and Roger Fulton, *Law Enforcement Management: What Works and What Doesn't* (2010), and indicates that Officers Adams and Mason are part of the same squad and report to the same supervisor, Sergeant Cassidy. Officer Adams has never been tardy to work and in fact has never taken any action that has resulted in discipline. Officer Mason has been tardy to work two times during the last two months and was disciplined accordingly each time. Officer Mason has never received discipline beyond those two occasions. Officer Adams and Sergeant Cassidy are part of the same social group outside of work, whereas Sergeant Cassidy has a strictly professional relationship with Officer Mason. Today, Officer Adams and Officer Mason are both tardy for work. Carpenter and Fulton state that supervisors should enforce discipline and standards equally among members of the command. The question asks, based on the text by Carpenter and Fulton, for the true statement. The keyed response is option b, Officer Adams and Officer Mason "may receive different levels of discipline due to their different disciplinary histories." Catalina maintains that option c, Officer Adams and Officer Mason "should receive the same level of discipline in order to prove there is no favoritism being shown to Officer Adams due to her friendly relationship with Sergeant Cassidy," is the best response. In this regard, Catalina argues that according to the text, "As a police supervisor, you enforce rules and regulations equally with all of your people. You don't play favorites and you treat everyone in your unit equally, consistent with their performance." Catalina adds that "the textbook does not identify how to appropriately discipline any individual, tell you to provide any reason or logic for an explanation of discipline or

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[12] *N.J.S.A.* 2C:15-1a provides that a person is guilty of robbery if, in the course of committing a theft, he:

(1) Inflicts bodily injury or uses force upon another; or
(2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
(3) Commits or threatens immediately to commit any crime of the first or second degree.

An act shall be deemed to be included in the phrase 'in the course of committing a theft' if it occurs in an attempt to commit theft or in immediate flight after the attempt or commission.

consider their history of past discipline." McNelly and Petrola contend that option d, Officer Adams and Officer Mason "may receive different levels of discipline, as long as it is explained to Officer Mason why he is receiving a higher level of discipline than Officer Adams is receiving," is the best response. Specifically, McNelly refers to the several sections of the text[13] and argues that "I do feel that the different sections I cited above do in fact support my answer choice. Throughout the entire book, the authors state 'Do the Right Thing.' In the given scenario, I truly

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[13] Specifically, McNelly refers to:

> Chapter 2 [Getting Ready], Section 8 [Supervisory Ethics], in the section titled[,] 'Is My Decision Fair to All Concerned?' In these two paragraphs, the authors focus on the supervisor asking oneself if the decision to discipline or not discipline is fair to all concerned. The authors specifically state[,] 'Law enforcement supervision, like street work is still a person-to-person business.' In addition to that, they also advise the reader to evaluate situations in 'human terms' . . .
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> Chapter 4 [Gaining Confidence], Section 5 [Handling Controversy], in the section titled 'Controversy is Inevitable.' In this section, the authors tell the reader to 'Understand that two reasonable people can see the same situation from two completely different viewpoints[;]' and also mention how 'Perception' is the issue in most controversial cases . . .
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> Chapter 4 [Gaining Confidence], Section 6 [Handling Conflict], under the main title of 'Handling Conflict.' In the fifth paragraph, the authors state[,] 'Once you recognize that a problem exists, it's time to take action and meet the conflict head-on. However, even after you decide to take action, the way you approach and handle the situation is critical to your success or failure.' . . . Simply put, handling something properly the first time will help you succeed as a commander.
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> Chapter 5 [Earning Respect], Section 1 [The Basics of Earning Respect], in the section titled[,] 'Take Care of Your People.' In this section, the authors tell the reader that 'Your officers are your most valuable asset,' and 'You also need to protect them from poor assignments, unreasonable expectations, and unfair discipline.' . . . Without a proper explanation of why a particular officer is being disciplined differently than another, the discipline may be 'PERCEIVED' (chapter 4, section 5) as 'UNFAIR.'
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> Chapter 10 [Job Security], Section 5 [Seven Deadly Sins], in [number 5,] 'Inconsistency" . . . In this section, the authors state[,] 'Poor commanders play favorites, enforce rules selectively, or grant favors to selected individuals. This type of inconsistency undermines a commander's authority. To combat this type of allegation, commanders should treat all members of the command equally, without favoritism or discrimination.' Again, with 'Perception' being the issue in most controversial cases, a lack of a proper explanation can lead subordinates to feel their supervisor is playing favorites, enforcing rules selectively, etc.
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> Chapter 10 [Job Security], Section [5 Seven Deadly Sins], in [number] 7, 'Not Caring About Your People' . . . In this section, the authors state the importance of 'Keeping your people informed' and also ask the reader, 'Are you a model of integrity, honesty, and fundamental fairness?'

