



STATE OF NEW JERSEY

In the Matter of Michael Gilmore, *et al.*, Sheriff's Officer Lieutenant (various jurisdictions)

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2023-32, *et al.*

Examination Appeals

ISSUED: October 12, 2022 (ABR)

Michael Gilmore (PC4985C), Atlantic County; and John Bourke and David DeLeeuw (PC4979C) Ocean County, appeal the multiple choice portion of the promotional examination for Sheriff's Officer Lieutenant (various jurisdictions). These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on May 26, 2022 and consisted of 45 multiple choice questions and one essay question.

Questions 11 through 20 are designed to measure candidates' abilities to accurately process and interpret written material. The examination provides the Bepin County Ride-Along Policy and Procedures and directs candidates to use only the material in the policy, and not the specific policies and procedures of their individual departments, to answer Questions 11 through 20.

Question 13 states as follows:

Lori is a college student. She has participated in four ride-alongs this year – once in January, March, June, and August. Based on the policy, which statement is **TRUE**?

The keyed response is option c, that “[m]ore information is needed to determine if the Ride-Along Policy was violated.” DeLeeuw argues that the best response is option a, that no policy violation occurred,¹ because the information provided in the policy states “college students are not limited.” The Civil Service Commission (Commission) observes that DeLeeuw appears to have misread or misinterpreted the relevant policy. Specifically, the section labeled “Limitations of Ride-Along Program” states, in relevant part, that “[c]ivilians in the ride-along program shall be limited to participation in a ride-along no more than three times per year and no more than one time in any thirty-day period” and that “[c]ollege students *participating in an internship program* will not be limited in the number of times they may participate as a ride-along, however, each instance must receive prior approval” (emphasis added). As a college student, Lori would be limited to three ride-alongs per year if she was not part of an internship program, but would not be limited in the number of ride-alongs she could take if she was participating in one. Since Question 13 does not state whether or not Lori is participating in an internship question, more information would be needed to assess whether there has been a policy violation. Thus, Question 13 is correct as keyed.

Question 14 indicates that an officer needs to respond to a potentially dangerous incident near the fire department halfway through Donald’s ride-along and asks what the officer should do. The keyed response is option a, to “[d]rop Donald off at the fire department and instruct him to wait for a sheriff’s department employee to transport him back.” Gilmore avers that he selected option d, “[a]llow Donald to decide whether he feels safe to continue to the incident,” because the policy, as worded, gives discretion to officers. Specifically, he notes that the language in the applicable policy is as follows:

In the event that an officer has to respond to a potentially dangerous or hazardous call, the participant may be dropped off at a safe location (any municipal or county building) away from the incident. If this occurs, the officer will provide instructions to the participant and may arrange for a department employee to pick up the participant.

Gilmore contends that because the policy says that officers “may” drop off rather than “shall” drop off, the best answer was to exercise discretion and ask the person riding along to decide. Bourke maintains that because the question does not state the specific dangerous situation, the best response is option b, to bring Donald to the scene and instruct him to remain in the car. Bourke avers that once there, if the scene is dangerous, the officer can park at a safe distance and have Donald remain in the car. Conversely, Bourke proffers that if he drops Donald off at the fire department, it is unclear if the fire house will be manned or that Donald will be “100% safe.” The Commission observes that option d has Donald, the ride-along participant, making the final decision as to whether to continue to the incident. It is evident that an officer would be expected to have the training and expertise necessary to make such a

¹ On appeal, Deeleuw incorrectly refers to this as option b.

judgment call and to be in charge of the conduct of the ride-along. As such, it would be inappropriate for the officer to defer to the judgment of the ride-along participant. Thus, while Gilmore is correct that the policy does not technically mandate that the participant be dropped off in such a situation, option d would not be an appropriate exercise of any discretion provided thereunder. As to Bourke's contention, the Commission observes that the policy explicitly speaks to the option of bringing the participant to "a safe location (any municipal or county building)" but does not suggest parking at a safe distance and leaving the participant in the vehicle as a solution. Further, while Bourke argues in favor of option b because of concern that Donald may not be "100% safe" at the fire house, there is no guarantee that Donald will be "100% safe" in the vehicle. In this regard, the Commission notes that it is possible that the officer may not be able to park the vehicle at a safe distance. For example, the officer may need to utilize the vehicle for a pursuit and/or detain one or more dangerous suspects in the vehicle. Accordingly, the Commission finds that the keyed response is the best response to Question 14.

