

## STATE OF NEW JERSEY

In the Matter of Paul Charles, *et al.*, Police Sergeant, various jurisdictions FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

:

CSC Docket Nos. 2019-2247, et al.

**Examination Appeal** 

**ISSUED:** MAY 24, 2021 (JH)

Paul Charles (PM2514W), Bloomfield; Joseph Bolcar, Leo Colombo, George Johnson, Karl Mangino and Daniel Mondino (PM2515W), Boonton; Greg Walters (PM2539W), Mount Holly; Anthony Buono, represented by David Beckett, Esq., Racheda Allen, Tracie Ashford, Jorge Astuquilca, Misty Camacho, Carlos Colon, Crystal Corbett, Melissa Corchado, Haniyyah Davis, Paulette Dent, Sherri Dillard, Damaris Febus, Javier Figueroa, Adolfo Furtado, Darnell Graham, Nassim Hamami, Antoinette Holland, James Holloman, Jennifer Jeffra, Andy Jimenez, Maria Lebron, Elizabeth Malave, Peter Malave, Maria Malave-Mitti, Virginia Marrero, Sharice McClees, Lamar Melvin, Jaret Perez, Isabel Reyes, Jesus Rivas, Arnaldo Rivera, Luz Romero, Osbaldo Rosa, Andy Santana, Luan Serrano, Karama Thomas, Taibu Thomas and Emerson Verano (PM2540W), Newark; Jeffrey Gennari, Wilbert Negron and Melissa Velazquez (PM2541W), North Bergen; Pedro Borrero, Priscilla Caraballo, Ivan Hicks, Tyseme Holmes, Richard M'Causland, Mahmoud Rabboh, David Tanis, Luis Torres, and Anzore Tsay (PM2544W), Paterson; Brian Rosas (PM2558W), Wallington; Michael Wallace (PM2559W), Winslow; and Robert Jones (PM2561W), Wood-Ridge appeal the administration of the promotional examination for Police Sergeant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

By way of background, the subject two-part examination, which was administered on February 23, 2019, consisted of a video-based portion, items 1

through 21, and a multiple-choice portion, items 22 through 85.<sup>1</sup> It is noted that candidates were provided with 35 minutes for the video portion<sup>2</sup> and one hour and 40 minutes for the multiple-choice portion. As noted in the 2018-2019 Police Sergeant Orientation Guide, candidates were tested in one of two sessions, the morning session (9:00 a.m.) or the afternoon session (12:00 p.m.). As further noted in the Orientation Guide, a period of sequestration was required for candidates in the first session, *i.e.*, all first session candidates were required to remain at the exam center until all candidates for the second session arrived.

It is further noted that the above-noted appellants tested in one of six test centers: Camden County College, Essex County College, Middlesex County College, Ocean County College, Passaic County College and Union County College. Specifically, the following appellants were scheduled to be tested at Camden County College: Michael Wallace and Greg Walters; at Essex County College: Racheda Allen, Jorge Astuquilca, Anthony Buono, Misty Camacho, Carlos Colon, Crystal Corbett, Haniyyah Davis, Paulette Dent, Sherri Dillard, Damaris Febus, Javier Figueroa, Adolfo Furtado, Darnell Graham, Nassim Hamami, James Holloman, Andy Jimenez, Maria Lebron, Maria Malave-Mitti, Virginia Marrero, Sharice McClees, Lamar Melvin, Jaret Perez, Jesus Rivas, Arnaldo Rivera, Osbaldo Rosa, Luan Serrano, Karama Thomas and Emerson Verano; at Middlesex County College: Damaris Febus, Peter Malave, Arnaldo Rivera and Karama Thomas; at Ocean County College: Wilbert Negron; at Passaic County College: Paul Charles, Joseph Bolcar, Leo Colombo, George Johnson, Karl Mangino, Daniel Mondino, Isabel Reyes, Luz Romero, Andy Santana, Emerson Verano, Melissa Velazquez, Pedro Borrero, Priscilla Caraballo, Ivan Hicks, Tyseme Holmes, Richard M'Causland, Mahmoud Rabboh, David Tanis, Luis Torres, Anzore Tsay, Brian Rosas and Robert Jones; and at Union County College: Tracie Ashford, Melissa Corchado, Antoinette Holland, Jennifer Jeffra and Taibu Thomas.

