



[2021] JMSC Civ 37

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE CIVIL DIVISION
CLAIM NO. 2012HCV01656**

BETWEEN	ANDY DAVIDSON	CLAIMANT
AND	ANTHONY ANDERSON	1ST DEFENDANT
AND	ATTORNEY GENERAL OF JAMAICA	2ND DEFENDANT

IN OPEN COURT

Mr. Sean Kinghorn instructed by Kinghorn & Kinghorn for the Claimant.

Ms. Kamau Ruddock instructed by the Director of State Proceedings for the 2nd Defendant.

Heard: February 3 and March 3, 2021.

Assault – Whether police officer had reasonable grounds to search claimant – Whether the search of the claimant constitutes an assault – Whether police officer assaulted the claimant and caused injury – Credibility of witnesses.

N. HART-HINES, J (Ag.)

[1] On March 26, 2011 the claimant, a Chef at Hotel Riu Ocho Rios, was a passenger in a seven seater public passenger vehicle. The vehicle was stopped by the police in the Bog Walk Gorge, in the parish of St. Catherine. Police officers, including the 1st defendant, were conducting vehicular checks at a checkpoint. The claimant alleges that the 1st defendant searched his person and his bag and detained him in a police service vehicle because he

did not have any national identification in his possession. The claimant alleges that this search of his person and bag was unlawful and constitutes an assault. Further, he alleges that while he was in the police service vehicle, the 1st defendant slapped him in his face multiple times. As a result of the assault, he sustained personal injury, suffered loss and damage. On March 20, 2012, the claimant brought this claim against the defendants seeking damages, aggravated damages exemplary damages and vindictory damages for assault and special damages in the sum of \$53,000, representing medical expenses incurred. The claim is brought against the 2nd defendant, pursuant to the Crown Proceedings Act. Although Mr. Anderson is named as 1st defendant, counsel indicated that he was never served with the claim form and particulars of claim. Throughout this judgment I will refer to him as “Sergeant Anderson”. The action proceeded only against the 2nd defendant.

- [2]** In the defence filed on May 21, 2013, the 2nd defendant denies that the claimant was assaulted on March 26, 2011. The 2nd defendant asserts that the purpose of the vehicular check point operation was to find wanted persons, dangerous drugs, illegal firearms and ammunition. The station wagon in which the claimant was travelling, was stopped and the occupants of the vehicle were asked to exit the vehicle so that it could be searched. The 2nd defendant alleges that everyone except the claimant complied with the request. After the request was repeated twice and after the claimant continued to refuse to comply, he was informed that it was an offence to disobey the lawful order of the police and then Sergeant Anderson lay hold of the claimant and removed him from the vehicle without injuring him. The 2nd defendant asserts that as a result of the claimant’s refusal to comply with the requests made, Sergeant Anderson had a reasonable suspicion that the claimant was in possession of a prohibited article. Reasonable steps were therefore taken to search the claimant's person and bag and this was done without physical injury to the claimant. The claimant was found in possession of a knife and he was taken to the Bog Walk Police Station for the purpose of conducting enquiries to verify his allegation that he was employed as a chef and that the knife was a tool of his trade. The 2nd defendant asserts that such enquiries were immediately

made, and after confirmation from his place of employment, the claimant was released without being charged with any offence.

THE ISSUES

[3] The issues for the determination of this court are:

1. Is the reason proffered for the search of the vehicle a recent concoction?
2. Has Sergeant Anderson been otherwise discredited?
3. Were there reasonable grounds for suspicion and to search the claimant?
4. Did the search of the claimant constitute an assault?
5. Is the claimant's account that he was assaulted credible?