Question 15 asks examinees to consider the following:

- I. Finn is a college student who is interested in observing a typical day of a patrol officer.
- II. Luke is in a recognized law enforcement training academy and has just entered the employment process of the Bespin County Sheriff's Department.
- III. Owen is a mail clerk at the Bespin County Sheriff's Department.
- IV. Rose is a security guard at Bespin County Community College.

It then asks examinees, based on the ride-along policy, which participant(s) is/are limited in the number of times they may participate in the ride-along program? The keyed response is option b, "I and IV" only. DeLeeuw stated that he selected option a, "IV only," because the ride-along policy says, in effect, that college students and civilian employees are not limited in the number of ride-alongs that they can participate in. The Commission observes that, as with Question 13, DeLeeuw's argument appears to be based upon a misreading of the ride-along policy, as it applies to college students. As noted above, the section labeled "Limitations of Ride-Along Program" states, in relevant part, that "[c]ivilians in the ride-along program shall be limited to participation in a ride-along no more than three times per year and no more than one time in any thirty-day period" and that "[c]ollege students *participating in an internship program* will not be limited in the number of times they may participate as a ride-along, however, each instance must receive prior approval" (emphasis added). Since Question 15 indicates that Finn is merely interested in observing a typical day of a patrol office and does not state that he is an intern, it is evident that he would be subject to the ride-along limitations applicable to civilians generally. Therefore, DeLeeuw's arguments are without merit and Question 15 is correct as keyed.

Gilmore selected the keyed response for Question 16, therefore his appeal of this item is moot.

Question 20 states that the examinee would like to suggest additional information to include in the ride-along policy and asks which item would be the most important to include in this policy. The keyed response is option a, a “section about officer responsibilities on instructing participants of safety guidelines during the ride-along.” Bourke submits that he selected option d, a “complete list of examples of potentially dangerous and hazardous calls.” He avers that this aspect of the policy is problematic because it does not explain what a potentially dangerous situation. He contends that such a list is critical because such a standard is subjective and what an officer with one year of experience considers dangerous may differ from an officer with 15 years of experience based on an officer’s training and experience. The Commission observes that the current ride-along policy does not have a section about officer responsibilities on instructing participants of safety guidelines during the ride-along and that providing participants with clear and consistent safety instructions would undeniably be a critical measure needed to ensure a safe and successful ride-along program. The Commission also recognizes that it would be difficult, if not impossible, to determine and list every type of “potentially dangerous and hazardous call” an officer may be asked to respond to. As such, there would inevitably be some need for officers to determine whether a call not included on such a list constitutes a potentially dangerous or hazardous call. Moreover, overreliance on such a list might lead an officer to wrongfully conclude that a call is not potentially dangerous or hazardous simply because it is not presented on a “potentially dangerous and hazardous calls” list. Accordingly, the Commission finds that Question 20 is correct as keyed.

Question 21 through 45 measure candidates’ knowledge of law enforcement procedures. Candidates were instructed to read each question and choose the best answer.