<sup>&</sup>lt;sup>1</sup> For the subject exam, it is noted that the Commission previously addressed exam item appeals in *In the Matter of Gordon Harvey, et al., County Police Sergeant and Police Sergeant* (CSC, decided September 10, 2019) and subsequently addressed appeals regarding test validity and the omission of the last 10 items from scoring in *In the Matter of Melvin Jumper, et al., Police Sergeant* (CSC, decided March 24, 2021). As noted in *In the Matter of Melvin Jumper, et al., supra*, the Commission now addresses issues regarding test administration herein.

<sup>&</sup>lt;sup>2</sup> It is further noted that the video portion was guided. In this regard, candidates were instructed, in part, "During the video portion you will be shown two scenarios requiring your attention . . . The narration in the video will instruct you to bubble your responses on your answer sheets . . . As the video progresses, questions will be presented for you to answer in the time provided. The questions will be clearly indicated as they appear on the screen and will be read aloud by the narrator on the video. Candidates were also informed, "When responding to a question, you may turn back to a previous page to refer to notes you have made, but you are not permitted to move forward in your booklet. Please follow the instructions of the video narrator and do not skip ahead in your video exam booklet, as it may result in missing valuable information presented in the scenario."

Regarding the appellants who tested at Camden County College, Wallace asserts that for the multiple-choice section, while the start time was written on the board, the end time was not and the monitor did not provide a warning before the test finished. Walters contends that during the test, a candidate brought his ringing cell phone to the front of the room and the monitor "stood up with his crutches (which made a loud clinging [sic] noise with every step)" and went to the hallway to discuss the matter with another monitor. Walters notes that the discussions between the monitors were not "discrete" and the candidate's subsequent exit from the room and discussion with the monitors in the hallway could be overheard. Walters argues that "due to the multiple, unnecessary distractions within the classroom caused by the monitor, student and monitor/supervisor" he had to reread questions "more than once in order to regain focus." Walters further indicates that due to certain diagnosed conditions, it was "virtually impossible to focus . . . during a test with multiple unnecessary distractions." Finally, Walters contends that after the test, he proceeded to the main lobby but he was unable to locate testing staff "to take my complaint or provide me with an appeal form."

With respect to the appellants who tested at Essex County College, Allen maintains that candidates waited in the cafeteria for approximately an hour, moved to a small classroom and then moved to a larger classroom. Allen adds that some of the monitors were rude and "the entire team was unorganized." Astuquilca requests that "the time given to use by the monitors [be checked] since the instructions were repeated twice while the time was never stopped therefore shortening the time to answer all questions." Buono presents that check-in did not begin until 9:00 a.m., the video portion did not begin until 9:30 a.m. and the monitor called time at 12:00 p.m. and as such, he "did not properly receive the three (3) hours that we were supposed to receive as per stated in the orientation packet." Buono adds that the monitor "did not have the material properly laid out, as to reduce the time delay with having to prepare as they handed out the material." Camacho, Dent, Figueroa and Rivas assert that the monitors were unprepared and that the test began late and finished early. Colon contends that the room monitors were "unaware of time management and began the test late and as such, candidates did not receive the "appropriate time allotted to complete" the subject test. Corbett presents that there were "several

<sup>&</sup>lt;sup>3</sup> N.J.A.C. 4A:4-2.14(a) provides that otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request for accommodation on the examination application and, upon receipt, the Civil Service Commission shall make a reasonable accommodation where appropriate and notify the candidate of the arrangements. In this regard, on the application for the subject examination, candidates could select if they required any auxiliary aid or reasonable accommodation to take the test. If a candidate selected that he or she needed an accommodation, he or she was contacted before the test to discuss what accommodation was needed. If a candidate did not select this option on his or her application, assistance was not available at the test center. A review of Walters' application finds that he did not request auxiliary aid or a reasonable accommodation for this examination.

