



STATE OF NEW JERSEY

In the Matter of Kim Clarke, *et al.*,
Correctional Police Lieutenant
(PS0085I), Department of Corrections

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

CSC Docket Nos. 2023-2941, *et al.*

Examination Appeal

ISSUED: February 7, 2024

Kim Clarke, Michael Kostbar, Michael Mann, Frank Martinez, Lanisha Moore and Carmelo Musarra appeal the examination for Correctional Police Lieutenant (PS0085I), Department of Corrections. These appeals have been consolidated due to common issues presented by the appellants.

The subject examination was administered on May 25, 2023 and consisted of 80 multiple-choice items.

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

Question 2 indicates that Officer Collin finds a Ziplock bag filled with pills during a cell search. Candidates were presented with four statements and required to determine, based on *N.J.A.C.* 10A:3-6.1 (Procedures for handling contraband upon discovery) which actions should be taken. The keyed response, option a, includes statement I, "Officer Collin should submit the contraband to the unit supervisor who shall submit it to Central Control." Musarra argues that "in the actual institutions, the past practice and current procedures is to have the officer relieved so that he or she can bring the contraband to central control his or herself in order to maintain the continuity of evidence. The unit supervisor does not take possession of the contraband for this very matter stated above." *N.J.A.C.* 10A:3-6.1 provides, in pertinent part, that "whenever an item, article or material is determined to be contraband, it shall be immediately seized. The custody staff member or staff member making the seizure shall submit the contraband to the unit supervisor who

shall submit it to the Special Investigations Division or Central Control of the correctional facility . . .” See *N.J.A.C. 10A:3-6.1(a)1*. It is noted that the directions provided to candidates in the test booklet specifically state: “Please answer each question by choosing the response that **BEST** addresses each situation, based upon the rules specified in *N.J.A.C. 10A*, **and not the specific policies and procedures of your facility**” (Emphasis added). As such, the question is correct as keyed.

Question 16 indicates that while speaking to Officer Conrad in the outdoor recreation yard, Lieutenant Amore observed Inmate Smith swinging his arms furiously, pacing and it also appeared that he had something concealed in his left hand. Lieutenant Amore asked the inmate to come over to him and Officer Conrad. Lieutenant Amore then asked Inmate Smith if he was okay, and the inmate said he was. Then Lieutenant Amore asked to do a pat search. Inmate Smith proceeded to run away from the Lieutenant and Officer and then throw an object over the perimeter fence. The question asks what Lieutenant Amore’s first action should be. The keyed response is option d, “Secure Inmate Smith in handcuffs and remove him from the area.” Mann and Musarra argue that option c, “Request the roving patrol to find the object,” is the best response. Specifically, Mann presents that “the first priority is finding the object that is thrown. It could be a hazard to anyone who may come in contact with it.” Mann asserts that handcuffing the inmate “could take a significant amount of time, as all State prison yards are secured areas. The entire time you are trying to secure the inmate is wasted time on securing the object.” Musarra contends that “recovering the object that is now outside the perimeter is crucial. The object could be a weapon or contraband and evidence that needs to be secured as soon as possible and should be the priority in this situation.” While it is important that the object be located to ensure the safety and security of the facility, the **first priority** is to secure the inmate and *then* request a roving patrol to search the area for the object.

Question 17 indicates Inmate Olsen needed emergency medical care and was being transported by an ambulance to the local hospital. In the ambulance were emergency medical staff, the escorting custody officer, and the inmate. The other custody officer following the ambulance in a county vehicle became immobilized due to a flat tire and pulled over safely to the side of the road. In response, the ambulance also stopped and the officer driving the car contacted central communications. The question indicates that you are the ranking custody supervisor and must determine the next course of action. The question asks for what you should tell the officers to do. The keyed response is option c, “Instruct both officers to ride in the ambulance to the hospital and send additional vehicles and staff to retrieve the state vehicle and meet the officers at the hospital.” Martinez and Musarra argue that option d, “Instruct the ambulance to proceed to the hospital with the one escorting officer, send additional staff and a vehicle to the hospital, and send additional staff and a vehicle to the accident scene,” is the best response. Specifically, Martinez asserts that “due to the emergent nature of the inmate needing advanced medical care, there may be

