

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

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

COME NOW, the Plaintiffs, by and through their attorneys, and for their Response to Defendants' 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, respond as follows:

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).

RESPONSE: Plaintiffs admit this averment, but object to it as irrelevant and prejudicial. See Fed. R. Evid. 401 and 403. Only admissible evidence is to be considered by the court in ruling on motions for summary judgement. See F.R.C.P. 56(c)(2).

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).

RESPONSE: Plaintiffs admit this averment, but object to it as irrelevant and prejudicial. See Fed. R. Evid. 401 and 403. Only admissible evidence is to be considered by the court in ruling on motions for summary judgement. See F.R.C.P. 56(c)(2).

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

RESPONSE: Plaintiffs admit this averment, but object to it as irrelevant and prejudicial. See Fed. R. Evid. 401 and 403. Only admissible evidence is to be considered by the court in ruling on motions for summary judgement. See F.R.C.P. 56(c)(2).

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

RESPONSE: Admit.

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

RESPONSE: Admitted, but note that the deposition testimony supporting this averment is on page 113 of Steele Deposition II and not contained in Defendants' Appendix.

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit, but note the police did not treat the call as an emergency and Hill responded without using lights and/or siren. (Plaintiffs' App. p. 15)(Defendant Hill's report states that he was "dispatched" to the Steele residence without noting that he engaged his emergency lights and siren). In Hill's statement to the DCI he describes receiving the dispatch, noting that he was already nearby, how he proceeded to the Steele residence while stopping at a stop sign and even "drove slower" because he did not know Merryman's location. Dep. Ex. 11 pp. 38-39 (Plaintiffs' Supplemental App. pp. 2-3).

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).

RESPONSE: Admit, but note that Merryman did not arrive at the scene until after Hill had already shot Autumn. (Defense App. pp. 2 and 26).

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).

RESPONSE: Admit and note that Gabriel saw the police car coming and was going out to meet the police. (Defense App. pp. 22-23).

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

RESPONSE: Admit and note that Autumn was hitting Gabriel on his back with the bottom, palm side, of her fist. (Defense App. pp. 23-24).

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

RESPONSE: Admit.

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).

RESPONSE: Admit.

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).

RESPONSE: Admit.

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

RESPONSE: Admit, but note that Sammy is a Collie-German Shepherd mix and weighed approximately 62 pounds. Gabriel Steele Dep. II p. 60:7-10 (Plaintiffs' Supplemental App. p. 14).

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

RESPONSE: Admit.

17. Officer Hill informed dispatch that the Steeles were fighting and proceeded on foot towards the Steeles. (Appendix 2, 0:00 – 0:01; 26).

RESPONSE: Admit.

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).

RESPONSE: Admit that approximately four seconds passed between the start of the body camera video and the point when Defendant Hill yelled "Hey, hey. Hey, stop it." See the transcript of the Hill Body Camera Video (Plaintiffs' App. pp. 4).

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).

RESPONSE: Denied. The video does not show Defendant Hill had both hands on Autumn's shoulders. Plaintiffs concede Defendant Hill made this claim in his report which he filled out a couple of days after the shooting. Hill Dep. 50:23-51:7 (Plaintiffs' App. p. 47). Plaintiffs note that the critical passages in Defendant Hill's report about how and why he decided to fire his service weapon in the direction of Autumn, Gabriel and G.S. are either unsupported by, or flat out contradicted by, the body camera video, as set out in greater detail below. (Compare Defense App. p. 2 with Defense App. p. 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).

RESPONSE: Denied. It is admitted that you can hear Sammy bark approximately 4-5 seconds into the video, but the video does not identify Sammy as being near Defendant Hill at that point. The video shows the Sammy on the other side of Gabriel and G.S. away from Defendant Hill right after the shots are fired. (Defense App. p. 2).

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).

RESPONSE: Denied. It is admitted that Defendant Hill first claimed he "felt the sensation of being bitten" when filling out his report a couple of days after the shooting. Hill Dep. 50:23-51:7 (Plaintiffs' App. p. 47). At the time of the shooting and its immediate aftermath, as established by Hill's body camera video, he NEVER ONCE claimed to have been bitten. Defendant Hill only claimed that Sammy "jumped" on him exactly one time and he

described that one time jump as an “attack,” not a bite. See Dep. Ex. 2, pp. 1-7, the transcript of Hill’s body Camera Video and Hills Dep. pp. 23:5-8 and 24:12-17 (Plaintiffs’ App. pp. 41, 4-10 and 45).

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

RESPONSE: Admit and note that rather than giving the Steeles an opportunity to comply with his order Defendant Hill immediately started firing away while falling backwards right after giving this order. (Plaintiffs’ App. p. 4 and Defense App. p. 2).

