

# WEST VIRGINIA

## THE APPLICATION OF QUALIFIED IMMUNITY IN CASES INVOLVING ALLEGATIONS OF EXCESSIVE FORCE BY LAW ENFORCEMENT IN EFFECTUATING ARREST



**O**n March 26, 2021, the West Virginia Supreme Court of Appeals entered an Order in *W. Va. State Police v. J.H.* reversing the Circuit Court of Berkley County's Order denying Petitioner's motion to dismiss and remanded the case back to the Circuit Court for entry of an order dismissing the vicarious liability and negligent training and supervision claims against Petitioner, the West Virginia State Police. This Order by the Supreme Court of Appeals has strengthened qualified immunity in cases where law enforcement has been alleged to have employed excessive force when effectuating an arrest.

In the case, *J.H.*, a minor, alleges that he was brutally and severely beaten and hit by West Virginia State Police Troopers and Berkeley County Sheriff Deputies when these troopers and deputies were arresting him. In response, *J.H.* filed two claims specifically against the West Virginia State Police: a claim for vicarious liability and a claim for negligent training and supervision. The West Virginia State Police filed their motion to dismiss arguing various reasons as to why each claim should be dismissed. Importantly, with respect to the vicarious liability claim, the West Virginia State Police argued that their troopers were entitled to qualified immunity and, therefore, the West Virginia State Police could not be held vicariously liable for their troopers' conduct.

The Supreme Court of Appeals found that *J.H.* failed to plead any factual allegations that supported his claim that excessive force was used against him in his arrest. Specifically, the minor did not plead any facts regarding what led to his arrest, what occurred during the arrest (i.e. whether he was combative or cooperated with the law enforcement officials), whether weapons were involved, or whether other individuals were present at the scene. The Supreme Court of Appeals recognized that an officer effectuating an arrest may, depending on the circumstances, use some level of force in doing so. Thus, to determine whether qualified immunity shields

law enforcement officers, or their employers via a vicarious liability claim, the circumstances of the arrest must be known.

This holding is particularly helpful for law enforcement defendants in cases where a plaintiff is alleging that officers used excessive force against the plaintiff when the officers are arresting the plaintiff. For a claim to survive the affirmative defense of qualified immunity, the plaintiff must allege more detailed facts about the arrest than just that the force used was excessive, brutal, severe, etc. Thus, a plaintiff must now clearly demonstrate in the complaint that the actions taken by the law enforcement officers were objectively unreasonable to survive a motion to dismiss in excessive force claims like this.



**SAMUEL BLOOM**

304.345.4222  
[sbloom@baileywyant.com](mailto:sbloom@baileywyant.com)