## *West Virginia Regional Jail and Correctional Facility Authority v. Shane R. Marcu*
## No. 15-1174 - West Virginia Supreme Court of Appeals

In its recent April 26, 2017 decision, *West Virginia Regional Jail and Correctional Facility Authorit v. Shane R. Marcum*, the West Virginia Supreme Court of Appeals decided as a matter of first impression that a video depicting the forcible cell extraction of an inmate at the Western Regional Jail cannot be made public pursuant to a request under the Freedom of Information Act ("FOIA"), reversing the circuit court's ruling.

In the proceedings below, the Circuit Court of Kanawha County issued an order requiring the Regional Jail to turn over a videotape of Mr. Marcum being physically removed from his cell in what is called a "cell extraction " To carry out the cell extraction, officers at the Regional Jail tossed two flash bang grenades into his cell, and then removed Mr. Marcum from his cell. The cell extraction and events immediately following the extraction were recorded on videotape by the Regional Jail.

On appeal, the WVSCA reversed the lower court and held that the videotape footage was exempt from FOIA disclosure. In a new syllabus point, the WVSCA held that "[p]ursuant to W. Va. Code § 29B-1-4(a)(19) disclosure of a videotape of the cell extraction of an inmate is prohibited, because it displays part of the design of a correctional facility and the operational procedures of personnel relating to the management of inmates, such that, if disclosed could be used by an inmate to escape from a facility or to cause injury to another inmate, resident or to facility personnel." In a footnote, the Court noted that "even though the videotape is exempt from disclosure under FOIA, this does not preclude its disclosure under the discovery rules in a civil lawsuit," subject to an appropriate protective orde

In a concurring opinion, Justice Workman agreed with the result the majority reached, but wrote separately to "vehemently disagree with the all-encompassing syllabus point four" which holds that "disclosure of a videotape of the cell extraction of an inmate is prohibited." According to Justice Working, the majority "should not have adopted a blanket rule with respect to the applicability of this exemption to all such videotapes" and instead should have permitted these specific determinations on a case -by-case basis because not every cell extraction video may contain confidential information about the jail facility.

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