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).

RESPONSE: Denied. It is admitted that the dog is heard barking during the second or two between the time Defendant Hill ordered the Steeles to “get your dog” and the time he began shooting towards Autumn, Gabriel and G.S. It is denied that the video establishes the location of Sammy at the time, or the increased intensity level of the barking. (Defense App. p. 2).

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

RESPONSE: Admitted that Hill did back pedal away from Sammy, Autumn, Gabriel and G.S. (Defense App. p. 2).

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

RESPONSE: Denied. It is admitted that Defendant Hill first claimed Sammy was advancing toward him with his “teeth showing” when filling out his report a couple of days after the shooting. Hill Dep. 50:23-51:7 (Plaintiffs’ App. p. 47). At the time of the shooting and its

immediate aftermath, as established by Hill's body camera video, he NEVER ONCE made this claim despite reciting the facts that lead up to the shooting a number of times. See Dep. Ex. 2, pp. 1-7, the transcript of Hill's body Camera Video (Plaintiffs' App. pp. 4-10).

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).

RESPONSE: Denied. It is admitted Defendant Hill claims to have done this when filling out his report days later, but denied the body camera video supports this claim. The body camera pinned to Hill's chest is pointed up toward the sky as both shots are fired in rapid succession. It is admitted that Defendant Hill fired his weapon toward Autumn, Gabriel and G.S., causing a bullet to go through Autumn's right arm, between her shoulder and elbow, then hitting and killing her by penetrating the right side of her chest just below the armpit. (Plaintiffs' Supplemental App. p. 5). It is also admitted that Sammy was grazed by a bullet. However, Hill's firing of his service weapon was so haphazard and uncontrolled that it is impossible to establish that he fired the first shot in a downward angle as he later claimed in his report. (Defense App. p. 2). Defendant Hill did not have control of his gun during the shooting sequence since the video shows him frantically pawing through the snow looking for his gun after the shooting. (Defense App. pp. 2 and 3).

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).

RESPONSE: Admit and note the body camera video shows Hill starting to fall backwards as he fired the first shot in the direction of Autumn, Gabriel and G.S. (Defense App. p. 2).

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

RESPONSE: Denied. It is admitted that Hill first claimed Sammy was advancing toward him while he was shooting and falling backwards when filling out his report a couple of days after the shooting. Hill Dep. 50:23-51:7 (Plaintiffs' App. p. 47). At the time of the shooting and its immediate aftermath, as established by Hill's body camera video, he NEVER ONCE made this claim despite reciting the facts that lead up to the shooting a number of times. See Dep. Ex. 2, pp. 1-7, the transcript of Hill's body Camera Video (Plaintiffs' App. pp. 4-10). It is denied that the body camera video supports this claim since it does not show Sammy while Hill is falling backwards and Sammy is seen right after the shots are fired away from Hill on the other side of Autumn, Gabriel and G.S. (Defense App. p. 2).

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

RESPONSE: Admit.

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).

RESPONSE: Admitted that in his deposition Defendant Hill said "yes" explaining that he fired his service weapon in the direction of Sammy, Autumn, Gabriel and G.S. because he feared for his "safety and well-being" because "Sammy jumped on [him]." (Defense App. p. 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).

RESPONSE: Admit.

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).

RESPONSE: Admit, but note that Defendant Hill did not give the Steeles any opportunity to do so. Defendant Hill started firing his gun haphazardly in the direction of Autumn, Gabriel and G.S. right after Sammy jumped on him one time. (Defense App. p. 2). 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).

RESPONSE: It is admitted that Defendant Hill did not give such a verbal command, but in his deposition Hill admitted that during this time period neither Autumn, Gabriel nor G.S. “were free to leave that scene until [he] was done with [his] investigation.” (Plaintiffs’ App. p. 48).

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

RESPONSE: Admit.

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

RESPONSE: Admit and note the court should look to Deposition Exhibit 2, a transcript of Defendant Hill’s Body Camera video, for ease of reviewing what was said in the immediate aftermath of the shooting. (Plaintiffs’ App. pp. 4-10).

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

RESPONSE: Admit.

36. Officer Hill responded to Gabriel’s question by stating “Did I? Oh my god.” (Appendix 2; 0:14).

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Denied. Gabriel said to Hill “you shot her.” (Plaintiffs App. p. 4).

39. Officer Hill responded to Gabriel’s statement by stating “Did I--Did I really?” (Appendix 2, 0:23 – 0:24).

RESPONSE: Admit.

40. 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).

RESPONSE: Admit.

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

RESPONSE: Admit.

42. 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).

RESPONSE: Denied. Hill said “The dog attacked me. I pulled my gun and shot it and I hit her.” (Plaintiffs’ App. pp.4-5).

