



# TIBA TEXAS INDEPENDENT BAR ASSOCIATION

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## TIBA's Case of the Week

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Case Name: [The State of Texas v. John Berry Jackson](#)

- OFFENSE: Possession of Controlled Substance (4-200 gr Meth)
- COUNTY: Mitchell
- C/A CASE No. 11-12-0315-CR
- DATE OF OPINION: May 30, 2014
- DISPOSITION: Trial Court Affirmed OPINION: [Wright, CJ.](#)
- TRIAL COURT: 32nd D/C; Hon. Glen Harrison
- LAWYERS: [Jeffrey Propst](#) & [Adrian Chavez](#) (Defense); [Anna Reed](#) (State)

(Background Facts) Appellant was the subject of a narcotics investigation in Mitchell County, and officers believed that Appellant, who resided in Colorado City, was a methamphetamine dealer. On November 22, 2011, the officers worked with a confidential informant and set up a controlled buy of methamphetamine from Appellant, who was in his Dodge Charger at the time of the sale. On November 29, 2011, the confidential informant made a second purchase of methamphetamine from Appellant. The officers received information that Appellant traveled to the Dallas-Fort Worth Metroplex to obtain methamphetamine once every week or two weeks. On December 2, 2011, the district judge issued an order in which he authorized law enforcement officers to install a mobile tracking device on Appellant's car for the purpose of following and tracking the car. On December 6, 2011, officers installed a GPS electronic tracking device on the car. The GPS device allowed the officers to monitor the location and speed of Appellant's vehicle at all times. The officers set up the GPS device to provide notification to Investigator Sides on his cell phone whenever Appellant left Colorado City. The officers did not obtain a search warrant. Appellant drove to Mesquite, Texas, and was stopped in Taylor County.

⚖ **31.02 Search & Seizure / Warrantless Searches:** Sides and another officer drove to Taylor County in separate unmarked vehicles, and they began to follow Appellant when they saw his car. At that time, Sides saw that Appellant was driving the car. The GPS device indicated that Appellant was driving at a speed in excess of the speed limit the entire trip. Sides testified that the officers also determined, by the use of the speedometers in their unmarked vehicles, that Appellant was speeding. Sides said that Appellant drove at a speed between 73 and 74 miles per hour in areas where the speed limit was 70 miles per hour. The officers informed Mitchell County Deputy Gary Clark that Appellant was headed to Mitchell County and that Appellant was

speeding. Clark had been involved in the ongoing narcotics investigation of Appellant. He positioned his patrol car in Mitchell County and waited for Appellant to arrive. When Appellant arrived, Clark used his radar on Appellant's car. The radar showed that Appellant was driving between 73 and 74 miles per hour. Clark stopped Appellant for speeding. Within a few minutes of the stop, Clark asked Appellant for consent to search Appellant's car. Sides testified that Clark asked for consent to search because the officers reasonably believed that Appellant had narcotics in the car. Sides said that Appellant gave Clark his consent to search. The officers searched Appellant's car and quickly found methamphetamine in the trunk. Clark arrested Appellant for possession of a controlled substance. The trial court granted Appellant's motion to suppress. The State contends in that the officers stopped Appellant based on a reasonable suspicion that he committed a traffic violation and that he possessed illegal contraband, that he subsequently consented to the search, and that, therefore, neither probable cause nor a search warrant was required to search his car.

**Holding:** After the officers used the GPS device on [Appellant]'s car in this case, the Supreme Court decided [U.S. v. Jones](#), 10-1259 (January 23, 2012)(see [§§](#), [Vol. 20, No. 1](#); 01/30/2012). In [Jones](#), the Supreme Court held that the warrantless installation and use of a GPS device on a suspect's vehicle to monitor the vehicle's movements constitutes a search within the meaning of the Fourth Amendment. As the trial court concluded in this case, the officers' installation and use of the GPS device on [Appellant]'s vehicle constituted a search under [Jones](#). \*\*\* The State contends that the holding in [Jones](#) is irrelevant to this case. To support this contention, the State asserts that the stop of [Appellant]'s car was legal for two reasons: (1) that Deputy Clark had reasonable suspicion that [Appellant] committed a speeding offense because Deputy Clark saw [Appellant] commit the offense and (2) that the officers had reasonable suspicion that [Appellant] possessed methamphetamine in his car. \*\*\* The data obtained from the use of the GPS device enabled the officers to be in a position to stop [Appellant] for speeding in Mitchell County. Without that data, the stop likely would not have occurred. \*\*\* Based on the evidence, we conclude that the stop, [Appellant]'s consent to search the car, the discovery of the methamphetamine, and [Appellant]'s statements to the officers cannot be separated from the information obtained from the use of the GPS device, which constituted a search under [Jones](#). Therefore, we conclude that the stop violated the Fourth Amendment.

**§§ 31.13 Search & Seizure / Attenuation Doctrine:** The State contends that, if the use of the GPS device on Appellant's car was an unlawful search under [Jones](#), Appellant's commission of the speeding offense and his consent to search were intervening circumstances that attenuated the taint of the search.

**Holding:** Evidence will not be excluded under Article 38.23 if the taint from the illegality has dissipated by the time the evidence is acquired. [Wehrenberg v. State](#), 416 S.W.3d 458 (Tex.Cr.App. 2013)(see [§§](#), [Vol. 21, No. 50](#); 12/16/2013). \*\*\* Based on our consideration of the three attenuation factors, we conclude that the discovery of the methamphetamine and [Appellant]'s statements to the officers were not sufficiently attenuated from the illegal GPS search to purge the taint of the illegality. As stated above, when no intervening circumstance exists, temporal proximity is the paramount factor in the attenuation analysis. \*\*\* Because the methamphetamine was discovered a short time after the officers stopped [Appellant]'s car and because there was no intervening circumstance that provided justification for the search of [Appellant]'s car, we conclude that the taint of illegality had not been purged.