Question 37 presents the following scenario:

This past evening, at approximately 1:00 a.m., Officers Rome and Tyson, as well as other sheriff’s officers, responded to an anonymous 9-1-1 report of a “man with a shotgun” on the corner adjacent to a county park. Upon his arrival at that address, Officer Rome observed three males, including a person later identified as Harold Hench, in the area. Officer Rome was approached by a young woman who told him that she was standing on the corner with a group of people when Hench pointed a shotgun in her direction, and said, “Get off the corner.” She also stated that she saw him throw the shotgun underneath a black Maserati. As the woman spoke to Officer Rome, he noticed that she was shaking a little bit and her voice was elevated. At that point, Hench was detained by Officer Rome while Officer Tyson recovered the unloaded shotgun

from underneath the Maserati. The woman at the scene told Officer Rome that she lived in the area. She did not provide any additional information about herself and insisted that she did not want to speak with any detectives. She was concerned for her safety and did not want to become involved in the case. Officer Rome did not get her name, address, or telephone number and the woman left the area on her own. While Officer Rome was transporting Hench to the Sheriff's Department, he blurted out: "What's the problem? You guys don't do your job. So, I went inside and got my shotgun." Based on current case law and under these circumstances, which accurately describes the first point when there was probable cause to arrest Hench?

The keyed response is option d, "[a]fter Officer Tyson discovered the shotgun." Bourke argues that option b, "[w]hen the woman came forward," should also be credited as a correct response, in part, because case law says that probable cause for arrest is a combination of both. The Commission observes that the question asks for the "*first point* when there was probable cause to arrest Hench" (emphasis added). While Bourke is correct that both an identifiable citizen's on-the-scene account of events that she witnessed minutes earlier and the discovery of corroborative physical evidence, *i.e.*, the shotgun supposedly used to threaten her, together provide probable cause to effectuate the arrest of Hench.² However, option b is incorrect because at *the point in time* that the woman came forward, corroborative physical evidence (the shotgun), had not yet been found. As such, Officer Tyson did not yet have probable cause to effectuate an arrest of Hench. Rather, the probable cause for arrest only existed *at the time* that Office Tyson found the shotgun. Therefore, Question 37 is correct as keyed.

Question 38 asks, based on Title 2C, which of four responses most accurately describes when an actor would be guilty of a sexual assault. The keyed response is option d, "[a] 21-year-old school bus driver with disciplinary power over students has consensual sexual intercourse with a 21-year-old student from the high school he is a bus driver for." Bourke argues that while the keyed response is correct, he selected option a, "an actor commits an act of sexual penetration with a victim that is less than 13 years old," because it falls under the sexual assault code. Bourke acknowledges that option a would be an aggravated sexual assault, but that because the question calls for the "most accurate[]" and best answer, his selection should have been credited. The Commission observes that option d is defined as a sexual assault based upon *N.J.S.A. 2C:14-2(c)*, which provides that:

An actor is guilty of sexual assault if the actor commits an act of sexual penetration with another person under any one of the following circumstances:

* * *

² See *State v. Basil*, 250 N.J. 570 (2010).

(5) The victim is a pupil at least 18 but less than 22 years old and has not received a high school diploma and the actor is a teaching staff member or substitute teacher, school bus driver, other school employee, contracted service provider, or volunteer and the actor has supervisory or disciplinary power of any nature or in any capacity over the victim.

Conversely, *N.J.S.A. 2C:14-2(a)* defines the act described in option a as an aggravated sexual assault, specifically providing:

An actor is guilty of aggravated sexual assault if the actor commits an act of sexual penetration with another person under any one of the following circumstances:

(1) The victim is less than 13 years old.

Thus, because Question 38 asks when an actor would be guilty of a sexual assault, rather than aggravated sexual assault, option c is clearly the better answer. Therefore, the Commission finds Question 38 correct as keyed.

CONCLUSION

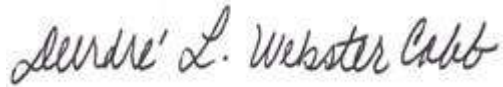
A thorough review of the appellants' submissions and the test materials reveals that the appellants' examination scores are amply supported by the record, and the appellants have failed to meet the burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12TH DAY OF OCTOBER, 2022



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