THE EVIDENCE

[4] The claimant gave evidence that on March 26, 2011, while he was travelling in a public passenger vehicle, the vehicle was stopped by the police in the Bog Walk Gorge. The claimant alleged that the passengers were instructed to disembark the vehicle in order for it to be searched, and all passengers complied. He said that Sergeant Anderson got into an argument with another passenger but did not detain that man. He further said that Sergeant Anderson searched his person and when he handed his work identification card to Sergeant Anderson, he began behaving boisterously. The officer detained him in a police service vehicle because he did not have any national identification in his possession. While in the police vehicle, he again showed Sergeant Anderson his identification card. Sergeant Anderson took his bag, searched it and found a paring knife. Sergeant Anderson then said that he would place him under arrest for being in possession of the knife. At that point, when he again attempted to show Sergeant Anderson his identification card, he was accused of assaulting the officer, and Sergeant Anderson grabbed him by his shirt and slapped him in his face three times. This caused pain, swelling and scratches to his neck and face, and ringing to his ears.

[5] The medical report of Dr. Janice Simmonds-Fisher of Essential Medical Services, dated November 18, 2011, indicates that the claimant was first seen on October 24, 2011, and a tooth with a dislodged filling was observed. The

report indicated that the claimant complained of feeling pain to his left jaw.

[6] The claimant also relied on an earlier statement prepared by Sergeant Anderson in October 2012 and a statement prepared by Woman Corporal Wendy Brooks in February 2013, prior to the filing of the defence on May 21, 2013. It appears that these were supplied to the Director of State Proceedings, in order to provide instructions in respect of the claim. Although these statements might be subject to legal professional privilege, they were disclosed, and at the trial they were tendered and admitted into evidence by consent, as **Exhibit 4** and **Exhibit 5**.

[7] Sergeant Anderson gave evidence that he was a part of a team which was on vehicular checkpoint duties along the Bog Walk area. He alleged that his team had received information that a station wagon motor car was being used to transport wanted persons, dangerous drugs, illegal firearms, and ammunition in the area. He alleges that when the station wagon in which the claimant was travelling was stopped, the claimant was asked three times to exit the vehicle, but he refused to comply. It then became necessary to lay hold of the claimant and remove him from the vehicle. When he was assisted out of the vehicle he was observed clutching his bag. The conduct of the claimant aroused his suspicion that the claimant fit "*one or more of the reasons*" for stopping the vehicle, namely, that he was a wanted person or was in possession of a prohibited article such as dangerous drugs, illegal firearms, or ammunition. As such, he wished to search the claimant's person and bag, and this was done without physical injury to the claimant. He denied assaulting the claimant by slapping him in his face.

SUBMISSIONS

Submissions on behalf of the claimant

[8] Mr. Kinghorn submitted that the claimant provided credible evidence on which the court could rely. In contrast, Mr. Kinghorn submitted that the 1st defendant is not to be believed as there were discrepancies in his evidence in more than one respect, and particularly as regards the reason for stopping the station

wagon in which the claimant was travelling. Instead, counsel submitted that the account of the claimant is the more credible of the two.

[9] As regards the unlawfulness of the search, counsel relied on dicta in **Gary Heman v The Attorney General of Jamaica** [2013] JMSC Civ. 75, where Batts J emphasised at paragraphs 57 and 58 of the judgment, that

[57] It is still the law of this nation that persons under the Queen's peace are entitled to freedom from search of their person or property unless such a search is legally justified. I hold that it is not a lawful reason to stop and search a car, "based on the fact that cars with similar features are often stolen and used in the commission of crime."...

[58] The reasonable cause to suspect that an individual has or is, or is about to commit a crime must relate to peculiar characteristics of the persons or the vehicle he is driving or the manner in which it is operated, or to information received. In Jamaica the citizen is free to move about without an obligation to carry a pass, and is not to be subject to arbitrary or random search. This is still a constitutional guarantee."

[10] Mr. Kinghorn submitted that the effect of this dicta is that where a police officer unlawfully stops and searched a citizen, the touching of that citizen is tantamount to an assault. In addition, Mr. Kinghorn submitted that the claimant had not been discredited as regards the allegation that he was assaulted by Sergeant Anderson, and sustained injuries to his face and neck.