no time to stop the trip as preservation of life is priority.” Given that the question stem indicates that “the ambulance also stopped,” this issue is moot. Martinez adds that the keyed response assumes that there is space in the ambulance not accounting outside medical personnel and custody staff already inside the emergency vehicle. Musarra presents that the keyed response “poses a problem[:] leaving an unattended vehicle which may have sensitive material inside such as mounted radio, which can cause major problems is someone were to break into the abandoned vehicle. We are not allowed to leave vehicles unattended.” Musarra also notes that the question indicates that the other custody officer is in a “county” vehicle. Musarra argues that this “caused confusion since we are a State department and only use [S]tate vehicles.” The Division of Test Development, Analytics and Administration (TDAA) contacted Subject Matter Experts (SMEs) regarding this matter who referred to *N.J.A.C. 10:3-9.12(b)* which provides that when an inmate is transported by ambulance, a custody staff member shall accompany him or her in the ambulance and another custody staff member shall follow the ambulance in a back-up car. The SMEs also referred to *N.J.A.C. 10A:3-9.3h* which provides that when escorting medium, maximum or close custody status inmates, the ratio of escorting custody staff members to inmates shall be two custody staff members to transport from one to five inmates unless security issues, such as, but not limited to, an inmate’s propensity to acts of violence or escape, require a larger number of escorting custody staff members. The SMEs indicated that regardless of the situation, only having one officer escort an incarcerated person in the back of an ambulance without a chase/back-up vehicle would be a security concern. The SMEs further referred to “Level I/III IMP Inmate Transportation CUS.001.IT.01” and indicated that “vehicles can be left unattended when needed. However, all vehicles shall remain locked and completely secured, including windows, when not in use. Also, per the policy, custody staff are responsible for all items issued to them on a transport to include transportation documents and security equipment. This means that no sensitive information or security equipment would remain in the vehicle. The custody staff would take these items with them in the ambulance.” As such, the SMEs concluded that option d would not be the best answer.

For question 23, candidates were provided with scheduling information and indicates that they were scheduling Officer Parcell and Officer Kenneth for the month of June. Based on the information provided in the test booklet, the question asks for the number of days between June 1 and June 17 that Officer Parcell and Officer Kenneth should both be scheduled to work together. Musarra argues that “scheduling is not a part of a Correctional [Police L]ieutenant[']s job functions.” Musarra argues that “schedules are in fact made by civilian communication operators and it is actually a manpower sergeant who makes any changes to the schedule as needed. It is a [S]ergeant’s job to take roll call and check the schedule, not the Lieutenant[']s.” It is noted that TDAA was contacted regarding this matter and indicated that the main goal of this item was to test the candidate’s ability to problem solve rather than schedule. Specifically, TDAA indicated that this item was part of

a subtest that measures situational judgment.¹ In this regard, TDAA explained that candidates are provided with information on how the schedule works, *i.e.*, the pattern it follows, and are asked to complete the pattern to answer the question. In other words, candidates were asked to determine how often the two officers would work together solely based on the pattern provided. TDAA further explained that candidates were not provided with multiple officers' schedules or tasks that need to be completed and asked when officers and/or tasks should be scheduled, which would be typical of a scheduling exercise.