instances of disruption between the exam monitor and other test takers" which "served as added distractions during the session." Davis and Holloman argue that there "was a lot of time wasted at the beginning of the day, as we had to change classrooms for some reason," some of the candidates were disruptive and the monitor was not "knowledgeable of how the exam was to be administered, and her lack of command of authority was a factor in the tone of the room. Further, she did not appear to be interested in creating an environment that aided those taking the exam to be able to do their best." Dillard and McClees contend that the second video presentation was "extremely low and very difficult to hear. Ordinarily, a suggestion would have been made to the exam proctor to raise the volume. However, the tone of the person . . . was such that no one was willing to ask because it would immediately be met with combativeness." Furtado avers that the monitor should have provided an end time for the test. Graham and Malave-Mitti maintain that after the test began, "the monitors continuously walked through the aisles, several times, and standing on the front of the stage, having several conversations regarding items being placed on the table" which was distracting. Hamami presents that he was not seated in the test room until 1:00 p.m., the video portion began at 1:15 p.m., the written portion began at 1:44 p.m. and this caused "undue burden and stress" since he was not able "to attend to my duties after 3:00 p.m., as I had planned since the exam was scheduled until 3:00 p.m." Jimenez and Marrero indicate that they had "concerns on the 2nd video which [they] found it difficult to hear and the demeanor of the person monitoring and providing instructions." Lebron contends that when candidates were instructed to sign their test booklets, she asked the room monitor if she "could review the pages as the instructions support. [The monitor] stated[,] You will review the booklet when I tell you to!' This was an extremely volatile discourse and deemed unnecessary. As a result, I was unable to review the pages in the booklet prior to signing to take the exam." Lebron and Serrano indicate that "[the monitor] aggressively engaged in arguments with a candidate . . ." Lebron and Serrano add that the monitor sat behind them in order to observe this candidate "and was constantly making noise throughout the test taking period," including, walking behind them to observe the candidate, deliberately opening and closing a book, clearing her throat and coughing which "made it extremely difficult for [them] to concentrate on the reading task at hand." Malave argues that the test did not begin at 12:00 p.m., the monitor "was unclear with her directions causing confusion," the monitor was "unable to answer any questions as she avoided a certain [c]andidate . . . She was rude and argued with candidates," and the monitor sat behind her to monitor a candidate which she found distracting. Melvin contends that he waited for an hour as the test did not begin until 1:00 p.m. Perez maintains that seating was close and it "was very distracting and bothersome." Rosa asserts that "once the time was up, I was singled out by one of the test monitors who threatened to disqualify me for attempting to answer my last question. I was embarrassed and shocked because there were people still writing on their answer sheets." Rosa argues that this was "very disrespectful, humiliating, embarrassing and unfair." In addition, Astuquilca, Camacho, Colon, Dent, Figueroa and Rivas maintain that appeals were not accepted

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by the room monitors at the test site. Melvin asserts that "at no time was it explained that the appeal had to be done on that day." Perez contends that he "was not afforded nor instructed by the administration administering the examination the opportunity to appeal the examination at the testing location on that date."

Regarding the appellants who tested at Middlesex County College, Febus argues that the "the test site was cold (to me)" and "I still had to take time to go to the restroom." Malave argues that staff refused to provide an ending time. Rivera and Thomas present that candidates had to wait for 30 minutes after the test for sequestration. Rivera adds that the sequestration time could have been used to finish the test.

With respect to the appellant who tested at Ocean County College, Negron presents that "after speaking to several co-workers[,] I learned that the video section at several test sites skipped so many times that it made it difficult for them to answer the test questions." Negron contends that at the "Edison Test location," candidates approached the Center Supervisor "because they felt they missed a section" of the video "due to it skipping and some of the questions didn't make sense based on the only video showed. The site supervisor agreed to review the video and upon doing so it was learned that they missed an entire section of it, as it was not played for the candidates at that test center." Negron alleges that he was further informed that the Center Supervisor allowed those candidates "to re-answer the questions for that section and advised them that they may take as much time as needed to answer the question[s]" and replayed the video portion multiple times. Negron argues that "this places them at an unfair advantage in taking that portion of the video as they had no time limit and the supervisor assisted them in ensuring that they obtained all of the facts from the video." Negron adds that "due to the technical difficulties at the other test si[te]s I am not sure if I missed a section of the video also."