Submissions on behalf of the 2nd defendant

[11] Counsel Ms. Ruddock submitted that the claimant had not discharged the burden of proving that he had been assaulted. Counsel submitted that as a result of the conduct of the claimant Sergeant Anderson had to employ reasonable force to remove the claimant from the vehicle and to carry out searches when his conduct aroused the officer's suspicions. It is submitted that there existed reasonable and probable cause to touch the claimant and there was no malice, and therefore no assault or battery.

THE LAW

Burden and standard of proof

[12] The claimant bears the burden of proving, on a balance of probabilities, that he was assaulted by Sergeant Anderson. This means that the claimant must provide cogent evidence to satisfy the court that the alleged particular event was more likely to have occurred than not. The 2nd defendant bears no legal

burden of proof by merely denying the claim.

Reasonable grounds for suspicion

- [13] A person's liberty is not to be taken away without lawful justification. While the police are given powers to arrest and search persons, such powers are only to be exercised in accordance with the law and when there is a reasonable basis for so doing. A person may be searched if there is a reasonable suspicion that he is in possession of a prohibited or stolen item, and a person may be arrested if there is a reasonable suspicion that he has committed or is in the process of committing an offence. If a police officer cannot satisfy a court that he held such "reasonable suspicion", then the arrest or search would have been carried out unlawfully.
- [14] It is settled law that in determining whether a police officer had reasonable cause to arrest or search someone, the court must consider what was in the mind of the officer at the material time, whether he had the necessary suspicion, and also whether there was an objective cause or factual basis for the suspicion held. Even after being so satisfied, the court must also be satisfied that the police officer has exercised his discretion in accordance with the principles laid down in ***Associated Provincial Picture Houses Ltd v Wednesbury Corporation*** [1947] 2 All ER 680¹.
- [15] As regards the subjective test, while an officer may rely on information received from another officer, civilian or computer entry², in order to have the necessary reasonable suspicion, there must be some reasonable factual basis for the suspicion being formed in his own mind. In the House of Lords decision in ***O'Hara v. Chief Constable of the RUC*** [1997] 1 All ER 129, their Lordships were of the view that³ "*those [matters] present in the mind of the arresting officer*"⁴ at the time of the arrest, were the only relevant matters. So even if information is received from another, once the reasonable suspicion is formed

¹ See ***Castorina v Chief Constable of Surrey***, The Times June 15, 1988 per Woolf LJ.

² See ***Hough v Chief Constable of the Staffordshire Constabulary*** [2001] EWCA Civ 39.

³ Based on the wording of s.12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1984.

⁴ Per Lord Steyn at page 133.

in the arresting officer's mind and once this is based on reasonable grounds, an arrest will be lawful.

[16] In **Dallison v Caffrey** [1965] 1 QB 348, Diplock LJ explained the objective test:

"The test whether there was reasonable and probable cause for the arrest or prosecution is an objective one, namely, whether a reasonable man, assumed to know the law and possessed of the information which in fact was possessed by the defendant, would believe that there was reasonable and probable cause."

[17] In assessing whether an officer had reasonable cause to suspect that someone has committed an offence or has a prohibited article in his possession, the court must examine the circumstances known to the officer, for example, if he had received information, or if he had made his own personal observations. The decision of the Judicial Committee of the Privy Council in **Husein v Chong Fook Kam** [1970] AC 942 suggests that it might be necessary on the facts, for an officer to make further enquiries, and a failure to ask relevant questions before arrest might result in the officer being found not to have had reasonable grounds to suspect.

Assault

[18] Section 33 of the Constabulary Force Act states:

"Every action to be brought against any Constable for any act done by him in the execution of his office, shall be an action on the case as for a tort and in the declaration it shall be expressly alleged that such tort was done either maliciously or without reasonable and probable cause; and if at the trial of any such action the plaintiff shall fail to prove such allegation he shall be non-suited or a verdict shall be given for the defendant."

