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## McBrayer v. Scarbrough

**Supreme Court of Georgia - October 11, 2023 - S.E.2d - 2023 WL 6611019**

Arrestee's wife brought wrongful death action against county sheriff, alleging negligence by sheriff's deputies arising from arrestee's death while he was restrained in back seat of a patrol car.

The Superior Court granted sheriff's motion for judgment on the pleadings. Wife appealed. The Court of Appeals affirmed. Wife petitioned for writ of certiorari to the Court of Appeals, and the Supreme Court granted her petition.

The Supreme Court held that:

- Word "use" in statute waiving sovereign immunity for injuries arising from negligent use of a covered motor vehicle does not exclude any use beyond active transportation, but instead, may include other acts depending on the circumstances of the case, overruling *City of Roswell v. Hernandez-Flores*, 365 Ga. App. 849, 880 S.E.2d 340; *Wingler v. White*, 344 Ga. App. 94, 808 S.E.2d 901; *Columbus Consolidated Govt. v. Woody*, 342 Ga. App. 233, 802 S.E.2d 717; *Bd. of Commrs. of Putnam County v. Barefoot*, 313 Ga. App. 406, 721 S.E.2d 612; *Gish v. Thomas*, 302 Ga. App. 854, 691 S.E.2d 900; and *Williams v. Whitfield County*, 289 Ga. App. 301, 656 S.E.2d 584, and
- Arrestee's death arose from deputies' alleged negligent "use" of a covered motor vehicle, as required for waiver of sovereign immunity.

Arrestee's death when county sheriff's deputies detained him and left him prone across back seat of the patrol car, restrained by cobble strap affixed to patrol car door, arose from deputies' alleged negligent "use" of a covered motor vehicle, as required for waiver of sovereign immunity in wrongful death action brought against sheriff by arrestee's wife, since patrol cars were designed to detain people, and loading arrestee into the back of the patrol car was inherently part of the detention process because he could not have been detained inside the patrol car without having been loaded inside it by deputies.

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