Question 24 indicates that Lieutenant Martin is reviewing an incident report written by Officer Dwight and notices that the report contradicts an incident report written by Officer Moe regarding the same incident. Officer Moe stated that Officer Dwight used O.C. spray on Inmate Halper while he was handcuffed. Officer Dwight stated he first used O.C. spray and then handcuffed Inmate Halper. The question asks for what Lieutenant Martin should do first. The keyed response is option b, "Ask each officer privately to verify the details in their report." Musarra maintains that option a, "Inform her immediate supervisor," is the best response. In this regard, Musarra argues that "a report of unlawful force should be immediately sent up the chain of command and have the investigators determine and verify the incident. My job as a lieutenant would be to accept the official report written by the officer and to notify my immediate supervisor that unlawful force was allegedly used, not to verify the report myself and possibly have that officer change his report." It is noted that TDAA contacted SMEs regarding this matter who indicated that pursuant to "the Use of Force Internal Management Policy CUS.001.UOF.001[,] staff have a duty to report illegal and inappropriate uses of force by other officers . . . Officer Moe has followed the policy. The lieutenant has reviewed the report and is then responsible for forwarding the report to her supervisor (Major) and Special Investigations Division (SID)/Internal Affairs. However, because of the reported accusation of unlawful force in the noted situation, a lieutenant should first confirm that the reported information is correct prior to forwarding the information up the chain of command." The SMEs also noted that once Lieutenant Martin has confirmed that both reports were accurate, she would then contact her immediate supervisor. As such, the question is correct as keyed.

Question 27 indicates that Sergeant Stanley has alerted Lieutenant Criss about an incident involving Officer Simmons. Officer Simmons was standing at the bottom of the stairs of a unit tier when he was splashed with an unknown liquid from an inmate in a cell. Upon arrival to the scene, Lieutenant Criss sees Officer Simmons

¹ As indicated in the 2023 Correctional Police Lieutenant Orientation Guide, under the section, Exam Information, "a job analysis was conducted to identify the knowledge and abilities that are necessary to perform the duties of a Correctional Police Lieutenant . . . Based on this job analysis, several work components were identified, and it is from these work components that a distinct examination has been developed. These work components, which have been translated into test content areas, are shown below along with their relative test weights (rounded %) . . . 18.7% Situational Judgment . . ."

and Sergeant Stanley, who have just placed the inmate into handcuffs after removing him from his cell. The question asks for, after being briefed, what Lieutenant Criss should do next. The keyed response is option b, "Call for additional custody staff to report to the area." Martinez and Musarra argue that option c, "Have Sergeant Stanley escort Officer Simmons to medical," is the best response. They argue that given that an unknown liquid was thrown at the officer, treating Officer Simmons and having medical assess him is of the utmost priority. Musarra maintains that "as a Lieutenant I can remain on the unit myself and wait for more staff to respond while the officer is being escorted off and sent to medical." It is noted that TDAA contacted SMEs regarding this matter who indicated that since the question does not indicate what other custody staff are present on the housing unit/unit tier, or whether other possible security concerns are present, the best security practice to utilize in this situation would be to call for additional custody staff to report to the area first. The SMEs noted that once additional custody staff report to the area, the officer that was assaulted would be escorted out of the unit and sent to medical for assessment/treatment at that time. Accordingly, the question is correct as keyed.

Question 28 indicates that Lieutenant Evans was completing a unit tour during an institutional count when he noticed that pieces of metal fencing inside the housing unit were missing. The question asks for what Lieutenant Evans should do next after consulting with the housing unit officers. The keyed response is option a, Lieutenant Evans should immediately "order the area sergeant and additional officers to the housing unit." Martinez, who selected option b, Lieutenant Evans should immediately "have the housing unit officers conduct a common area search," argues that you should have officers that are present do the search and then call for additional officers. It is noted that TDAA contacted SMEs regarding this matter who indicated that the correctional facility, including this particular housing unit, would be completely secured while institutional count was occurring. The SMEs explained that after consulting with the housing unit officers, the lieutenant should next order the area sergeant and additional officers to the housing unit in order to ensure that a supervised, systematic and thorough search is completed of the housing unit. In this regard, the SMEs explained that completing a unit search/common area search while a housing unit is secured can be accomplished more quickly, thoroughly and systematically with more custody staff and more supervision. In addition, the SMEs indicated that the lieutenant would be able to ensure that the area sergeant is debriefed on the situation face to face; that the area sergeant coordinates a systematic search of the housing unit by utilizing the unit officers and the additional officers; that the area sergeant or other available custody staff take pictures of the areas of fence that were missing pieces; and would have available custody staff present when coordinating with maintenance to make needed repairs to the fence, which might require a custody staff escort. Thus, the SMEs concluded that having the housing unit officers conduct a common area search after consulting with the housing unit officers would not be the best next step. As such, the question is correct as keyed.

