

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' RESPONSES TO  
PLAINTIFFS' ALLEGED MATERIAL  
AND UNDISPUTED FACTS IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
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 Responses to Plaintiffs' Alleged Material and Undisputed Facts in Support of Plaintiffs' Motion for Summary Judgment, pursuant to Federal Rule of Civil Procedure 56 and Southern District of Iowa Local Rule 56, state:

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).

**RESPONSE:**

**Defendants admit the statements in ¶ 1.**

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).

**RESPONSE:**

**Defendants admit the statements in ¶ 2.**

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).

**RESPONSE:**

**Defendants admit the statements in ¶ 3.**

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).

**RESPONSE:**

**Defendants admit the statements in ¶ 4.**

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).

**RESPONSE:**

**Defendants admit the statements in ¶ 5.**

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).

**RESPONSE:**

**Defendants admit that the dog, Sammy, was near Autumn and Gabriel as Officer Hill approached them.**

**Defendant denies the characterization that the dog was “clearly visible” at all times. (Pl. Appendix 25; 41). Defendants further deny that this statement is material towards Plaintiffs’ summary judgment claims.**

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).

**RESPONSE:**

**Defendants admit the statements in ¶ 7.**

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).

**RESPONSE:**

**Defendants admit the statements in ¶ 8.**

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).

**RESPONSE:**

**Defendants admit Officer Hill made the statements alleged in ¶ 9.**

**Defendants deny the accuracy and admissibility of Plaintiffs’ Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill’s body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill’s body camera. (Pl. Appendix**

**p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit Autumn made the statement alleged in ¶ 10.**

**Defendants deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit that Officer Hill's body camera footage depicts a child crying and a dog barking and growling near Officer Hill immediately before and while he states "Get your dog."**

**Defendants deny ¶ 11 to the extent it states that the dog barks only once or growls only once on Officer Hill's body camera recording. (Pl. Appendix p. 41).**

**Defendants further deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit that two shots are heard on Officer Hill's body camera recording and Autumn makes an audible utterance after the shots are fired.**

**Defendants deny that any audible utterance by Autumn is relevant or material towards Plaintiffs' summary judgment claims.**

**Defendants deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix**

**p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit that Officer Hill fired his service weapon two times. Defendants further admit that Autumn Steele was fatally wounded by Officer Hill.**

**Defendants deny ¶ 13 to the extent Plaintiffs assert Autumn was shot twice by Officer Hill. Defendants' Answer to Plaintiffs' Complaint clearly deny Autumn was struck two times and Plaintiffs present no evidence supporting Autumn was struck two times. (Pl. Appendix p. 3). Autumn's autopsy revealed highly compatible evidence that she was struck in the right arm and chest by a single projectile. (Def. Appendix 106-107). The investigating Iowa Department of Criminal Investigations agents were unable to identify which shot fired by Officer Hill struck Autumn. (Def. Appendix 21-22).**

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).

**RESPONSE:**

**Defendants admit that Officer Hill back-pedaled when he fired towards the dog and fell backwards. Defendants further admit that Officer Hill had to search for his gun in the snow after the shooting.**

**Defendants deny that Officer Hill shot Autumn while falling backwards because there is no evidence in the record to support which bullet struck Autumn. (Def. Appendix 21-22).**

**Defendants further deny that Officer Hill “completely lost of control of his gun” while he discharged his weapon because there is no evidence in the record to support when he dropped his weapon in the snow. (Pl. Appendix p. 41).**

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

**RESPONSE:**

**Defendants admit the statements in ¶ 15.**

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).

**RESPONSE:**

**Defendants admit that Gabriel Steele stated “You shot her” to Officer Hill. However, Defendants note that such statement came after Gabriel asked Autumn if she had been shot and after Gabriel asked Officer Hill if he had shot Autumn. (Pl. Appendix p. 41, 0:10 – 0:24).**

**Defendants deny the accuracy and admissibility of Plaintiffs’ Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the**

**transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit the statements in ¶ 17 are excerpts of statements made by Officer Hill.**

**Defendants deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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).



**RESPONSE:**

**Defendants admit the statements in ¶ 18 were made by Officer Hill.**

**Defendants deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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."

