

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION**

**GABRIEL STEELE, individually, as
Executor of the Estate of Autumn Steele,
and as next of friend for his minor child
G.S., Sean Schoff, as next of friend for his
minor child K.S., and GINA COLBERT,
individually.**

Plaintiff,

v.

**CITY OF BURLINGTON and OFFICER
JESSE HILL**

Defendants.

Case No.: 3:16-cv-105

**PLAINTIFFS' STATEMENT OF
UNDISPUTED FACTS IN
SUPPORT OF SUMMARY
JUDGMENT**

Come now the Plaintiffs, Gabriel Steele, the Estate of Autumn Steele, G.S., K.S. and Gina Colbert, in accordance with Fed. R. Civ. Pr. 56 and Local Rule 56.1, to submit the following Statement of Undisputed Facts in support of Summary Judgment:

1. Defendant Burlington, Iowa, is a governmental subdivision of the State of Iowa and operates a police force, employing Defendant Jesse Hill. Defendants' Answer admitting para. 9 of Plaintiffs' Complaint. (App. p. 2).
2. All acts committed by Defendants as alleged by Plaintiffs' Complaint were done under color of state law. See Defendants' Answer admitting para. 28 of Plaintiffs' Complaint. (App. p. 3).
3. On January 6, 2015, Defendant Hill responded to a 911 call reporting a domestic dispute at the Steele residence in Burlington, Iowa. See Defendants' Answer admitting para. 11 of Plaintiffs' Complaint. (App. p. 2).

4. When Hill arrived on the scene he witnessed Autumn and Gabriel Steele engaged in a verbal argument and physical altercation in front of the home. Gabriel was holding the couples child G.S. See Defendants' Answer admitting paras. 13 and 14 of Plaintiffs' Complaint. (App. p. 2).

5. Hill made a radio call to dispatch, exited his patrol vehicle, activated his body camera, and ran toward Autumn, Gabriel, and G.S. See Defendants' Answer admitting para. 15 of Plaintiffs' Complaint and Dep. Ex. 34, Hill's body camera video. (App. pp. 2 and 41).

6. As Hill was approaching Autumn and Gabriel, the Steele family dog, Sammy, was clearly visible near the feuding couple. See Dep. Ex. 34, Hill's body camera video, Dep Ex. 12, p. 3, a series of screen caps from the video. (App. pp. 41 and 26).

7. When Hill approached Autumn Steele she was shouting at Gabriel and physically assaulting him. See Defendants' Answer admitting para. 16 of Plaintiffs' Complaint. (App. p. 2).

8. As Hill was moving toward Autumn Steele, Sammy, a Collie/German Shepard mix, approached him. See Defendants' Answer admitting para. 17 of Plaintiffs' Complaint. (App. p. 2).

9. Hill stated, "Hey, hey. Hey, stop it." See Dep. Ex. 34, Hill's body camera video, and Dep. Ex. 2, p. 1, transcript of Hill's body camera video. (App. pp. 41 and 4).

10. Autumn replied, "He's got my kid." See Dep. Ex. 34, Hill's body camera video, and Dep. Ex. 2, p. 1, transcript of Hill's body camera video. (App. pp. 41 and 4).

11. On the video you can hear a baby crying and the dog barks and growls once. Hill states, "Get your dog." See Dep. Ex. 34, Hill's body camera video, and Dep. Ex. 2, p. 1:5, transcript of Hill's body camera video. (App. p. 41 and 4).

12. Two shots are then heard on the video, and Autumn said “Ahh.” See Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, p. 1:6-7, transcript of Hill’s body camera video. (App. pp. 41 and 4).

13. Hill fired his service weapon two times hitting and killing Autumn Steele. See Defendants’ Answer admitting paras. 20 and 21 of Plaintiffs’ Complaint. (App. p. 3).

14. Hill shot Autumn while back pedaling and falling backwards and completely lost control of his gun having to search for it in the snow after the shooting. See Dep. Ex. 34, Hill’s body camera video, Dep. Ex. 11, p. 40, the DCI Hill Interview (“I started backpedaling say hey, get your dog. I’m backpedaling and the dog’s coming at me. . . I drew my gun. As I’m falling backwards I fire one shot. I fall on the . . .snow covered ground. Fall down. Take another shot.”) (App. pp. 41 and 24).

15. Sammy did not knock Hill over he “slipped or fell.” Hill Dep. 64:17-25. (App. p. 49).

16. Gabriel Steel stated, “You shot her.” See Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, p. 1:16 transcript of Hill’s body camera video. (App. p. 41 and 4).

17. Hill replied, “Oh, my god. Get your dog. Where are you shot ma’am? 38, get an ambulance. . . Oh my God, Tim [Merryman, a second officer who arrived on the scene].” See Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, p. 1:17-18, transcript of Hill’s body camera video. (App. pp. 41 and 4).