Question 29 indicates that while having a one-on-one meeting with Lieutenant Cariso, Sergeant Baird said that he thinks everyone has become too relaxed with appearance standards and officers are looking “sloppy.” Lieutenant Cariso decided to send a memo out to custody staff explaining that uniforms should be neat and clean. Later that day, Lieutenant Cariso overheard officers complaining how unnecessary the memo was and that supervisory staff just enjoy putting their subordinates down. The question asks, based on the information provided, for what Lieutenant Cariso did not do that could have prevented this situation. The keyed response is option c, “Assessed the situation himself to see if appearance standards are a problem.” Musarra argues that option a, “Asked Sergeant Baird to document his observations” is correct. It is noted that TDAA contacted SMEs regarding this matter who indicated that Lieutenant Cariso should assess the situation for himself since “officers are less likely to complain if the Lieutenant sees for himself.” Therefore, the question is correct as keyed.

Question 30 indicates that Lieutenant Mulroy, the area lieutenant, is called to a housing unit in which an inmate in his cell is irate, refusing to handcuff up, appears to be under the influence of an intoxicant, and in need of medical attention. Lieutenant Mulroy arrives on scene and begins to communicate with the inmate, but he continues to refuse to comply with orders and threatens to hurt anyone who comes into his cell. The question asks for what Lieutenant Mulroy should do next. The keyed response is option d, Lieutenant Mulroy should call “the shift commander.” Martinez and Moore argue that option a, Lieutenant Mulroy should call “a medical code,” is the best response. Specifically, Martinez asserts that “the supervisor sees the inmate under medical duress and calling the code is notification to the Shift Commander.” Moore refers to *N.J.A.C. 10A:3* and argues that by calling the shift commander first, it “would delay the treatment of the inmate who is in need.” It is noted that TDAA contacted SMEs regarding this matter who emphasized that you would not open a cell door and attempt to provide medical care, especially given that the question does not indicate that emergent medical care is needed, to a non-compliant, irate inmate that has threatened to hurt anyone that comes into his cell without the inmate first being properly secured. The SMEs further noted that Lieutenant Mulroy has attempted to de-escalate the situation to gain compliance which has failed at this time. The SMEs determined that Lieutenant Mulroy should then contact the shift commander to inform them of the situation and await further instructions on what actions to take. Therefore, the question is correct as keyed.

Question 31 refers to the federal Prison Rape Elimination Act (PREA). The question presents candidates with three statements and they are required to completed the following sentence, “According to PREA section §115.15 Limits to cross-gender viewing and searches, the facility shall **NOT** conduct cross-gender strip searches or cross-gender visual body cavity searches **EXCEPT** when . . .” The keyed response is option d, statement I, “exigent circumstances are present” or statement

III, “the search is performed by medical practitioners.”² Martinez, who selected option b, statement II, “deemed necessary by the Administrator,” only, argues, “The best answer is opposite gender strip searches can be done based on [N.J.A.C.] 10A:3-5.7 [(Strip Searches)]³ especially during emergent conditions. Though PREA guideline will be adhered to, emergent conditions can arise which justify opposite gender strip searches.” The instructions for this item directed candidates that their answers should be based on the U.S. federal PREA regulations and *not* on any PREA regulations that may have been developed by their specific facility. Given that candidates were instructed to only consider federal PREA section §115.15 for this item, Martinez’ argument is misplaced.