[19] Where there was no evidence to suggest that an officer reasonably suspected that an arrestable offence had been committed before he arrested or searched a suspect, the arrest or search becomes unlawful, and might amount to an assault and false imprisonment. It is important then for a court to decide on the lawfulness of the arrest.

[20] In **Collins v Wilcock** [1984] WLR 1172, Goff LJ said at page 1178:

"Of course, a police officer may subject another to restraint when he lawfully exercises his powers of arrest; and he has other statutory powers, for example, his power to stop, search and detain persons under section 66 of the Metropolitan Police Act..."

[21] However, the ratio of the decision in **Collins** is that, when an officer is not lawfully exercising his powers of arrest, his physical contact with a person should not exceed that which is generally acceptable between two citizens for the purpose of one of them engaging the attention of the other. In essence, where an officer has not formed the view that an arrestable offence has been committed, the officer may not lay hold of a citizen, otherwise that would constitute the infliction of unlawful force or a battery.

[22] In this case, the claimant alleges not only that Sergeant Anderson assaulted him when he touched him to carry out the search of his person, but also that he slapped him to his face. The latter, if proved, would clearly be unlawful.

ANALYSIS

Is the reason proffered for the search of the vehicle a recent concoction?

[23] Counsel Mr. Kinghorn submitted that if there was no unlawful basis for the search of the vehicle and its occupants, then the search of the claimant amounts to an assault. In considering this issue, Mr. Kinghorn has asked the court to note the difference between Sergeant Anderson's witness statement filed in this matter on August 20, 2019, and that supplied to the Director of State Proceedings in 2012 (**Exhibit 4**). The difference is that the earlier statement did not state that his team had received information that station wagon motor cars were being used to transport wanted persons, dangerous drugs, illegal firearms, and ammunition in the Bog Walk Gorge area. Counsel submitted that the previous inconsistent statement makes no reference to any lawful justification for the interception and search of the vehicle the claimant was travelling in. In essence, Sergeant Anderson's witness statement filed on August 20, 2019, therefore sought to provide a lawful basis for stopping the station wagon, by stating that it fit the description of vehicles identified in the intelligence received.

[24] The absence in **Exhibit 4** of a reference to the intelligence received would ostensibly suggest that the reference to same at paragraph 4 of the later

witness statement was a recent concoction. However, I have to look at the totality of that witness statement and the officer's explanation for the omission.

[25] Sergeant Anderson's explanation for the failure to refer to the intelligence received was that "[t]his statement spoke to specifics in what occurred during that incident on the day in question". He seems to be saying that his focus in the first witness statement was not on the reason for the interception of the vehicle, but rather, on what happened during the search of the claimant. I have noted that at paragraphs 2 and 3 of **Exhibit 4**, the following is stated:

"On Saturday 26, March 2011 about 2:00pm, I was on Special Operational duties in the Bog Walk Gorge area with emphasis placed on the Bog Walk Gorge, properly dressed in denim along with Sergeant R. Palmer and Corporal K. Lewis. About 2:30pm I was conducting vehicular check point duties re Dangerous Drugs, Firearms Act and Road Traffic Act, along the main road in the Bog Walk Gorge, when a motor car was signalled to stop..."

[26] In my opinion, when read together, the reference to "*Special Operational duties*" and to "*vehicular check point duties re Dangerous Drugs, Firearms Act*" would suggest that the police had received some intelligence and there was a small scale operation set up in response to same. It would have perhaps been prudent for Sergeant Anderson to specifically refer in his earlier statement to the fact that intelligence had been received, but I do not find that the omission is an adequate basis to find that he has been discredited. In my assessment, his explanation is a reasonable one, and the omission does not affect his credibility on this issue.

[27] I have noted that Sergeant Anderson was forthright to the extent that he voluntarily disclosed early on in the cross-examination, that random vehicles were stopped and searched, even though this is not good practice.

Has Sergeant Anderson been otherwise discredited?