**RESPONSE:**

**Defendants admit that the statements in ¶ 19 are excerpts of statements made by Officer Hill.**

**Defendants deny that the excerpted statements made by Officer Hill are material or relevant to Plaintiffs' summary judgment claims.**

**Defendants deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the**

**transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

**Defendants admit that the Burlington Police Department and DCI reports do not specifically mention a statement made by Officer Hill that he was "f\*\*\*ing going to prison" but deny that such information is relevant or material towards Plaintiff's summary judgment claims.**

**Defendants further deny the characterization that the excerpted statement by Officer Hill occurred "within seconds" after the shooting. The excerpted statement occurred approximately *one minute and forty seconds after the shooting occurred*. (Pl. Appendix p. 41, 1:48) (emphasis added).**

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).

**RESPONSE:**

**Defendants admit the statements in ¶ 20 were made by Officer Hill.**

**Defendants deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog**

**growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit that Officer Hill was asked the question and gave the response stated in ¶ 21.**

**Defendants deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit that Officer Hill was asked the question and gave the response in ¶ 22.**

**Defendants deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill's body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill's body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill's body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants deny that officers did not allow Gabriel to go near Autumn. Officer Hill's body camera and Officer Merryman's body camera do not capture any Burlington police officers telling Gabriel that he could not come near Autumn. (Pl. Appendix pp. 41; 61). At 5:10 in Officer Hill's body camera, Officer Hill told Gabriel that he could come towards Autumn. (Pl. Appendix p. 41). Furthermore, at 6:33 into Officer Hill's body camera (Pl. Appendix p. 41), Gabriel is observed within feet of Autumn as she is being loaded on to a stretcher to go into the ambulance and is not told to move away by Burlington police officers. Defendants further deny that whether Gabriel was allowed to**

**go near Autumn after the shooting is material or relevant to their summary judgment claims.**

**Defendants admit Officer Hill’s body camera ends with him sitting in a police vehicle but denies that the video ends with him “being told to go sit in the car.” (Pl. Appendix p. 41).**

**Defendants deny the accuracy and admissibility of Plaintiffs’ Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill’s body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill’s body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill’s body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit that Officer Hill did not say the word “bit” in his body camera recording.**

**Defendants deny Plaintiffs’ characterization that Officer Hill only reported that the dog jumped on him and that the dog’s “jump” was an “attack.” Officer Hill clearly stated several times on his body camera that the dog “attacked” him without reference to the dog**

**“jumping” on him. (Pl. Appendix p. 41). Officer Hill further put in his written report regarding the incident that he felt the sensation of being bit on his upper left thigh area. (Pl. Appendix pp. 12; 15; 52-53). Officer Hill further sought and received medical treatment specifically for a dog bite after the incident. (Pl. Appendix pg. 45; Def. Appendix 33-34).**

**Defendants deny the accuracy and admissibility of Plaintiffs’ Appendix pgs. 4-10. This transcription is not certified in any manner, gives no indication as to who prepared it, and Plaintiffs presented no foundation for the transcription. Furthermore, the transcription does not contain all relevant statements and actions captured in Officer Hill’s body camera. For example, the transcription does not contain any reference to a dog growling or barking, which are clearly heard in Officer Hill’s body camera. (Pl. Appendix p. 41). The best evidence of what was stated, when it was stated, and by whom on Officer Hill’s body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit that Officer Hill wrote in his written report that he felt the sensation of being bit on his upper left thigh when removing Autumn away from Gabriel.**

**Defendants deny Plaintiffs’ characterization that Officer Hill had any type of duty to “categorically claim that Sammy bit him” when making his written report. Plaintiffs do not cite to any authorities supporting such a duty.**

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).

**RESPONSE:**

**Defendants admit that the statements in ¶ 26 are excerpts contained in the written report Officer Hill prepared regarding the January 6, 2015 incident.**

**Defendants deny the accuracy of the last statement in the quotations because it omits the word "was" between "body" and "positioned", as stated in the full version of Officer Hill's written report. (Pl. Appendix 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).