Regarding the appellants who tested at Passaic County College, Charles, Bolcar, Colombo, Johnson, Mangino, Mondino, Verano, Velazquez, Borrero, Caraballo, Hicks, Holmes, M'Causland, Rabboh, Tanis, Torres, Tsay, Rosas and Jones, who tested in the morning session, present that there were technical issues during the video portion as the video cut out, skipped and froze during the test administration which caused them to miss critical information they needed to answer the questions. In addition, Rabboh contends that he "observed people taking the exam in close proximity to people they know or work with allowing them to work together rather than individually." Tanis adds that "seating was to[o] close together. People writing after time was over." Reyes, Romero, Santana and Verano, who tested in the afternoon session, argue that although the test was scheduled for 12:00 p.m., "the test commenced at [1:30 p.m.];" "the testing center experienced technical

<sup>&</sup>lt;sup>4</sup> It appears that Negron is referring to the Middlesex County College test site which is located in Edison.

difficulties during the video portion of the exam;" and that while they were provided with forms, "at no time was it explained that the appeal had to be done on that day."

With respect to the appellants who tested at Union County College, Ashford asserts that there were no clocks in the room and candidates were not given a warning before the test ended. Corchado indicates that the second video scenario was difficult to hear and "the demeanor of the monitor." Holland contends that the test did not begin at 12:00 p.m. as scheduled but rather at 1:00 p.m. and "ended exactly at 3:00 p.m." Holland argues that "the delay should have been able to be made up at the end and not stopped at exactly at the time it was noted on the notification." Jeffra presents that the test did not begin until 12:40 p.m. and she "anticipated that a classroom setting would have been equipped with a functioning wall clock. The time then became more dependent on the monitor who failed to do so adequately." Thomas argues that there was no working clock in the test room and the monitor did not provide a warning prior to the end of the test. Thomas also asserts that the sequestration period could have been used to complete the test.

## **CONCLUSION**

Regarding the timely filing of test administration appeals, *N.J.A.C.* 4A:4-6.4 states that appeals pertaining to administration of the examination must be filed in writing at the examination site on the day of the exam. The Division of Test Development and Analytics was contacted regarding this matter and indicated that all monitors were provided with the same set of instructions and they were directed to read the instructions to the candidates as written. In this regard, the monitor instructions provide, after check-in is completed and prior to the test administration, in pertinent part:

Any objections to the manner in which the examination was administered must be made in writing <u>immediately following the completion of the examination</u> by completing a Comment or an Appeal of Civil Service Commission Examination Form prior to leaving the examination center. This form can be obtained from the Center Supervisor. No appeal relating to the manner in which the examination was administered shall be permitted after the test date.

As indicated above, candidates were instructed to obtain appeal forms from the Center Supervisor. Thus, it is not clear why Astuquilca, Camacho, Colon, Dent, Figueroa and Rivas indicate that they attempted to file appeals with the room monitors. Moreover, even assuming that the above noted directions were not read aloud to candidates, any claim that candidates were not so informed or that candidates were discouraged from filing appeals on the test date or that they were unable to locate staff in order to file an appeal are rendered moot as these appeals are addressed herein.

With respect to the starting time of the test, candidates are notified that the test arrival time is the time the candidates are expected to be at the test center, and is not the "start time" of an examination. In this regard, there are several steps, which include processing candidates and providing testing instructions, that must be accomplished before candidates may open their test booklets. Thus, the indicated time on the notification to appear for examination is not the time at which candidates open their test booklets but rather when candidates must arrive at the testing center so that the testing process may begin. In other words, the scheduled session times, *i.e.*, 9:00 a.m. to 12:00 p.m. or 12:00 p.m. to 3:00 p.m., were not designed, as indicated above, for solely test taking purposes. In this regard, as also noted previously, candidates were provided with 35 minutes for the video portion and one hour and 40 minutes for the multiple-choice portion. In addition, candidates were also informed that they should expect to spend several hours at the testing center. Moreover, as noted in the Orientation Guide, candidates scheduled for the morning session were required to be sequestered and at the test center, they were further informed:

In order to preserve the integrity of the Police Sergeant exam process, all candidates scheduled for the 9:00 a.m. session must remain in the testing room until all candidates scheduled for the 12:00 p.m. session have arrived. Upon completion of your exam, you will be required to sit quietly at your seat until time is called. Candidates will be disqualified from the exam process if they disrupt or talk to other candidates who are still in the process of testing. Please review and sign the Candidate Sequestration Agreement.

Thus, all candidates were to receive one hour and 40 minutes for the multiple-choice portion and the sequestration period was to be used strictly for sequestration purposes.

With regard to timekeeping, for the multiple-choice portion, monitors were to instruct candidates: "It is your responsibility to keep track of your own time. You will not be given a warning as your time is running out and I cannot tell you how much time is remaining." In addition, room monitors were to inform candidates that "your total time allotted is 1 hour and 40 minutes." Room monitors were to instruct candidates to begin the exam and record the start time. For those rooms that did not have a clock, room monitors were instructed to write the start time on the board and then, during the exam, write on the board and announce, the current time every half hour after the start of the exam. In addition, candidates were allowed to bring permitted time-keeping devices, e.g., a simple watch, to the test centers. Furthermore, it is not the responsibility of the Division of Administrative Services to provide candidates with time-keeping devices. See In the Matter of Marc Ferrara (CSC, decided May 15, 2013).

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Regarding the testing environment, it is noted that the Division of Agency Services uses examination centers throughout the State. These centers have been chosen for both their suitability as test sites and their location near transportation The above noted test sites were determined to be suitable examination centers that satisfied these criteria. In addition, since the test sites are rented by the Civil Service Commission, test staff do not have the authority to regulate the amenities of the facility, including heating or air conditioning, nor can staff change the size of seating or the distance between fixed seating. While testing staff makes every effort to ensure that the environment for testing is comfortable and free of extraneous distractions, circumstances can occur which are beyond the staff's control. In this regard, situations may arise during testing that staff must address. For example, if a candidate brings a prohibited device into the testing room or if a candidate is suspected of cheating, these matters may require that the room monitor briefly discuss the issue with the candidate and/or another monitor and/or the Center Supervisor or to take other actions. In addition, monitors are responsible for observing the testing room and this may require a monitor to walk around the room.

With respect to the video portion at the Passaic County College site, a review of the Center Supervisor report finds that during the morning session, there were difficulties with the picture and/or sound for certain portions of the first presentation of each scenario. The Center Supervisor report indicates that for the afternoon session, there were fewer issues with the video. However, the Center Supervisor report notes that there were no issues upon the repeat of each of the scenarios.<sup>5</sup> As such, testing staff determined that remedial action was not necessary as the candidates were exposed to the entire stimulus material given that the scenarios repeat. In addition, the Division of Test Development and Analytics was contacted regarding this matter and indicated that their analysis found no significant difference in scores between candidates who tested at the Passaic County College site and candidates from all other test centers. The Division of Test Development and Analytics further indicated that the analysis found that candidates in both the morning and afternoon sessions at the Passaic County College site scored, on average, higher on the video portion than the rest of the testing population.

Regarding Corchado, Dillard, Davis, Holloman, Jimenez, Lebron, Elizabeth Malave, Marrero, McClees and Serrano, it is noted that test centers are under the supervision of Center Supervisors. As such, the appellants had the opportunity to address any concerns they had regarding the room monitor, including how the room monitor managed the room or administered the test, or regarding the volume of the video portion, with the Center Supervisor on the test date. There is no record of the appellants complaining of these issues to the respective Center Supervisors during

<sup>&</sup>lt;sup>5</sup> It is noted that during the video portion, the scenarios were presented twice. In this regard, the video test booklet informed candidates that "some information will be presented twice to ensure that you are able to record the details you feel are important."