believe that 'The Right Thing' would be to discipline the officers involved differently, however explain to them why they are being disciplined differently . . ." Petrola notes that the text indicates, under the heading, "How to criticize," to be specific and argues that "it would be more specific if the supervisor told the employee why he was receiving more days off, specifically because it was not the first time he was late." Petrola adds that the text "advises to 'Be Fair' and that honesty is the greatest attribute that subordinates want in a commander. Since we do not know that the employee receiving more discipline understands or recognizes that his more aggressive discipline is due to him being late more often, it should be explained to him the reason for his discipline." Uzunis presents that option a, Officer Adams and Officer Mason "must receive the same level of discipline because they both committed the same infraction," is the best response. In this regard, Uzunis argues that "the problem with the keyed answer, it leaves room for speculation. The utilization of 'may' means the friend won[']t be disciplined and the 3rd time offender can receive unknown punishment or it can mean something else. The one officer was never late to work, on this day two officers were both late. Facts before acts, was there an accident? Did the friend of the supervisor car break down and the 3rd-time tardy officer go out of his way to pick him up? Therefore, barring any additional information, if any discipline is warranted the most correct answer is [option a]." The SMEs indicated that "enforcing discipline and standards equally, without favoritism or discrimination" among members of the command does not mean that each officer should receive identical discipline when committing the same type of infraction. In this regard, the SMEs noted that an officer's disciplinary record would still be a factor, particularly in progressive discipline, in determining the appropriate disciplinary action. Thus, the SMEs indicated that it would not be fair for Officer Adams, who has never been tardy, to receive the same discipline as Officer Mason, who has been tardy on two prior occasions. As such, option a is not the best response. The SMEs further indicated that the fact that both officers are being disciplined demonstrates that favoritism is not taking place and emphasized, again, that due to the officers' different disciplinary records, it would not be fair for both to receive the same level of discipline. As such, option c is not the best response. With respect to option d, the SMEs indicated that you would not explain to one officer about their discipline in relation to another officer's discipline. Thus, the SMEs emphasized that you would only discuss with Officer Mason his discipline and you would not discuss Officer Adams and why or why not her discipline is different. Accordingly, the question is correct as keyed.

Question 55 refers to Carpenter and Fulton, *supra*, and indicates that you have been tasked with evaluating the training needs of your department. In order to identify your department's training needs, you plan to conduct surveys of incumbents and confer with other police departments in your county. The question asks, based on the text by Carpenter and Fulton, for the true statement. The keyed response is option a, "You could also conduct a detailed examination of job descriptions as part of your effort to identify the training needs of your

department." Catalina maintains that option d, "As a member of your department, you are too close to the situation and will not be able to adequately identify training needs; you should instead have an independent consultant conduct a formal needs assessment," is the best response. In this regard, he refers to the text which provides, in part:

> A formal needs assessment conducted by an independent consultant is ideal. However, if your department doesn't have the resources to conduct such a detailed study, there are still some steps you can take to identify your training needs. Some of these include surveys of incumbents, detailed examination of job descriptions, conferring with other departments, and the use of consultants for guidance on a limited basis.