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

RESPONSE: It is admitted that eventually Hill and then Merryman did chest compressions on Autumn even though the appropriate emergency response to a sucking chest wound is to plug the wound. Note, however, that prior to administering any first aid Hill admitted his reckless conduct by stating “Shit Tim [Merryman]. I’m fucking going to prison, Tim. Oh, my God. Oh, my God.” And then the cover-up began with Merryman, who did not witness the shooting, claiming “It was an accident,” to which Hill readily agreed. (Plaintiffs’ App. p. 5). Merryman/Hill then yanked Autumn’s body around and ripped open her shirt. Blood is visible in the snow and coming out of Autumn’s mouth. Hill starts chest compressions and Autumn can be heard grasping for breath. (Plaintiffs’ App. 41 and 5-6).

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

RESPONSE: Admit.

45. Shortly after the shooting incident occurred, G.S. was taken across the street to a neighbor’s house. (Appendix 3, 7:03 – 7:08¹; 58).

RESPONSE: Denied. Approximately 7 to 8 minutes after the shooting a neighbor came across the street and was allowed to take G.S. back to her house. (Defense App. p. 3).

¹ All specific time-stamp references to Appendix 3 begin at the start of the video file, 0:00.

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

RESPONSE: Admit.

47. 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)

RESPONSE: Denied as being taken out of context. Merryman asked Gabriel to “tell me what happened.” Gabriel then gave a concise and factually accurate, as supported by Hill’s body camera video, statement of what happened - “she was trying to take the baby. She had a protection order. I don’t know what the fuck happened. She got arrested for hitting me yesterday. She come over here and tried to take the baby. I come outside with the baby, she’s chasing me. The dog seen the cop pull up. The dog run around here and [Hill’s] like “get your dog.” I reached over for [the dog]. [Hill] slid on the thing, fired two shots, my wife fucking dropped. The dog's hit. [Hill] didn’t even give me a chance to get [the dog]. [Hill] could have pulled his fucking Tazer and tazed the dog.” Merryman then asked, “what was the dog doing?” Gabriel replied, “he got out of the house, he was coming out cause the baby was out here and the cop showed up and everything else.” Merryman then asked, “was he attacking the officer?” Gabriel replied, “he was going towards him, yeah, but [Hill] didn’t even give me a chance to get [the dog]. He just drew his fucking pistol and shot her. He fired two shots. I don’t know where the fuck, my baby was out here, I was out here, my wife dropped instantly.” (Defense App. 3, 5:26-6:08).

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

RESPONSE: Admit, within the context noted above in response paragraph 48. Note that as the discussion between Gabriel and the officers continued, Gabriel stated, “He had no reason to shoot. He could have tazed.” Another officer replied, “it’s not that easy.” Gabriel responded, “. . . he didn’t even give me a chance to grab it. He just fucking shot. He didn’t even know where he was shooting. He’s falling down pulling the trigger twice.” (Defense App. 3, 6:40-6:58).

49. 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).

RESPONSE: Denied. Gabriel never said this. See the response to paragraph 48 which accurately sets out the exchange between Merryman and Gabriel. (Defense App. 3, 5:26-6:08).

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

RESPONSE: Denied. It is admitted that, unbeknownst to Gabriel, Merryman was eavesdropping and recording a phone call Gabriel had with another person, to which Merryman was not a party, in violation of Iowa law. See I.C.A. 727.8. (Defense App. p. 3).

51. 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).

RESPONSE: Denied that the phone conversation occurred “in front of Officer Merryman;” rather, Merryman eavesdropped and recorded the phone call without the knowledge or consent of either party to the call. It is admitted that after hearing the Defendants refer to what Sammy did numerous times as an “attack” that Gabriel used that word one time to describe the incident to the person he was talking to on the phone, stating “. . . the dog tried to attack the cop

and he pulled his gun instead of pulling his Tazer and fired two rounds right in our direction. Hit Sammy and fucking shot Autumn.” (Defense App. 3, 14:50-15:05).

52. 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).

RESPONSE: Admit.

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

RESPONSE: Admit, but note they were certainly in harm’s way when Defendant Hill fired two rounds in their direction, along with everyone else in the neighborhood who could have been struck by Defendant Hills haphazard and uncontrolled shooting. (Defense App. pp. 2-3).

54. 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).

RESPONSE: Admit that those exact words were not spoken to Gabriel or G.S. and that G.S. was later allowed to be taken across the street to a neighbor’s home, but deny the implication of the averment – that Gabriel could have left the scene any time he wanted to without talking to law enforcement officers present. (Defense App. pp. 2-3).

55. 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).

RESPONSE: Admit, but note that Gabriel also tried to make a phone call in private by turning away from the officers as they continued to question him. (Defense App. 3, 14:40-1508).