Question 38 indicates that Sergeant Rosenberg received a gift from her male subordinate, Officer Ellis. The question asks, based on the New Jersey Uniform Ethics Code, whether Sergeant Rosenberg should report the gift to the Ethics Liaison Officer (ELO). The keyed response is option b, “No, if the gift was not excessive or inappropriate for a business environment.” Kostbar, who misremembered the keyed response as, “No, gift is of low monetary value,” and Martinez argue that the gift should be reported.⁴ Specifically, Kostbar presents that “the gift should be reported as no monetary value is given in the question.” Martinez asserts that “receiving a gift from a subordinate can establish a future conflict of interest . . . [and] other officers will know and can lead to belief of preferential treatment to the [officer] giving the supervisor a gift.” The New Jersey Uniform Ethics Code (2021) provides, “A State employee is permitted to give or receive a gift from a co-worker, a supervisor or a subordinate. The gift should not be excessive or inappropriate for a business environment. Such gift shall not be reported to the ELO.” As such, the question is correct as keyed.

Question 41 refers to an excerpt from the fictitious Lightbridge Correctional Facility Inmate Rules and Regulations provided to candidates in their test booklets. The question indicates that on Wednesday, inmates were served three meals during the regular meal times. One of the three meals served was hot. Fourteen hours elapsed between the evening meal the day before and the breakfast meal that was served on Wednesday. The question asks for the true statement. The keyed response is option d, “More information is needed to determine whether or not there was a

² PREA section §115.15 provides, “The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.” See 28 C.F.R. §115.15a.

³ N.J.A.C. 10A:3-5.7(d) provides that strip searches of inmates may be conducted by custody staff and a scanning/testing device operator(s) of the opposite gender under emergent conditions as ordered by the Administrator, Associate Administrator, Assistant Superintendent or the highest ranking custody supervisor on duty.

⁴ It is noted that both Kostbar and Martinez selected option c, “Yes, because supervisors are not permitted to accept gifts from subordinates,”

violation of the Lightbridge Correctional Facility Inmate Rules and Regulations.” Musarra argues that option b, “The Lightbridge Correctional Facility Inmate Rules and Regulations were violated,” is correct. Musarra contends that “the policy clearly states that two out of three meals should be served hot. Therefore, serving any less hot meals clearly violates policy . . .” It is noted that the Lightbridge Correctional Facility Inmate Rules and Regulations provides, in pertinent part:

V. Meals

A. Serving of Meals

1. All inmates will be provided with meals that are dietician-approved from a standard menu unless a special diet request is approved.
2. Three meals will be served at regular meal times each day.
3. No more than 14 hours shall elapse between the evening and breakfast meals.
4. Two of the three meals provided shall be hot meals ***unless*** emergent circumstances are present. (emphasis added).

Given that the question does not indicate whether emergent circumstances were present, more information is needed to determine whether the policy was violated. As such, the question is correct as keyed.

Question 50 also refers to the Lightbridge Correctional Facility Inmate Rules and Regulations and indicates that “on Thursday, there were seven official counts, which included the wake-up and lights out count, along with counts at the start of each shift.” The question asks, according to the Lightbridge Correctional Facility Inmate Rules and Regulations, for the true statement. The keyed response is option a, “The Lightbridge Correctional Facility Inmate Rules and Regulations were adhered to.” Musarra asserts that option b, “The Lightbridge Correctional Facility Inmate Rules and Regulations were violated,” is correct. In this regard, he maintains that “the question indicates that a count was taken at the end of the shift. Per the fictitious policy, the times in which counts are permitted did not mention anything about the end of shift; therefore, the policy was violated.” The Lightbridge Correctional Facility Inmate Rules and Regulations provides, under the section “Counts,” “Official counts are conducted a minimum of six times each day (this includes counts at the start of each shift, wake-up, and lights out).” As noted above, the question clearly states, “lights out count,” and not “end of the shift.” Accordingly, the question is correct as keyed.