18. Hill explained, “The dog attacked me. I pulled my gun and shot it and I hit her.” See Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, p. 1:25-2:1, transcript of Hill’s body camera video. (App. pp. 41 and 4-5).

19. Hill stated, “Oh, my God, no. Oh, fuck, Tim . . . Shit, Tim. I’m fucking going to prison, Tim.” See Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, p. 2:14-18, transcript of Hill’s body camera video. (App. pp. 41 and 5). None of the police reports filed regarding this incident by either the Burlington Police Department or the DCI mention the admission made by Hill within seconds of the shooting that he was “fucking going to prison.”

20. Hill stated, “They were fighting, and as soon as I tried to grab her to get her away, the fucking dog jumped on me.” See Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, p. 4:16-18, transcript of Hill’s body camera video. (App. pp. 41 and 7).

21. Hill was asked, “Did she shoot herself?” He replied, “No, sir. The fucking dog attacked me, and I fucking pulled and shot it. Fuck, and I think I hit her, Sergeant. I don’t know where. Oh, my fucking God.” See Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, p. 4:20-24, transcript of Hill’s body camera video. (App. pp. 41 and 7).

22. Hill was asked, “So they were over here fighting?” He replied, “yeah, she was swinging on him. I jumped out, tried to get her away, and the fucking dog jumped on me.” See Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, p. 6:19-23, transcript of Hill’s body camera video. (App. pp. 41 and 9).

23. Law Officers present did not allow Gabriel Steele near Autumn. Hill’s body camera video ends with Hill being told to go sit in the car. Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, p. 7:4-11 transcript of Hill’s body camera video. (App. pp. 41 and 10).

24. At no point on his body camera video does Hill claim Sammy bit him. He only claims the dog “jumped’ on him one time and he describes this as an “attack.” See Dep. Ex. 34, Hill’s body camera video, and Dep. Ex. 2, pp. 1-7, transcript of Hill’s body camera video; see also Hill’s Dep. p. 23:5-8 and 24:12-17. (App. pp 41, 4-10 and 45).

25. In his report filled out a couple of days after the shooting, after reviewing the body camera video and before being interviewed by the DCI, Hill does not categorically claim that Sammy bit him, but that he “felt the sensation of being bit.” Dep. Ex. 9, p. 1; Hill Dep. 50:23-51:7. (App. pp. 15 and 47).

26. In Hill’s report he describes the shooting as “I heard the dog growl and immediately felt the sensation of being bit. . . [I] began to back pedal . . . The dog began advancing toward me with its teeth showing and I drew my duty weapon and pointed at a downward angle toward the dog and fired a shot. During the back pedal I lost my balance on the downward angled, snow covered sidewalk and began falling. . . Before hitting the ground my body positioned slightly lower than 45 degrees when another shot was fired at the dog, which I observed to still be advancing toward me at my feet.” Dep. Ex. 9, p.1. (App. p. 15).

27. Three eyewitnesses saw Hill approach Autumn, Gabriel and G.S., saw how Sammy was behaving during that time period and heard the gunshots - Courtney Webb, Ed Ranck and Laura Mellinger. All three were interviewed by Officer Merryman after the shooting, and all three described Sammy as being non-aggressive and/or playful. See Merryman body camera video and Dep. Ex. 10, a transcript containing the portions of the interviews where the eyewitnesses describe Sammy’s conduct. (App. pp. 61 and 16-19).

28. Ranck did see Sammy jump on Hill but noted that “it looked no different than if my dog jumped on somebody.” Merryman body camera video, and Dep. Ex. 10, p. 2. (App. pp. 61 and 17).

29. After interviewing the three eyewitnesses Officer Merryman wrote a report in which he made no mention of any of the eyewitnesses descriptions of Sammy being non-aggressive and/or playful. See Dep. Ex. 28, p. 1-3. (App. pp. 27-29).

30. Hill is “leery” of dogs and was unable to identify if his leerness was “a cautious leery or an over-the-top leery.” See Dep. Ex. 11, Hill’s DCI Interview, p. 34-35, and Hill Dep. p. 52:16-21 and 53:17-23. (App. pp. 22-23 and 47).

31. Hill is now adamant that Sammy bit him even after conceding that a bite on the thigh would have to penetrate his pants to cause an injury and finding out that there was no hole in the pants he was wearing as determined by the DCI. Hill Dep. p. 22:13-24, and Dep. Ex. 3, p.1. (App. pp. 45 and 11).

32. The doctor who treated Hill at the ER states that he saw an abrasion but no puncture wound. He diagnosed it as a bite because of the history he was provided and that if he had been told the dog jumped on Hill that would have changed his causation opinion. He also noted the abrasion was not bleeding and he did not recall even putting a band aid on the wound. Beauchamp Dep. p. 8:23-10:1. (App. pp. 52-53).

