

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
ADDITIONAL MATERIAL FACTS IN
SUPPORT OF THEIR RESISTANCE TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT**

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

1. While Autumn and Gabriel were arguing at their residence on January 6, 2015, Gabriel called 9-1-1 and requested police assistance from the dispatcher. (Def. Appendix 1).
2. Gabriel told the dispatcher Autumn was "trying to take [their] son" and asked for the police to "hurry" to his residence. (Def. Appendix 1).
3. Burlington Police Officers Jesse Hill and Timothy Merryman responded to the Steele residence to investigate the domestic disturbance reported by Gabriel. (Pl. Appendix pp. 15; 27-29; 41; 61).

4. Officer Hill was the first officer to arrive at the Steeles' residence. (Pl. Appendix pp. 15; 27-29; 41; 61).

5. Approximately four seconds after activating his body camera and after exiting his patrol vehicle, Officer Hill reached Autumn's location and verbally ordered her to stop assaulting Gabriel. (Pl. Appendix p. 41, 0:04).

6. Approximately four-to-five seconds after Officer Hill activated his body camera, the Steeles' dog, Sammy, barks near Officer Hill. (Pl. Appendix p. 41, 0:04 – 0:05).

7. 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. (Pl. Appendix p. 15).

8. Immediately after Officer Hill ordered the Steeles to get their dog, the dog, Sammy, began barking more intensely and growling near Officer Hill. (Pl. Appendix 41, 0:05 – 0:07).

9. Officer Hill observed that the Steele's dog was advancing towards him "with its teeth showing." (Pl. Appendix p. 15).

10. 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. (Pl. Appendix p. 15; 41, 0:07).

11. 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. (Pl. Appendix pp. 15; 41, 0:07).

12. While shooting and falling backwards, Officer Hill perceived the Steeles' dog was still advancing towards him. (Pl. Appendix p. 15; 41).

13. Both rounds fired by Officer Hill were discharged in less than a second of each other. (Pl. Appendix p. 41, 0:07).

14. 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. (Pl. Appendix p. 41, 0:00 – 0:08).

15. 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. (Def. Appendix 15).

16. Prior to firing any shots from his firearm, Officer Hill did not issue any commands to Autumn, Gabriel or G.S. that they were not free to leave the area or that they were being detained or placed under arrest. (Pl. Appendix 41, 0:00 – 0:07; Def. Appendix 11-12;17-18).

17. After both rounds from Officer Hill's service weapon were discharged, Gabriel asked Autumn if Officer Hill shot her. (Pl. Appendix 41, 0:10).

18. Gabriel then asked Officer Hill if he shot Autumn. (Pl. Appendix 41, 0:13).

19. Officer Hill responded to Gabriel's question by stating "Did I? Oh my god." (Pl. Appendix 41; 0:14).

20. Gabriel then asked Autumn again if she had been shot. (Pl. Appendix 41, 0:15).

21. Gabriel then exclaimed to Officer Hill that he had shot Autumn. (Pl. Appendix 41, 0:22).

22. Officer Hill responded to Gabriel's statement by stating "Did I--Did I really?" (Pl. Appendix 41, 0:23 – 0:24).

23. Officer Merryman arrived to the scene after Officer Hill's shots had been fired. (Pl. Appendix 41; 61).

24. 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. (Pl. Appendix 41, 1:02 – 1:06).

25. After Officer Hill stated that he was "f***ing going to prison" to Officer Merryman, Officer Merryman responded "It was an accident." and Officer Hill replied "It was." (Pl. Appendix p. 41, 1:48 – 1:53).

26. The exchange between Officer Hill and Officer Merryman in Paragraph 25 occurred approximately one minute and forty seconds after Officer Hill had fired the last shot from his service weapon. (Pl. Appendix p. 41, 0:00 – 0:08, 1:48 – 1:53).

27. Officer Merryman spoke to Gabriel after the incident and asked Gabriel whether the dog was "attacking" Officer Hill at the time of the shooting. (Pl. Appendix p. 61, 5:25 – 5:58¹)

28. In response to Officer Merryman's questions, Gabriel stated that their dog was "going towards [Officer Hill], yeah." (Pl. Appendix p. 61, 5:57 – 5:58).

29. Gabriel further told Officer Merryman that Officer Hill drew his pistol and shot at their dog when it was going towards him. (Pl. Appendix p. 61, 6:01 – 6:04).