[28] Mr. Kinghorn submitted that there are inconsistent accounts relating to how the claimant was held and searched. Counsel indicated that Sergeant Anderson stated that when that the claimant was resisting the search, he used his left hand to hold both the claimant's hands on top of his head and used his right hand to carry out the search. This account differs from paragraph 10 of

his witness statement where he stated that he used his left hand to hold the claimant's left shoulder and to pull him backwards slightly.

- [29]** I do not find that these inconsistencies are so critical or material as to raise a real doubt as to Sergeant Anderson's credibility. I have to bear in mind that the events occurred ten (10) years ago and that memories fade with the passage of time. The officer may now be mistaken as to the sequence of the events, but he has been consistent in his assertion that he had to lay hold of the claimant when performing the search.
- [30]** Mr. Kinghorn asks the court to note that Sergeant Anderson did not ask the occupants of the vehicle for identification, even though he alleged that he was searching for wanted persons. However, my assessment of Sergeant Anderson's evidence is that he was suspicious that the claimant had a prohibited item in his possession, and not that he was a wanted person.
- [31]** Further, counsel for the claimant asks the court to consider the fact that Woman Corporal Brooks' statement indicates that she saw the claimant with a Riu Badge with his name printed on it pinned to the front of his shirt, which Sergeant Anderson said he did not recall seeing. This, counsel submits, rules out the claimant as a "wanted man" and suggests that the presence of the badge shows that Sergeant Anderson did not have reasonable cause to search the claimant's person that day. I am not persuaded by this submission.
- [32]** My reasons are two-fold. First, the fact that Woman Corporal Brooks saw the badge affixed to the claimant's shirt at the police station does not mean that he had been wearing it at the time the vehicle was stopped. Indeed, it would seem unnecessary to wear it *en route* to work as the purpose of the badge was to not assist persons on the road to know who the claimant was, but rather to assist guests and other staff at the hotel. The badge may well have been in his bag and affixed to his chef's uniform at the time of the search, and he might have removed it and re-pinned it to the shirt he was wearing, on arrival at the police station. Secondly, even if the badge was affixed to the claimant's shirt

at the outset, if the claimant was recalcitrant as alleged, the police would still have cause for suspicion and would have been justified in searching him.

[33] I do not find that Sergeant Anderson has been discredited in relation to any material issue.

Were there reasonable grounds for suspicion and to search the claimant?

[34] Sergeant Anderson's account is that the claimant refused to exit the vehicle despite numerous requests, and that this aroused his suspicion. Further, when the claimant was assisted out of the vehicle, he is said to have "clutched" his bag. I am satisfied that, in such circumstances, Sergeant Anderson had the necessary suspicion that the claimant was probably concealing a weapon on his person or in his bag, and a reasonable man, in the position of the officer at the time of the search, would have thought the same. Further, I am satisfied that he exercised his discretion to search the claimant in accordance with the principles laid down in *Wednesbury*.

Did the search of the claimant constitute an assault?

[35] As indicated earlier, I do not find that the reason proffered for the vehicular search was a recent concoction, or that there was no unlawful basis for the search of the vehicle and its occupants. Even if there was cause to doubt Sergeant Anderson's credibility as regards the intelligence allegedly received, I must consider his evidence regarding the circumstances that followed the interception of the vehicle. In my opinion, as long as I can be satisfied that there were other suspicious circumstances at the time of the search, which weighed on Sergeant Anderson's mind so as to reasonably cause him to suspect that the claimant had something illegal in his bag or on his person, I may find that the search arrest was lawful.

[36] At paragraph 6 of his witness statement, Sergeant Anderson stated "*I informed him of my observations and told him that his behaviour was causing suspicion based on the information I had received*". I have considered what was in the officer's own mind, having regard to the circumstances at the time. I find that

the claimant's conduct in refusing to exit the vehicle and in clutching his bag would cause a reasonable man in Sergeant Anderson's position to reasonably suspect that an illegal article was in his bag or on his person. I therefore find that the search of the claimant was lawful and does not amount to an assault.