33. The alleged wound is barely, if at all, visible on a picture at the hospital. Hill circled the area he claimed was the injury caused by Sammy on Deposition Exhibit 5, p. 1. (App. p. 12).

34. On his utility belt at the time of the shooting Hill had pepper spray, located on his right side just in front of his service weapon and a Taser that was holstered on his left side, along with a baton. Dep. Ex. 8, p. 1-2, Hill Dep. 43:25-44:2 (Taser) and 44:14-25 (pepper spray). (App. pp. 13-14 and 46).

35. The pepper spray on Hill’s utility belt could be pulled out and used just as quickly as the service weapon since they are located right next to each other on the right side of the utility belt. Dep. Ex. 8, p. 2. (App. p. 14).

36. Hill had previously and successfully used a Taser to handle a dog that was attacking another dog and he agreed that some pepper spray was “a very effective deterrent for dogs.” Dep. 44:3-13 and 45:1-3. (App. p. 46).

37. Hill had plenty of time to consider how to handle Sammy using less than lethal force since he knew the Steele’s had a dog from a previous call at the Steele home, he saw the dog and “it was in [his] mind” as he exited his patrol cruiser to approach Autumn, Gabriel and G.S. Dep. 71:2-5 and Dep. 52:2-5. (App. pp. 47 and 50).

38. Hill testified during his deposition that he did absolutely nothing wrong in shooting and killing Autumn Steele and if the same factual circumstances arose again he would conduct himself in the same manner. Hill Dep. 5:23-6:6. (App. pp. 43-44).

39. Training for how to handle dogs in the course of police work, although not provided to Hill, was available prior to the shooting of Autumn Steele. Vaughn Dep. 17:16-18:2. (App. pp. 55-56). That available training included the following directives:

- a. More people are killed by lightning every year than dog bites. Dep. Ex. 32, p. 4 (App. p. 31);
- b. The overwhelming majority of dog bites are minor, causing either no injury, or injury so minor that no medical care is required. Dep. Ex. 32, p. 4. (App. p 31);
- c. Fatalities from dog attacks are extremely rare, and most often affect the weak, such as elderly and small children. Dep. Ex. 32, p. 4. (App. p. 31);
- d. There is no documented case of a Police Officer dying as the result of a dog-bite related injury. Dep. Ex. 32, p. 4. (App. p. 31);
- e. Dogs communicate by barking and some dogs will growl to talk to you, this does not always mean they are being aggressive. Dep. Ex. 32, p. 11. (App. p.32);
- f. A running police officer is likely to be chased by any dog in the vicinity. Dep. Ex. 32, p. 14. (App. p. 33);
- g. You cannot judge the aggressiveness of a dog by its size, shape or breed. Dep. Ex. 32, p. 18. (App. p. 34);

- h. Dogs will bite the first thing they can grab so offer them you baton, flashlight, or you forearm if nothing else available. Dep. Ex. 32, p. 27. (App. p. 35);
 - i. Taser may be used to subdue dogs. Dep. Ex. 32, p. 32. (App. p. 36); and
 - j. Pepper spray can be effective if not used in confined quarters. Dep. Ex. 32, p. 33. (App. p. 36);
40. Additional training sponsored by the U.S. Department of Justice was available online prior to the shooting of Autumn Steele. Grimshaw Dep. 11:10-15 and 14:10-22. (App. p.58 and 59). That training included the following directives:

- a. In dealing with a dog the use of force may be necessary to overcome a subject's resistance to arrest, protect officer from bodily harm, protect suspect and bystanders from injury, and prevent an escape. Dep. Ex. 33, p. 3. (App. p. 38);
- b. Baton, Taser and verbal and body language may be available to control dogs. Dep. Ex. 33, p. 4. (App. p. 39);
- c. Most dog bites are not full attacks, but rather a bite or bites (no violent shaking) intended to warn the person. Dep. Ex. 33, p. 5. (App. p. 40); and
- d. **Only after a dog has attacked, and the attack continues for several seconds with the dog shaking the officer or individual, is lethal force an appropriate response to the threat of serious bodily injury.** Dep. Ex. 33, p. 5. (App. p. 40).

(emphasis added)

Respectfully Submitted,

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on the 12th day of January, 2018, by:

- | | |
|---|---|
| <input checked="" type="checkbox"/> EDMS/ECF | <input type="checkbox"/> FAX |
| <input type="checkbox"/> Hand Delivered | <input type="checkbox"/> Certified Mail |
| <input type="checkbox"/> FedEx/Airborne Express | <input type="checkbox"/> Email |

Signature: /s/ David A. O'Brien