

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

GABRIEL STEELE, individually, and as
Executor of the Estate of AUTUMN STEELE,
and as next of friend for minor G.S., Sean
Schoff, as next of friend for minor K.S., and
GINA COLBERT, individually,

Plaintiffs,

vs.

CITY OF BURLINGTON and JESSE HILL,

Defendant.

Civil No. 3:16-cv-105

FILED UNDER SEAL

**DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS IN
SUPPORT OF THEIR MOTION
SUMMARY JUDGMENT**

COME NOW, Defendants, City of Burlington and Jesse Hill, by and through their attorneys, Betty, Neuman & McMahon, P.L.C., and for their Statement of Undisputed Material Facts in support of their Motion for Summary Judgment, pursuant to Federal Rule of Civil Procedure 56 and Southern District of Iowa Local Rule 56 state:

1. On January 5, 2015, Gabriel Steele called 9-1-1 for police assistance at his residence at 104 South Garfield Avenue, Burlington, Iowa, for a domestic disturbance with his wife, Autumn Steele. (Appendix 9-18).

2. Gabriel informed the responding Burlington police officers that Autumn struck him with a metal spatula during an argument, leaving red marks and an outline of the spatula on his body. (Appendix 9-18).

3. Autumn was arrested and was taken to jail on January 5, 2015 for domestic assault. (Appendix 9-18).

4. The next morning, January 6, 2015, Gabriel was shoveling snow at their 104 South Garfield Avenue residence. (Appendix 19-20).

5. Autumn returned to the residence while Gabriel was shoveling snow. (Appendix 20-21).

6. An argument ensued between Gabriel and Autumn. (Appendix 21).

7. While they were arguing, Gabriel called 9-1-1 and requested police assistance from the dispatcher. (Appendix 1; 21).

8. Gabriel told the dispatcher Autumn was “trying to take [their] son” and asked for the police to “hurry” to his residence. (Appendix 1).

9. Burlington Police Officers Jesse Hill and Timothy Merryman responded to the Steele residence to investigate the domestic disturbance reported by Gabriel. (Appendix 2-3; 25-27).

10. After placing the 9-1-1 call, Gabriel picked up their minor son, G.S., and proceeded to exit the residence. (Appendix 22-24).

11. Autumn followed Gabriel outside and began physically striking Gabriel while he was holding their child, G.S. (Appendix 22-24).

12. Officer Hill was the first officer to arrive at the Steeles’ residence. (Appendix 2-3; 26).

13. Officer Hill observed Gabriel walking away from his residence on a nearby sidewalk while holding a minor child and Autumn was following Gabriel. (Appendix 26).

14. Officer Hill observed Autumn was holding the back of Gabriel’s coat and striking him multiple times with an opened and closed fist against his head and neck area. (Appendix 26).

15. Officer Hill further observed an unrestrained black and brown German Shepherd-looking dog near the Steeles during the altercation. (Appendix 26).

16. Officer Hill exited his vehicle and activated his body camera. (Appendix 26).

17. Officer Hill informed dispatch that the Steeles were fighting and proceeded on foot towards the Steeles. (Appendix 2, 0:00 – 0:01¹; 26).

18. Approximately four seconds after activating his body camera, Officer Hill reached Autumn's location and verbally ordered her to stop assaulting Gabriel. (Appendix 2, 0:04).

19. Officer Hill further began to place both of his hands on Autumn's shoulders to prevent her from further assaulting Gabriel. (Appendix 2, 0:04; 26).

20. Approximately four-to-five seconds after activating his body camera, the Steeles' dog, Sammy, barks near Officer Hill. (Appendix 2, 0:04 – 0:05).

21. Around the time he was attempting to physically remove Autumn away from Gabriel, Officer Hill recalls feeling the sensation of being bitten in his upper left thigh area by the Steeles' dog. (Appendix 26).

22. Officer Hill then verbally commanded the Steeles to "get [their] dog." (Appendix 2, 0:05 – 0:06; 26).

23. Immediately after Officer Hill ordered the Steeles to get their dog, the dog, Sammy, began barking more intensely and growling near Officer Hill. (Appendix 2, 0:05 – 0:07).

24. Officer Hill attempted to backpedal away from the dog. (Appendix 26).

¹ All specific time-stamp references regarding Appendix 2 begin at the start of the video file, 0:00.

25. Officer Hill observed that the Steele's dog was advancing towards him "with its teeth showing." (Appendix 26).

26. As he was backpedaling, Officer Hill drew his service weapon, pointed it at the dog, and discharged a round at a downward angle towards the dog. (Appendix 2, 0:07; 26).

27. As he was shooting at the dog Officer Hill lost his footing on the snow-covered sidewalk, began to fall backwards, and discharged another round towards the dog. (Appendix 2, 0:07; 26).

28. While shooting and falling backwards, Officer Hill perceived the Steeles' dog was still advancing towards him. (Appendix 2; 26).

29. Both rounds fired by Officer Hill were discharged in less than a second of each other. (Appendix 2, 0:07).

30. Officer Hill testified that, at the time of discharging his weapon towards the Steeles' dog, he was fearful for his safety and well-being against bodily injury from the dog. (Appendix 28-30).

31. Approximately eight seconds elapsed between the time that Officer Hill activated his body camera and the time the last round was discharged from his service weapon. (Appendix 2, 0:00 – 0:08).

32. Autumn, Gabriel and G.S. did not state anything to Officer Hill prior to the discharge of his firearm that they would restrain their dog, Sammy. (Appendix 2, 0:00 – 0:07).