**RESPONSE:**

**Defendant denies that Courtney Webb, Ed Ranck, and Laura Mellinger "saw how Sammy was behaving" during the entirety of his interactions with the Steeles prior to the shooting. (Def. Appendix 38-89). Defendant admits Courtney Webb, Ed Ranck, and**

**Laura Mellinger saw Officer Hill near the Steeles prior to the shooting and heard the gunshots during the shooting.**

**Defendant denies that Courtney Webb, Ed Ranck, and Laura Mellinger all described Sammy as being non-aggressive and/or playful at the time Officer Hill discharged his firearm towards the dog. (Def. Appendix 38-89; Pl. Appendix p. 61). The statements made by Courtney Webb, Ed Ranck, and Laura Mellinger to Officer Merryman speak for themselves in Officer Merryman's video and audio recordings. (Pl. Appendix p. 61).**

**Courtney Webb further testified that she did not see the Steeles' dog have any interaction with Officer Hill and that she never heard the dog bark or growl. (Def. Appendix 56-66).**

**Ed Ranck further testified that, to him and from his vantage point 50 feet across the street, the dog didn't appear to be aggressive in his opinion. (Def. Appendix 72-89). However, he further testified that he did not hear any barking or growling while Officer Hill was near the Steeles, both of which were exhibited by the dog near Officer Hill immediately prior to the shooting. (Pl. Appendix p. 41; Def. Appendix 82-89).**

**Laura Mellinger further testified that, at the time of the shots, her view as obstructed by a telephone pole. (Def. Appendix 38-49). From that vantage point, she did not see the dog barking or "acting up" near the officer but she also did not hear the dog bark or growl. (Def. Appendix 38-49).**

**Defendants deny the accuracy and admissibility of Plaintiffs' Appendix pgs. 16-19. These transcriptions are not certified in any manner, give no indication as to who prepared them, and Plaintiffs presented no foundation for the transcriptions. Furthermore, the transcriptions do not contain all statements captured during the interviews of the witnesses**



**and only contain excerpts. (Pl. Appendix p. 61). The best evidence of what was stated, when it was stated, and by whom on Officer Merryman’s body camera recording is the audio and video footage itself.**

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).

**RESPONSE:**

**Defendants admit that the statement in ¶ 28 is an excerpt of what Ed Ranck told Officer Merryman. However, Plaintiff leaves out additional statements made by Ed Ranck, including the admission that he was not close enough to the scene to hear or see everything that occurred, and that he didn’t hear the dog bark or growl even though barking and growling is clearly heard on Officer Hill’s body camera immediately before the shooting. (Pl. Appendix pp. 41; 61; Def. Appendix 82; 89). Ed Ranck’s statements to Officer Merryman speak for themselves in Officer Merryman’s video and audio recording. (Pl. Appendix p. 61).**

**Defendants’ deny that the excerpted statement in ¶ 28 pertains to the dog’s mannerisms at the time Officer Hill drew and discharged his firearm. Defendants’ further deny that the excerpted statement in ¶ 28 is relevant or material to Plaintiffs’ summary judgment claims.**

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).

**RESPONSE:**

**Defendants admit that Officer Merryman wrote a written report summarizing his interactions with Courtney Webb, Laura Mellinger, and Ed Ranck.**

**Defendants deny that Officer Merryman had any duty to provide detailed descriptions of his interviews with witnesses, which were video and audio recorded. Plaintiffs do not cite to any authorities providing that such duty exists.**

**Defendants further deny that all of the witnesses described the dog to Officer Merryman as being non-aggressive and/or playful at the time Officer Hill drew and discharged his firearm. (Pl. Appendix p. 61; Def. Appendix 38-89).**

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).

**RESPONSE:**

**Defendants admit that Officer Hill testified he could not answer the question presented in ¶ 30.**

**Defendants deny that this statement is relevant or material fact towards Plaintiffs’ summary judgment claims and further note that Officer Hill testified that he didn’t think anybody could answer that type of question. (Pl. Appendix 47-48).**

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).

**RESPONSE:**

**Defendants admit that Officer Hill testified that he believed a dog would have to penetrate his pants in order to be bitten by a dog on the thigh.**

**Defendants deny the characterization that Officer Hill is “now adamant” the Steeles’ dog bit him. Officer Hill sought and received medical treatment for a dog bite and was diagnosed with a dog bite injury by his physician on January 6, 2015. (Def. Appendix 33-34). Officer Hill further wrote in his written report that he felt the sensation of being bitten on his upper left thigh by the Steeles’ dog and reported to DCI agents investigating the shooting that he had been bitten on his upper left thigh area. (Pl. Appendix p. 12; 15; 24).**

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).