Question 66 refers to Michael Carpenter and Roger Fulton, *A Practical Career Guide for Criminal Justice Professionals* (2007). The question indicates that there has been ongoing tension between two of your sergeants, which has come to a boiling

point. You had to break up a heated discussion they were having in front of officers. You immediately told the sergeants to stop arguing and separated them. The question asks, based on the information provided by Carpenter and Fulton on the decision-making process, what you should do next to resolve this conflict. The keyed response is option a, "Meet with each sergeant privately to determine what the problem is and to gather information." Clarke argues that option c, "Have each sergeant come to your office individually and explain that it is critical for supervisors to appear as a united front," is equally correct. In this regard, Clarke refers to the text which "references to the concept of 'unity of command' (i.e. united force). With that being said that would be correct as well as asking what the problem is." It is noted that TDAA contacted SMEs regarding this matter who indicated that while you could have each sergeant come to your office individually and explain that it is critical for supervisors to appear as a united front, this would not be the best step to take. The SMEs explained that it is important to allow staff to express their concerns so that you can gather information. In this regard, the SMEs explained that after allowing each sergeant express their concerns, you would have the ability to move forward knowing why there is tension between them and address it appropriately. For example, if the tension were work-place related, the SMEs indicated that this would be something that may need to be reported appropriately to ensure certain policies are followed. However, the SMEs indicated that if this a personal issue or a minor workplace issue, discussing professionalism in the workplace would be appropriate. Accordingly, the question is correct as keyed.

Question 71 indicates that Sergeant O'Toole is a new supervisor and is being mentored by Lieutenant Hamlin, who is a more experienced supervisor. Sergeant O'Toole sent an email to an outside vendor regarding an inmate educational program and copied Lieutenant Hamlin on the email. The email had multiple spelling and grammatical errors. The question asks for the best way for Lieutenant Hamlin to explain to Sergeant O'Toole what was wrong with his email. The keyed response is option c, "There were spelling and grammatical errors in your email. I recommend proofreading your emails for errors before sending them out." Clarke argues that option d, "We must make sure our emails are appropriate before sending them to an outside agency. Ensure your emails are suitable before sending them," is the best response. In this regard, Clarke asserts that option d "would tactfully address the unprofessional email with grammar mistakes and misspelled words without humiliating him. A part of sending an appropriate email is sending an email without grammar mistakes and misspelled words. An appropriate email is a professional email. Definition of appropriate is suitable or proper in the circumstances." Although option c is specific and straight to the point, Clarke does not indicate in her appeal how this would be "humiliating." In addition, option c specifically describes the issue with Lieutenant Hamlin's email and provides a solution going forward. Option d uses ambiguous terms such as "appropriate" and "suitable" which does not offer any

specificity regarding the problem with Lieutenant Hamlin's email.⁵ Option d also does not provide Lieutenant Hamlin with a proactive solution to address the problem. Accordingly, the question is correct as keyed.

For question 80, candidates are presented with three statements:

- I. Officer Hanover made a mistake at work and does not tell his supervisor because he does not want to appear incompetent.
- II. Officer Caldwell provides his supervisor with all the documents he has on the case.
- III. Officer Livingston omits information from his report that he doesn't think Sergeant Roseland would want to know.

Candidates are required to determine which are examples of filtering in communication. The keyed response is option a, II only. It is noted that TDAA contacted SMEs regarding this item and indicated that this item was miskeyed. TDAA rekeyed this item to option c, I and III only, prior to the list being issued.

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.

⁵ As indicated in the text by Carpenter and Fulton, *supra*, in the section entitled, "General communication skills," "Does grammar count? You bet it does . . . The quality of your written order communicates a great deal about who you are and how competent you are. Check your work for proper grammar and spelling before it goes out in written form." The authors also indicate, in the section entitled, "Barriers to effective communication," "Ambiguous words: There are so many 'relative' terms in the English language. Some examples are . . . 'appropriate,' 'inappropriate,' . . . Be concise and to the point."

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 7TH DAY OF FEBRUARY, 2024

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