33. Prior to firing any shots from his firearm, Officer Hill did not issue any commands to Gabriel or G.S. indicating that they were not free to leave the area or that they were being detained or placed under arrest. (Appendix 2, 0:00 – 0:07; 31-32).

34. Officer Hill also did not physically touch Gabriel or G.S. at any point in time on January 6, 2015. (Appendix 2).

35. After both rounds from Officer Hill's service weapon were discharged, Gabriel asked Autumn if Officer Hill shot her. (Appendix 2, 0:10).

36. Gabriel then asked Officer Hill if he shot Autumn. (Appendix 2, 0:13).

37. Officer Hill responded to Gabriel's question by stating "Did I? Oh my god." (Appendix 2; 0:14).

38. Gabriel then asked Autumn again if she had been shot. (Appendix 2, 0:15).

39. Gabriel then exclaimed to Officer Hill that he had shot Autumn. (Appendix 2, 0:22).

40. Officer Hill responded to Gabriel's statement by stating "Did I--Did I really?" (Appendix 2, 0:23 – 0:24).

41. Officer Hill began to investigate whether Autumn was struck by any rounds discharged from his firearm and requested an ambulance to arrive at the scene. (Appendix 2, 0:28 – 0:33).

42. Officer Merryman arrived to the scene after Officer Hill's shots had been fired. (Appendix 2).

43. Officer Hill informed Officer Merryman that the dog "attacked" him, he pulled his service weapon to shoot the dog, and that Autumn appeared to have been struck. (Appendix 2, 1:02 – 1:06).

44. Officers Hill and Merryman began to administer emergency aid to attempt to resuscitate Autumn. (Appendix 2-3).

45. Additional police officers and paramedics arrived to the scene. (Appendix 2-3).

46. Shortly after the shooting incident occurred, G.S. was taken across the street to a neighbor's house. (Appendix 3, 7:03 – 7:08²; 58).

47. Autumn was placed into an ambulance to receive medical treatment from paramedics. (Appendix 2-3).

48. Officer Merryman spoke to Gabriel after the incident and asked Gabriel whether the dog was “attacking” Officer Hill at the time of the shooting. (Appendix 3, 5:25 – 5:58)

49. In response to Officer Merryman's questions, Gabriel stated that their dog was “going towards [Officer Hill], yeah.” (Appendix 3, 5:57 – 5:58).

50. Gabriel further told Officer Merryman that Officer Hill drew his pistol and shot at their dog when it was going towards him. (Appendix 3, 6:01 – 6:04).

51. Gabriel later made a telephone call to another individual in the presence of Officer Merryman. (Appendix 3, 14:30).

52. While recounting the shooting incident to the person on the phone in front of Officer Merryman, Gabriel stated “the dog tried to attack” Officer Hill. (Appendix 3, 14:50 – 14:58).

53. Gabriel testified during his deposition that, to him, the phrase that a dog “attacked” a person means the dog “bit” or “mauled” the person. (Appendix 7-8).

54. Gabriel and G.S. were not struck by any rounds discharged from Officer Hill's service weapon on January 6, 2015. (Appendix 2-3).

55. Gabriel and G.S. were not told by any Burlington police officers that they were being detained, arrested, or were not free to leave the scene on January 6, 2015. (Appendix 2-3).

² All specific time-stamp references to Appendix 3 begin at the start of the video file, 0:00.

56. Gabriel voluntarily stayed near the shooting scene on January 6, 2015 and voluntarily responded to questions asked by Burlington police officers regarding his observations of the shooting incident. (Appendix 2-3).

57. Gabriel and G.S. were not physically restrained by any Burlington police officers on January 6, 2015. (Appendix 2-3).

58. Autumn was fatally wounded on January 6, 2015. (Complaint – Docket#1, ¶ 27).

59. The Iowa Department of Criminal Investigations (“DCI”) investigated the January 6, 2015 shooting incident involving Officer Hill and the Steeles. (Appendix 35-36).

60. The investigating DCI agents were unable to determine from their investigation if Autumn was struck by the first or second round fired by Officer Hill. (Appendix 36).

61. DCI agents determined that the Steeles’ dog, Sammy, was a German Shepherd-mix weighing approximately eighty (80) pounds. (Appendix 39).

62. DCI agents further determined that the Steeles’ dog, Sammy, sustained a gunshot wound to its right shoulder which appeared to be a grazing wound. (Appendix 39-41).

63. After the shooting incident, Officer Hill was treated by Dr. Brandon Beauchamp at Great River Medical Center in West Burlington, Iowa. (Appendix 42-43).

64. Officer Hill was diagnosed with and provided treatment for a dog bite injury to his left lower extremity. (Appendix 42-43).

65. Dr. Beauchamp testified that, while providing treatment to Officer Hill, he found evidence of a dog bite in the form of an abrasion to Officer Hill’s left anterior thigh. (Appendix 47-48).

66. Dr. Beauchamp further testified that the abrasion appeared to be relatively new. (Appendix 49).

67. On November 14, 2016, Plaintiffs filed the above-captioned lawsuit against Defendants City of Burlington and Officer Jesse Hill. (Complaint – Docket #1).

68. Burlington Police Department’s written “Use of Force” policy, in relevant part, authorizes its officers to use deadly force only when the officer reasonably believes the action is:

- (a). In defense of human life, including officer’s life or
- (b). In defense of any person in immediate danger of serious physical injury

(Appendix 59-60).

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CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS

I hereby certify that on January 12, 2018, I electronically filed the foregoing document with the Clerk of Court using the ECF system and a true copy of the foregoing was served either electronically or by U.S. First Class Mail upon the following:

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