**RESPONSE:**

**Defendants admit that Dr. Beauchamp testified he saw an abrasion but no puncture wound on Officer Hill’s left thigh area. Defendants deny that this fact is material or relevant to Plaintiffs’ summary judgment claims.**

**Defendants deny that Dr. Beauchamp diagnosed the injury as a dog bite solely from the history he was provided with from Officer Hill. Dr. Beauchamp testified that the abrasion could have been consistent with a dog bite and that it appeared to be a relatively new injury, consistent with the history Officer Hill provided to him. (Pl. Appendix p. 53).**

**Defendants admit that Dr. Beauchamp testified he couldn't recall if a band-aid was placed on the dog bite injury and that there was no bleeding. Defendants deny that this fact is material or relevant to Plaintiffs' summary judgment claims.**

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).

**RESPONSE:**

**Defendants deny the statement "The alleged wound is barely, if at all, visible on a picture at the hospital." This statement is an opinion/argument and is not a fact. Defendants further deny whether an injury is visible or not is not material or relevant towards Plaintiffs' summary judgment claims.**

**Defendants admit that Officer Hill circled the area where he was injured by the Steeles' dog on the deposition exhibit.**

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).

**RESPONSE:**

**Defendants admit the location of Officer Hill's pepper spray, taser, and baton on his duty belt as alleged in ¶ 34 but deny that such information is material or relevant towards Plaintiffs' summary judgment claims.**

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).

**RESPONSE:**

**Defendants deny the statement in ¶ 35 because it is not a fact; it is an opinion and it is purely speculation without any support in the record. A photograph of an officer's utility belt does not support a conclusion that pepper spray "could be pulled out and used just as quickly as the service weapon." (Pl. Appendix p. 14). This type of statement could only be supported by witness or expert testimony after appropriate foundation has been laid. Plaintiffs did not present any such testimony or foundation in support of that statement.**

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).

**RESPONSE:**

**Defendants admit Officer Hill previously used a taser to handle a dog that was attacking another dog but deny the remainder of ¶ 36 because it misstates Officer Hill's testimony. It is not clear if Officer Hill testified some pepper spray is effective for dogs or if pepper spray is effective for some dogs. (Pl. Appendix 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).

**RESPONSE:**

**Defendants admit that Officer Hill testified he knew the Steeles had a dog from a prior call he responded to at their home, that he saw the dog during the incident on January 6, 2015, and that the dog was “in his mind” during the incident on January 6, 2015.**

**Defendants deny Plaintiffs’ citations to Appendix pg. 50 because there is no “pg. 50” in Plaintiffs’ Appendix.**

**Defendants deny Officer Hill had “plenty of time to consider how to handle Sammy using less than lethal force.” This statement is not a fact; it is an opinion and it is purely speculation without any support in the record. From the time that Officer Hill arrived on scene until the time of the shooting, only eight (8) seconds transpired. (Pl. Appendix 41, 0:00 – 0:08). Plaintiffs have not presented any witness or expert testimony with appropriate foundation to support the statement that there was “plenty of time” for Officer Hill to consider the use of non-lethal force under the circumstances.**

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).

**RESPONSE:**

**Defendants admit Officer Hill testified he would conduct himself in the same manner if presented with the same factual circumstances of January 6, 2015.**

**Defendants deny the remainder of ¶ 38 because it misstates Officer Hill’s testimony. (Pl. Appendix pp. 43-44). Officer Hill was not asked a question as to whether he did anything “absolutely wrong.” (Pl. Appendix pp. 43-44). Officer Hill testified that he did**

**what he felt was reasonable under the circumstances on January 6, 2015. (Pl. Appendix 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);

**RESPONSE:**

**Defendants deny that Officer Hill was never provided with any training material from Angela Vaughn. Plaintiffs do not cite to any authority in support of that allegation.**

**Defendants further deny that the training Angela Vaughn provided to Burlington police officers was intended to be instructional on how to handle dogs in the course of all types of police work and scenarios/situations presented to law enforcement officers. Plaintiffs do not cite to any authority in support of that allegation.**

