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# Weighing Qualified Immunity Against Several Versions of the Same UOF Incident

By **Daigle Law Group**

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In the Seventh Circuit case of *Bayon v. Berkebile*, qualified immunity was denied for officers who mistakenly believed that the plaintiff had a gun. The incident became complicated due to the numerous conflicting versions from both the plaintiff and the officers about the use of force.

As a reminder, qualified immunity balances the need to hold public officials accountable for irresponsible use of power and the need to protect officials from harassment, distraction, and liability when they act reasonably.

When deciding on qualified immunity, the court considers the alleged constitutional violation in the light most favorable to the plaintiff and whether the constitutional right was clearly established at the time of the alleged violation.

In this case, both the district court and the circuit court denied qualified immunity to the officers.

## Facts

On December 24, 2017, Alhadji Bayon attempted to rob a gas station in Indianapolis and fled the scene in a white SUV. Several police officers chased him, and a high-speed pursuit through residential areas ensued. To end the dangerous situation, one of the officers caused Bayon's SUV to spin and crash into a tree in a front yard.

Using a loudspeaker, an officer ordered Bayon to exit the SUV multiple times. However, it took Bayon several minutes to do so, and the officers could not see inside the SUV due to the damaged door and deployed airbags. When Bayon finally exited the SUV, the officers shot him. Bayon survived and sued the officers, alleging that the shooting was unreasonable and violated the Fourth Amendment.

Bayon testified that he was dazed from hitting his head in the collision and that the damage from the crash made it difficult for him to open the SUV door. He claimed that once he exited the SUV, he saw 10-15 officers and heard conflicting commands to put his hands up and to show identification. Bayon said that after he reached for his wallet in his back pocket, the officers shot him three times and he fell face-first to the ground. According to Bayon, the officers approached him and rolled him over, at which point one of them said, 'Oh, my God, he doesn't have a weapon.'

The officers gave a different account of the events. They testified that it took Bayon about 5 minutes to exit the SUV after being ordered to do so. During this time, one of the officers saw the SUV rocking back and forth and believed that Bayon might be 'digging around' for something inside the vehicle.

According to the officers, after Bayon exited the vehicle, they saw him take several aggressive steps towards them and reach for something in or near his waistband, not his back pocket. One officer testified that she saw Bayon lift his shirt and reveal a black, hard object with a ribbed handle that she thought was a gun. Another officer testified that he saw Bayon lift his shirt and reach for a black object in his waistband and heard other officers yell 'gun' before shots were fired.

After rolling Bayon over while he was on the ground, one of the officers found 'a car jack handle, about 2 feet long' in his pant leg. In his deposition, Bayon stated that he did not recall telling the officers that he 'wanted to die' when asked why he did it.

The district court denied the officers qualified immunity, stating that there were genuine issues of material fact that needed to be decided by a jury. If a reasonable jury believed Bayon's version of the events, it could find that the officers used unreasonable force when Bayon was already subdued and complying with their orders. The officers appealed the decision.

### **Seventh Circuit Court Opinion**

The Seventh Circuit Court of Appeals upheld the district court's denial of qualified immunity for the officers. The court pointed out that the officers argued for qualified immunity based on their version of the facts, not the facts as seen in the light most favorable to Bayon. However, the court found that the officers' facts and interpretation of them conflicted with Bayon's account of the incident. In this case, both parties disagreed on what happened after Bayon exited the SUV and before the shots were fired. For example, did Bayon pose a threat to a reasonable officer after he exited the vehicle? How immediate was the threat? Did he continue to resist arrest? The court determined that there were factual disputes to be addressed regarding the objective reasonableness of the force used to arrest Bayon, and therefore a trial is needed to determine if the officers are entitled to qualified immunity.

### **Takeaways**

When ordering someone around who has just crashed their vehicle, it may be helpful to give them more time to comply, especially if you are giving conflicting orders. As a team pursuing a suspect, prioritize what you are ordering them to do, especially in a situation like this one. Bayon argued that he was getting conflicting instructions that further confused him while he was already in a dazed state. Remember that someone may not be able to understand you right away and may need more time to

comply, especially if there is no resistance to arrest. While there may have been resistance at the beginning of the chase, by the end Bayon seemed to be trying to cooperate. The Circuit Court also mentioned that many of the facts surrounding the force used are in question and will need to be further examined in a trial. However, qualified immunity was ultimately denied. Remember that in qualified immunity cases, the facts are viewed in the light most favorable to the plaintiff.

**Bayon v. Berkebile, 29 F.4th 850 (7th Cir. 2022)**

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