[37] The discovery of a knife in the claimant's bag would have given the police cause to carry out further enquiries to verify that the claimant was a chef and that knife was a tool of his trade. Briefly detaining the claimant while checks were being made seem reasonable in the circumstances.

Is the claimant's account that he was assaulted credible?

[38] I have assessed the claimant's account and I examined his demeanour while testifying. Applying a common sense approach, I have to consider whether the evidence given is improbable or whether it is reasonable.

[39] The claimant portrayed himself as an intelligent witness. However, his evidence regarding the assault when he was in the police service vehicle is unconvincing. When this evidence is considered with care, and when I have regard to the medical evidence, it is apparent that his account is not supported by the medical evidence. I find that his account in relation to the alleged assault to be incredible.

[40] Firstly, his account is somewhat vague. I have given consideration to the account given by the claimant in his witness statement that he was in a daze after being struck by Sergeant Anderson. He said this:

*"I was so shocked that I fell into a daze. When I came to I realized that he slapped me **three times**. I could feel swelling and scratches to my neck and face. My ears were ringing and I remember I felt a sudden pain in my face."* (My emphasis)

[41] The court asked the claimant some questions regarding the assault:

Q: How many times he hit you?

A: At the time I thought it was one. But when I realise I start to feel multiple bruises on my face, I start to analyse that it may have been more than three times.

Q: Are you saying you are not quite sure how many times?

A: I know it was more than 3 definitely for a fact.

[42] I am mindful of the fact that shock will affect everyone differently. However, I

would expect a person to clearly recall approximately how many times he/she was hit in the face and how their face and neck came to be scratched. Unless he was concussed, which he did not say he was, there should be some fairly vivid recollection of the events. However, the claimant portrayed himself as being unsure of how many times he was hit in his face by the police officer.

[43] After hearing his account in court, it remained unclear what part of his face had been hit. The court sought to clarify where he received the swelling (which he called a “bruise”) and he said “*the bruise was on the right side and the scratch was on the left. A bruise is like a swelling*”. The court again sought to clarify where that swelling was. He replied “*on my jaw. Swelling on one jaw and scratches on the next jaw*”. When these two statements are read together, the claimant would seem to be saying that the swelling was on the right side of his face and the scratches were on the left. The only inference that can be drawn from these statements regarding the location of the swelling, is that the claimant had allegedly been hit on the right side of his face, which he said had the swelling or “multiple bruises”.

[44] However, this account that there was swelling to the right side of his face is inconsistent with paragraph 18 of his witness statement wherein the claimant stated that he continuously felt pain in the left side of his face months after the incident. At paragraph 18, the claimant said:

“A few months after the incident I was still feeling pain in the left side of my face and so I went and sought medical attention from Essential Medical Services. I was examined and given pain killers. I was also advised to visit a dentist because one of my filling was dislodged. I eventually had the tooth removed.”

[45] Likewise, the medical report from Essential Medical Services states that the claimant complained of left jaw pain. However, this is the side to which he would have received only “scratches”. Based on this apparent inconsistency, I do not accept the claimant’s account that Sergeant Anderson slapped him several times or at all.

[46] Additionally, in his initial account in his witness statement, no explanation was offered for the alleged scratches to his neck and face. It was only when the

court made enquiries that the claimant indicated that Sergeant Anderson “stood up on the vehicle, reached inside and grabbed me by the neck area and proceeded to hit me in the face with his hand”. When the court asked where he received scratches, he said he had scratches to the left side of his face and to the right and left side of his neck. However, still no explanation was offered for the alleged scratches to his face, as distinct from his neck which he said was grabbed.