He argues that the sentence that begins, "A formal needs assessment . . .," "alone should provide the basis that the answer should be changed to [option d] or double keyed." He also notes that "the question did not provide whether or not the department has the resources." He indicates that "the question in itself provided an order leading to [option d]. The examples provided were in order of the textbook and it omitted the keyed response between options. The question naturally draws onto the order cited in the textbook and asked for a solution leaving [option d] in the correct and citable order." He further argues that "the test writer attempted to hide the correct answer by including [in option d] that you are too close to your own department. This addition does nothing to detract that the use of an outside consultant is ideal . . ." As noted in the 2019 Police Lieutenant Orientation Guide, which was available to candidates on the Commission's website:

> The correct answer is the choice that contains the most exact or most complete information in response to the question. Some answer choices may be correct or true in part, but less exact or less complete than the 'best' choice. An answer choice that is only partially correct, partially true, or true only under certain conditions should be considered an incorrect choice.

Thus, the better candidate recognizes that option d is rendered incorrect by the "addition," "As a member of your department, you are too close to the situation and will not be able to adequately identify training needs . . .," since, as Carpenter and Fulton state in the above noted paragraph, while an independent consultant may be ideal, "there are still some steps you can take to identify your training needs" and list examples of those steps. Accordingly, option d is not the best response.

For question 57, since Uzunis selected the correct response, his appeal of this item is moot.

Question 63 indicates that the police are called to the scene of an assault after Jackson Bentley punched Landon Gregory in the face outside a local pub. Candidates are provided with copies of the driver's licenses for the victim and the suspect in the test booklet[14]. The question further indicates that Officer Stark has used the driver's licenses to begin completing portions of the incident report, a copy of which is provided to candidates in the test booklet.[15] The question asks, based on the driver's licenses, for the box in the incident report in which the information is incorrect. The keyed response is option b, Box 7. Turner argues that "both preprinted entry boxes [1 and 13 in the incident report] clearly indicate that the Officer should record the names with a comma placed directly after the Last Name, and a comma placed directly after the First Name, before the Middle Initial. The Officer, however, DID NOT include the required comma – after the First Name and before the Middle Initial – for either the suspect or the victim in his report. He instead recorded them as: '(Last, First MI).'" As noted above, the question asks for the box in which the information in incorrect and not for formatting errors in the report. Thus, the focus of the question is on the information contained in the licenses. In this regard, the middle initials Officer Stark recorded in boxes 1 and 13 are correct. As such, the question is correct as keyed.

For question 74, since Walsh selected the correct response, his appeal of this item is moot.

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[14] The licenses provide, in pertinent part:

GREGORY
LANDON M

48 LAKE SHORE DRIVE
CROWLEY, NJ 08642

BENTLEY
JACKSON P

448 GROVER WAY
MAPLE LAKE, NJ 08643

[15] The incident report provides:

VICTIM	1. Name (Last, First, MI) GREGORY, LANDON M	2. Race C	3. Sex M	4. Date of Birth 05 21 91		5. Age
	6. Home Address 48 LAKE SHORE DRIVE	7. City CROWELY		8. State NJ	9. Zip Code 08642	
	10. Phone – Home	11. Phone – Cell		12. Phone – Work		
SUSPECT	–FOR USE IN INCIDENTS INVOLVING A KNOWN SUSPECT–					
	13. Name (Last, First, MI) BENTLEY, JACKSON P	14. Race C	15. Sex M	16. Date of Birth 08 15 95		17. Age
	18. Home Address 448 GROVER WAY	19. City MAPLE LAKE		20. State NJ	21. Zip Code 08643	
	22. Phone – Home	23. Phone – Cell		12. Phone – Work		

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 15TH DAY OF JANUARY, 2020

Deirdré L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

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