

COUNTIES & THE LAW

This edition of *Counties & the Law* includes decisions of interest to county attorneys published in the Daily Report Opinions Weekly between June 18, 2016, and June 24, 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

State v. Reid

Georgia Court of Appeals
April 22, 2016; A16A1237

The Court of Appeals held that implied consent was actual consent where a police video clearly showed that a defendant agreed verbally to a blood test and executed a written consent that specifically showed it was for the purpose of determining the presence of alcohol. The video showed no coercive circumstances that would undercut the voluntary nature of the consent.

Zilke v. State

Supreme Court of Georgia
April 20, 2016; S15AG1820

The Supreme Court held that a campus police officer had no authority under O.C.G.A. 20-3-72 to effect a custodial arrest beyond the 500 yard boundary of college property. While the officer could have made the arrest as a private person, the most he could have done would have been to deliver the defendant to another peace officer. No field sobriety test or breathalyzer test could have been administered.

Woodhouse v. State

Georgia Court of Appeals
April 20, 2016; A16A0358

The Court of Appeals held that the clear and unambiguous terms of O.C.G.A. 35-3-37, relating to sealing criminal records, applied to arrests and records which pre-dated the amendments to the statute.

IMMUNITY

Pearce v. Tucker

Supreme Court of Georgia
June 20, 2016; S15G1310

A police officer was sued by the spouse of a suicide victim who ended his life by hanging himself with his socks in a holding cell. The Court of Appeals held that suicide is an unforeseen intervening event that absolves a tortfeasor of liability. The Supreme Court upheld the decision under the right-for-any-reason doctrine. The Court held that the officer was entitled to qualified immunity and thus the negligence issue was not even addressed. There was no evidence of malice willfulness or intent to injure and the officer's actions were discretionary.

INVERSE CONDEMNATION

Prigbeagu v. Gwinnett County

Georgia Court of Appeals
April 13, 2016; A15A2026

Property owners sued the county for inverse condemnation for improper road and drainage maintenance which caused repeated flooding of their home. The Court of Appeals reversed the trial court since sovereign immunity does not prevent an inverse condemnation claim because it is based on a separate provision of the constitution. Counties are not generally liable for creating a nuisance unless it amounts to a taking. The trial court erred in relying on the *Orwig* case as authority for disallowing damages for personal property and attorneys' fees. That case did not address those issues. It also erred in excluding expert testimony on the cost of repairs since it for the purpose of showing the value before and after the taking.