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⚖ Vol. 30, No. 13, April 11, 2022

Case Name: [Larry Thomas Chambers Jr. v. The State of Texas](#)

- **OFFENSE:** Possession of Controlled Substance
- **COUNTY:** Williamson
- **COURT OF APPEALS:** Texarkana 2019
- **C/A CITATION:** Unpublished
- **C/A RESULT:** Conviction Affirmed
- **CCA. CASE No.** PD-0424-19 **DATE OF OPINION:** April 6, 2022
- **DISPOSITION:** Court of Appeals Reversed
- **OPINION:** [Judge Bert Richardson](#) **VOTE:** 9-0
- **TRIAL COURT:** 277th D/C; Hon. Stacey Matthews
- **LAWYERS:** [Keith Hampton](#) (Defense); [Rene Gonzalez](#) (State)

(Background Facts): At about 10:45 p.m. on April 1, 2017, a Round Rock Police sergeant initiated a traffic stop claiming that Appellant's pickup truck had no rear license plate, which is required by law. During the traffic stop, the officers found two pistols and substances that appeared to be narcotics. Appellant was arrested and later indicted for possession of four grams or more, but less than 200 grams, of penalty group 1 controlled substance.

⚖ **324 Court's Charge / Defensive Instructions (Article 38.23):** At trial, the State introduced into evidence at trial the officer's dashcam video and still photos of the back of the vehicle. These show definitively that a paper license plate was indeed attached to the back of Appellant's truck. Appellant filed a motion to suppress, asserting that the State failed to prove the vehicle had no license plate, but the trial court denied that motion. At trial, however, Appellant also requested an Article 38.23 instruction to tell the jury to disregard any evidence it found to be obtained in violation of the Constitution or laws of the United States or Texas. The trial court refused to give the instruction, and the jury found Appellant guilty of the offense charged. On appeal, in an unpublished opinion, the Texarkana Court of Appeals held that the trial court did not err in refusing to give a 38.23 instruction.

Holding: This Court has held, and the court of appeals here reiterated, that if a defendant raises a fact issue regarding whether a traffic stop violated the Constitution or the laws of the United

States or Texas, the trial court should instruct the jury to disregard any evidence it finds was unconstitutionally or illegally obtained. [Hamal v. State](#), 390 S.W.3d 302 (Tex.Cr.App. 2012)(see [§§](#), [Vol. 20, No. 37](#); 09/17/2012). *** This Court has also clarified that there must be a genuine dispute about a material fact, and the disputed fact must be essential to deciding the lawfulness of the challenged conduct. See [Madden v. State](#), 242 S.W.3d 504 (Tex.Cr.App. 2007)(see [§§](#), [Vol. 15, No. 50](#); 12/24/2007). Moreover, an Article 38.23 instruction is mandatory only if there is a factual dispute regarding how the evidence was obtained. See [Garza v. State](#), 126 S.W.3d 79 (Tex.Cr.App. 2004)(see [§§](#), [Vol. 12, No. 4](#); 02/02/2004). So it is here. *** The Court of Appeals set out the correct standard here but failed to follow it. The court spent much time emphasizing the timing of the photos, but no matter the time they were taken, they still raise a fact issue about what the officer could see, which raises a question about whether he was mistaken or being untruthful. *** Because this was not a legal judgment based on uncontested facts, the trial judge erred by not including an Article 38.23 instruction in the jury charge. Appellant was entitled to have the jury decide whether evidence was obtained by the officer in violation of any provisions of the Constitution or laws of the State of Texas (Art. 38.23), and if so, to have the jury instructed to disregard such evidence.