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CA Supreme Court Finds No Immunity for Police Investigations; Immunity for Prosecutions Remains

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Question:

Does the Government Claims Act (Gov't Code § 821.6) provide law enforcement immunity for investigations?

Answer:

No. Officers are not immune for harm claimed during the conduct of an investigation.

In *Leon v. County of Riverside*, a man was shot and killed in the driveway of a mobile home lot near his home. When the deputies arrived on scene to investigate, they heard additional gunshots. The deputies dragged the dead body behind a vehicle and attempted to revive him but were unsuccessful.

The movement in dragging the man behind the vehicle caused his pants to slide down to his ankles exposing his naked body. The man's body was left behind the vehicle for

approximately eight hours while the deputies searched for the shooter and investigated the shooting. Ultimately, the deputies concluded that the shooter had killed himself. As a result, no charges were filed against anyone in this incident.

The man's wife sued for negligent infliction of emotional distress for the deputies' care in handling her husband's body arguing the deputies failed to exercise reasonable care when they left his naked body exposed and uncovered for eight hours, in an area where the general public could see.

The lower courts dismissed the case, finding the deputies and the County were immune from suit based on Government Code § 821.6 which provides immunity for law enforcement for injuries and claims caused by wrongful prosecution. The case was then appealed to the California Supreme Court.

The California Supreme Court was asked to decide whether Government Code § 821.6 provides law enforcement immunity from injuries and claims that stem from police investigations, not just prosecutions. On June 22, 2023, the Court ruled that the law does **not** provide immunity from conduct based on investigations. Rather, § 821.6 provides for immunity for injuries caused by the institution (meaning bringing charges) or prosecution of a case, not based on an investigation. In other words, Government Code § 821.6, does **not**



provide any immunity from lawsuits where an investigation is conducted, but no charges are ever filed. An investigation refers to the process of gathering information, evidence and facts related to potential or alleged criminal activity.

THE BOTTOM-LINE TAKEAWAY:

Lawsuits against officers for their conduct during an investigation, can proceed (i.e., no immunity). But immunity from lawsuits still exists if officers cause harm during the process of bringing charges or prosecuting a case.

In other words, if an officer conducts an investigation but never files any charges, the officer can be sued. However, if the officer investigates a crime and charges are filed or the investigation leads to the prosecution of a crime, the officer may be granted immunity.

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