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the test administration when a remedy could have been provided. It is further noted with respect to Elizabeth Malave that, as noted previously, all monitors were provided with the same set of instructions and they were directed to read the instructions to the candidates as written. Elizabeth Malave does not further describe in her appeal how the "monitor was unclear with her directions."

With respect to Lebron's claim that she was not permitted to review the test booklet before time began, monitors were to instruct candidates, prior to the administration of the video portion and of the multiple-choice portion:

The center of the booklet states how many numbered pages are contained in your [test] booklet. Without looking at test content, please verify that your booklet contains all numbered pages in the correct order by checking the numbers at the bottom of each page. After you have verified that your booklet is complete, read the front cover of the booklet and sign where it says, 'Candidate Signature.'

Monitors themselves were instructed, "Allow the candidates to check the bottom of each page to verify that they have a complete booklet. <u>DO NOT</u> allow candidates to read the test questions at this time." Thus, candidates were not permitted to review their test booklets but rather, they were only permitted to check the numbers at the bottom of the pages. Additionally, it is noted that Lebron does not indicate on appeal that either of her test booklets had page number issues and there is no record that she complained of this issue at the test center.

Regarding Rosa, monitors advised candidates, "If you are still working on the exam when time is called, please put your pencil down and close your booklet. Remain in your seat and I will collect each answer sheet and booklet one at a time." In the present matter, Rosa does not claim that he was erroneously accused by the room monitor but rather, he acknowledges that he continued to work on his test after time was called. Thus, in essence, Rosa is seeking an unspecified remedy for choosing to commit a prohibited act. Furthermore, it is noted that Rosa was not disqualified. Moreover, since time had been called, this did not materially affect Rosa's performance on the test.

With regard to Negron, as indicated above, Negron did not test at the Middlesex County College test site and thus, did not witness the alleged occurrence. Rather, he claims that he spoke to co-workers who tested at that site.<sup>6</sup> In addition, a review of the Center Supervisor report finds that in one of the rooms, "the projector went off and so did the sound. We were able to get it running again. It went off after the video for 1-6 ran the first time. I rewound it to that point so the first scenario played for the second time. No appeals on the video stoppage."

<sup>&</sup>lt;sup>6</sup> It is further noted that Negron does not provide the names of the co-workers with whom he discussed the test. Thus, the Commission was unable to seek input from alleged witnesses.

Furthermore, the Center Supervisor was contacted regarding this matter and added that "an issue arose with the video, and in order for the candidates to see/hear the whole video portion that part of the video was replayed." The Center Supervisor also indicated that "the steps [that were taken] to replay the portion of the video that the candidates didn't see/hear would in no way give an unfair advantage to any of the candidates." The Center Supervisor further added that she absolutely did not provide candidates with as much time as needed to answer the questions.

Regarding Rabboh's assertion that he observed candidates "work[ing] together rather than individually," it is noted that Rabboh does not provide the names of these individuals and there is no record that Rabboh reported this issue to the room monitor or Center Supervisor. Thus, the Commission cannot pursue this matter further.

Accordingly, 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  $19^{TH}$  DAY OF MAY, 2021

Derdre' L. Webster Cabb

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Antoinette Holland (2019-2325)

James Holloman (2019-2450) Jennifer Jeffra (2019-2272) Andy Jimenez (2019-2492) Maria Lebron (2019-2273) Elizabeth Malave (2019-2274) Peter Malave (2019-2454) Maria Malave-Mitti (2019-2423) Virginia Marrero (2019-2424) Sharice McClees (2019-2426) Lamar Melvin (2019-2733) Jaret Perez (2019-2428) Isabel Reves (2019-2364) Jesus Rivas (2019-2430) Arnaldo Rivera (2019-2431) Luz Romero (2019-2366) Osbaldo Rosa (2019-2231) Andy Santana (2019-2321) Luan Serrano (2019-2368) Karama Thomas (2019-2433) Taibu Thomas (2019-2458) Emerson Verano (2019-2369) Jeffrey Gennari (2019-2438) Wilbert Negron (2019-2439) Melissa Velazquez (2019-2294)

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