

COUNTIES & THE LAW

This edition of *Counties & the Law* includes decisions of interest to county attorneys published in the Daily Report Opinions Weekly between April 30, 2016, and May 6, 2016.

We welcome your suggestions and opinions regarding Counties & the Law. Please contact Kelly Pridgen at kpridgen@accg.org or Joe Scheuer at jscheuer@accg.org with your comments.

CRIMINAL MATTERS

Bynes v. State

Georgia Court of Appeals
May 5, 2016; A15A1974

A defendant was convicted of harming a police dog in the course of a robbery at gunpoint. The trial court erred in imposing too great a sentence. O.C.G.A. 16-11-107 (c) provides that knowing and intentional harm to a police dog is a misdemeanor. O.C.G.A. 16-11-107(d) provides that knowingly causing debilitating injury to a police dog is a felony. In this case, the defendant was only charged under subsection (c) so a felony sentence on that charge was greater than allowed by law.

IMMUNITY

Kliesrath v. Estate of Davis

Georgia Court of Appeals
May 2, 2016; A15A1746

A suspect died after being tased several times. The suspect's estate sued the police officers. The officers moved for summary judgement based upon official and qualified immunity. The trial court denied the motion and the officers filed a direct appeal to the Court of Appeals which affirmed without opinion. The Supreme Court reversed following the *Turner* case. An order denying a motion based upon an immunity defense is interlocutory. It is not directly appealable under the collateral order doctrine and must proceed through the interlocutory appeal procedures of O.C.G.A. 5-6-34 (b).

Hart v. Sirmans

Georgia Court of Appeals
May 3, 2016; A15A2327

Two police officers were sued by a suspect following arrest for transporting narcotics. The allegations were malicious prosecution, false arrest, unreasonable force, and 'giving false information'. The officers moved for summary judgement based upon official immunity. The trial court denied the motion. On appeal, the Court of Appeals reversed. It is undisputed the officers were acting in their discretionary function as law enforcement officers and were entitled to immunity absent a showing of actual malice or intent to injure. There was no such evidence here. The Court also noted that there is no tort of 'giving false information' in this state.

Calloway v. City of Warner Robins

Georgia Court of Appeals
May 4, 2016; A15A2081

The city and the city clerk were sued by parents following the death of their child who had been left inside a car by a daycare facility. The allegation was wrongful death from the negligent issuance of a business license/occupation tax permit. The city and clerk moved for summary judgement based upon sovereign immunity. The trial court granted the motion. On appeal, the Court of Appeals affirmed. The issuance of the permit is a governmental function, and, even if performed negligently, the city and clerk would still be immune from suit under O.C.G.A 36-33-1. Under the statute, the only liability is for negligent performance of ministerial duties.

WHISTLEBLOWER

McKinney v. Fuciarelli

Supreme Court of Georgia
May 2, 2016; S15G1885

The GA Taxpayer Protection Against False Claims Act, O.C.G.A. 23-3-120, et seq., requires prior approval by the Attorney General to bring suit regardless of whether the action is against a defendant in official or personal capacity.