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

RESPONSE: Admit.

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

RESPONSE: Admit.

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

RESPONSE: Admit and note the DCI issued a news release stating “[o]ne person is deceased and one Officer is receiving treatment for non-life threatening injuries.” Deposition Ex. 68 (Plaintiffs’ Supplemental App. p. 4).

59. 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).

RESPONSE: Admit that Hill’s shooting was so haphazard and uncontrolled the DCI was unable to determine “for sure” which bullet killed Autumn. (Defense App. p. 36).

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

RESPONSE: Admit that was the estimate made by the DCI, but not that Gabriel recalled Sammy weighing 62 pounds when they got him. (Plaintiffs Supplemental App. p. 14).

61. 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).

RESPONSE: Admit.

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

RESPONSE: Admit and note that Dr. Beauchamp states that he saw an abrasion, but no puncture wound. (Plaintiffs’ app. p. 52). Dr. Beauchamp diagnosed the abrasion as a bite

because of the history he was provided by Defendant Hill and testified that if he had been told the dog jumped on Hill that would have changed his causation opinion. Dr. Beauchamp 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. (Plaintiffs' App. pp. 52-55). 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. (Plaintiffs' App. p. 12).

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

RESPONSE: Denied. Defendant Hill was diagnosed with a bite injury solely because of the history he provided and he received no treatment for the abrasion that did not even require a Band Aid. (Plaintiffs' App. pp. 52-55).

64. 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).

RESPONSE: Admit that Dr. Beauchamp testified that the abrasion "could have been" consistent with a dog. (Defense App. p. 49). Also note that the causation opinion was based on the history provided as set out in paragraph 63 above. (Plaintiffs' App. p. 52).

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

RESPONSE: Admit.

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

RESPONSE: Admit.

67. 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).

RESPONSE: Admit that this is the Burlington Police Department's stated "Use of Force" policy, but note that it is wholly inadequate and fails to set out other factors that must be considered by an objectively reasonable law enforcement officer in deciding whether to use deadly force, including factors required by Iowa law. See I.C.A. 704.2. Compare the "Use of Force" provision of the Dubuque Police Department which includes the following precautions, "Discharge of Firearms - Each officer is responsible for any discharge of a weapon under his/her control and is prohibited from discharging a firearm when it appears likely that an innocent person may be injured. When it may be done with reasonable safety to innocent bystanders or other officers, a weapon may be discharged . . . When necessary to kill a dangerous animal or animal which must be killed for humane purposes." (Plaintiffs' Supplement App., p. 10).

The Dubuque policy goes on to define "Use of Deadly Force - The term "deadly force" means any of the following:

1. Force used for the purpose of causing serious injury.
2. Force which the actor knows or reasonably should know will create a strong probability that serious injury will result.
3. The discharge of a firearm in the direction of some person with the knowledge of the person's presence there, even though no intent to inflict serious physical injury can be shown.

(Plaintiffs' Supplement App., p. 11).

See also the Cedar Rapids Police Department's "Use of Force" provision which defines "Deadly Force" as including "the discharge of a firearm . . . in the direction of some person with the knowledge of the person's presence there, even though no intent to inflict serious physical injury can be shown." (Plaintiffs' Supp., p. 12).

Respectfully submitted,

DAVE O'BRIEN LAW
1500 Center St NE
Cedar Rapids, Iowa 52402
Telephone: (319) 861-3001
Facsimile: (319) 861-3007
E-mail: dave@daveobrienlaw.com

By: /s/ David A. O'Brien
DAVID A. O'BRIEN, AT0005870

SHELNUTT LAW FIRM
10 9th St., Suite 101
Columbus, GA 31901
Telephone: (256) 547-4988
E-mail: jms@shelnettllaw.com

By: /s/ John Shelnett
JOHN M. SHELNUTT,

LAW OFFICES OF ADAM J. KLEIN
6 Concourse Parkway, Suite 2920
Atlanta, GA 30328
Telephone: (678) 825-5529
Facsimile: (404) 475-3091
E-mail: aklein@adamkleinlaw.com

By: /s/ Adam J. Klein
ADAM J. KLEIN, Ga Bar No 425032

HENKELVIG LAW
314 N. 4th St.
Burlington, IA 52601
Phone: (319) 753-5411
Fax: (866) 255-4581
TAHenkelvig@iabar.org

By: /s/ Trent A. Henkelvig
Trent A. Henkelvig,

ORIGINAL TO:

Martha Shaff
Betty, Neuman & McMahon, PLC
1900 East 54th St.
Davenport, IA 52807
(Attorney for Defendants)

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 2nd day of February, 2018, by:	
XEDMS/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: <u>/s/ David A. O'Brien</u>	