**Defendants admit that the statements in subparagraphs (a) – (d) are contained within materials prepared by Angela Vaughn. Defendants deny that such statements are material or relevant to Plaintiffs’ summary judgment claims.**

**Defendants deny subparagraph (e) because there is no Plaintiffs’ Appendix pg. 32 to support the statement. Defendants further deny that this statement is material or relevant to Plaintiffs’ summary judgment claims.**

**Defendants admit that the statement in subparagraph (f) is contained within materials prepared by Angela Vaughn. Defendants deny that this statement is material or relevant to Plaintiffs’ summary judgment claims.**

**Defendants deny subparagraph (g) because the content of Plaintiffs’ Appendix pg. 34 does not support that some one can not judge the ‘aggressiveness of a dog’ by its size, shape or breed. (Pl. Appendix p. 34). Plaintiffs’ Appendix pg. 34 only states “the most dangerous thing you can do is judge a dog based on media reports or size and shape of a dog” and does not use the phrase “aggressiveness” at all. (Pl. Appendix p. 34). Defendants further deny that this statement is material or relevant to Plaintiffs’ summary judgment claims.**

**Defendants admit that the statements in subparagraphs (h) – (i) are contained within materials prepared by Angela Vaughn. Defendants deny that these statements are material or relevant to Plaintiffs’ summary judgment claims.**



**Defendants deny subparagraph (j) because Plaintiffs' Appendix pg. 36 does not mention pepper spray or the use of pepper spray in confined quarters to support the statement. (Pl. Appendix p. 36). Defendants further deny that this statement is material or relevant to Plaintiffs' summary judgment claims.**

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)

**RESPONSE:**

**Defendants admit that the U.S. Department of Justice had materials available online prior to January 6, 2015. Defendants deny that this statement is material or relevant to Plaintiffs' summary judgment claims.**

**Defendants deny subparagraph (a) because Plaintiffs' Appendix pg. 38 does not mention anything about dealing with a dog. (Pl. Appendix p. 38). Defendants further deny that this statement is material or relevant to Plaintiffs' summary judgment claims.**

**Defendants admit that the statements in subparagraphs (b) – (d) are contained within the documents provided in Plaintiffs’ Appendix. Defendant denies that these statements are material or relevant to Plaintiffs’ summary judgment claims.**

**Defendants further deny that subparagraph (d) is an accurate recitation of when an officer may be justified or reasonable in using deadly force on a dog under the United States and Iowa Constitutions.**

BETTY, NEUMAN & McMAHON, P.L.C.

By: /s/ Martha L. Shaff  
Martha L. Shaff #AT0007215

By: /s/ Brandon W. Lobberecht  
Brandon W. Lobberecht #AT0011918

1900 East 54<sup>th</sup> Street  
Davenport, IA 52807-2708  
T: 563-326-4491  
F: 563-326-4498  
E: [mls@bettylawfirm.com](mailto:mls@bettylawfirm.com)  
[bwl@bettylawfirm.com](mailto:bwl@bettylawfirm.com)

**ATTORNEYS FOR DEFENDANTS, CITY OF  
BURLINGTON and JESSE HILL**

**CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS**

I hereby certify that on February 2, 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:

David A. O'Brien  
Dave O'Brien Law  
1500 Center St NE  
Cedar Rapids, Iowa 52402  
T: 319-861-3001  
F: 319-861-3007  
E: [dave@daveobrienlaw.com](mailto:dave@daveobrienlaw.com)

Adam J. Klein  
Law Offices of Adam J. Klein  
6 Concourse Parkway, Suite 2920  
Atlanta, GA 30328  
T: 678-825-5529  
F: 404-475-3091  
E: [aklein@adamkleinlaw.com](mailto:aklein@adamkleinlaw.com)

John M. Shelnett  
Shelnett Law Firm  
601 S 5th  
Gadsden, AL 35901  
T: 256-547-4988  
E: [jms@shelnettlaw.com](mailto:jms@shelnettlaw.com)

Trent A. Henkelvig  
Henkelvig Law  
314 N. 4th St.  
Burlington, IA 52601  
T: 319-753-5411  
F: 866-255-4581  
E: [TAHenkelvig@iabar.org](mailto:TAHenkelvig@iabar.org)

/s/ Brandon W. Lobberecht