[47] Further, I would expect a person who was assaulted to seek treatment and to obtain a medical record to support the allegation of assault. After leaving the police station, the claimant went to his place of work to be examined and treated by medical staff. He said that he filed a report at the Nurses’ desk and received treatment. A record would have been made of the treatment he received at the nurse’s desk or station. There ought to be some record of his visit, and what he indicated was the cause of his injuries. Neither his report nor the nurse’s record was supplied to the court for consideration. It is clear that the claimant sought legal advice early and instituted proceedings within one year of the alleged assault. In seeking to get redress for what he perceived to be a breach of his rights and misconduct by the police, I would expect the claimant to ensure that he obtained contemporaneous medical evidence to support his claim. It is unclear why the claimant did not obtain a copy of whatever record was made of the treatment he received at Hotel Riu on March 26, 2011. If his allegation of assault were true, the injuries received were likely to have been still visible by the time he arrived at work that day, after leaving the police station. To that extent, the record created by the nurse on March 26, 2011 would have been assisted the claimant in buttressing his claim.

[48] The medical report of Dr. Janice Simmonds-Fisher of Essential Medical Services, indicated that the claimant was first seen on October 24, 2011, some seven months after the incident. Dr. Simmonds-Fisher observed a tooth with a dislodged tooth filling and she indicated that the claimant reported feeling pain. She did not see any bruising or swelling on his face and neck. Having regard to the fact that seven months had passed, the court cannot be satisfied

that the absence of a tooth filling is connected to the alleged incident. There could be any number of reasons for the filling becoming dislodged.

[49] I do not accept that the claimant sustained any injury to his face as a result of an assault by Sergeant Anderson. I do not accept that he assaulted him.

[50] I also do not accept the claimant's account that he was placed in the police vehicle before the knife was found in his bag. He said:

The service vehicle was a pick up. I was placed in the back seat. While sitting inside the vehicle, officer Anderson came and took the bag from me to search. After he found the knife, I hold out my ID card again like this [shows], and said I told you I am a chef".

[51] It would be illogical and unwise of the police to place a detained civilian in their vehicle for transportation to a police station without first ensuring that the person was not carrying a weapon. I prefer the account of Sergeant Anderson that it was after the knife was found that the claimant was told that it was an offence to carry an offensive weapon and that he would be detained while efforts were made to verify the information supplied that he was a chef and that the knife was a tool of his trade.

[52] In addition, it is hard to fathom why Sergeant Anderson would feel the need to hit the claimant at the point where he had been placed in the police vehicle which was about to travel to the police station for the purpose of verifying the identity and occupation of the claimant. The decision to conduct further enquiries had already been taken, so it would make no sense to hit the claimant when he was not resisting arrest or involved in a confrontation with the officer.

[53] Finally, I have also given consideration to **Exhibit 5**, which is a statement prepared by Woman Corporal Wendy Brooks in February 2013. Therein, Woman Corporal Brooks indicated that she saw and spoke with the claimant and was supplied with a contact name and number for his supervisor at Riu. She made contact with the said supervisor and confirmed that the claimant was a chef. She further stated that the claimant had a Riu badge with his name

printed on it, pinned to the front of his shirt. Further, she said that at no point during their discussions, did the claimant inform her that he had been assaulted by Sergeant Anderson, and he left the police station in good physical health.

[54] I accept the account given in Woman Corporal Brooks' witness statement that she observed a Riu badge with the claimant's name printed on it, pinned to the front of his shirt. I also accept her account that the claimant made no report of abuse by Sergeant Anderson or any injuries sustained.

CONCLUSION

[55] Having given careful consideration to the claimant's evidence, and having particular regard to the evidence in relation to the assault which allegedly took place in the police vehicle, I can only conclude that the claimant is not a forthright or credible witness. I accept Sergeant Anderson's account that he had reasonable grounds to search the claimant. In such circumstances, I find that the search of the claimant's person and bag was not unlawful. Ultimately the burden of proof rests with the claimant and I do not accept that he was slapped or otherwise assaulted by the police officer.

DECISION AND ORDERS

[56] My orders are as follows:

1. Judgment for the 2nd defendant.
2. Costs to be agreed or taxed.
3. Attorney-at-law for the 2nd defendant to prepare, file and serve this order.