30. Gabriel later made a telephone call to another individual in the presence of Officer Merryman. (Pl. Appendix p. 61, 14:30).

31. 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. (Pl. Appendix p. 61, 14:50 – 14:58).

¹ These time stamps refer to Officer Merryman's video from his arrival on the shooting scene.

32. Gabriel testified during his deposition that, to him, the phrase that a dog “attacked” a person means the dog “bit” or “mauled” the person. (Def. Appendix 5-6).

33. The Iowa Department of Criminal Investigations (“DCI”) investigated the January 6, 2015 shooting incident involving Officer Hill and the Steeles. (Def. Appendix 21).

34. 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. (Def. Appendix 22).

35. The investigating DCI agents did not find that Autumn was struck by more than one round fired by Officer Hill. (Def. Appendix 22).

36. DCI agents determined that the Steeles’ dog, Sammy, was a German Shepherd-mix weighing approximately eighty (80) pounds. (Def. Appendix 25).

37. DCI agents further determined that the Steeles’ dog, Sammy, sustained a gunshot wound to its right shoulder which appeared to be a grazing wound. (Def. Appendix 25-27).

38. After the shooting incident, Officer Hill was treated by Dr. Brandon Beauchamp at Great River Medical Center in West Burlington, Iowa. (Def. Appendix 33-34).

39. Officer Hill was diagnosed with and provided treatment for a dog bite injury to his left lower extremity. (Def. Appendix 33-34).

40. 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. (Pl. Appendix p. 52).

41. Dr. Beauchamp further testified that the abrasion appeared to be relatively new. (Pl. Appendix p. 53).

42. Although Officer Hill was generally aware that the Steeles had a dog based on a prior call he responded to at their residence, he had never seen the dog before January 6, 2015 and had no knowledge regarding the dog's size, breed, or temperament. (Def. Appendix 28-32).

43. The following exchange occurred between Plaintiffs' counsel and Officer Hill during Officer Hill's deposition:

Q. Now, the good news for you is **all the eyewitnesses who had – who had some observation of this incident** all thought you believed that – **all believed that you were trying to shoot the dog, right?**

A. That's what –

Q. And that's what you were trying to do, isn't it?

A. It was.

Q. All right. **And nobody's accusing you of intentionally pulling your gun out and shooting Autumn, right?**

A. I'd hope not.

Q. And you didn't do that, did you?

A. No, I didn't.

(Def. Appendix 16) (emphasis added).

44. Laura Mellinger witnessed portions of the shooting incident on January 6, 2015 from a second-story window in her house approximately 50 feet away from the incident. (Def. Appendix 38-42; 50-52).

45. Mrs. Mellinger did not have her windows cracked or open at all. (Def. Appendix 41; 44).

46. Mrs. Mellinger saw Officer Hill pull up in his patrol vehicle and approach the Steeles. (Def. Appendix 45-46).

47. Mrs. Mellinger could not see what Officer Hill was doing before the shots were fired because a telephone pole obstructed part of her view. (Def. Appendix 46-47).

48. Mrs. Mellinger could not hear the Steeles' dog bark and could not hear anything that Officer Hill said during the incident. (Def. Appendix 47-48).

49. Mrs. Mellinger could not see where Officer Hill was located at when he fired the shots because her view was obstructed by the telephone pole and she wasn't looking at Officer Hill. (Def. Appendix 48-49).

50. Mrs. Mellinger could not see how Officer Hill's gun was pointed at the time he fired his shots. (Def. Appendix 49).

51. Courtney Webb drove past the Steeles and Officer Hill in her car on January 6, 2015. (Def. Appendix 56-57).

52. Ms. Webb as stopped at the intersection of Market and Garfield Streets at the time Officer Hill arrived in his patrol vehicle. (Def. Appendix 58-59).

53. When Officer Hill got out of his vehicle, Ms. Webb continued driving through the intersection. (Def. Appendix 59).

54. Ms. Webb did not hear any gunshots until she was at the next intersection at Smith Street. (Def. Appendix 63; 67; 82).

55. Ms. Webb did not observe Officer Hill when he discharged his firearm. (Def. Appendix 63).

56. Ms. Webb did not hear anything said by Officer Hill or the Steeles during the incident. (Def. Appendix 63).

57. Ms. Webb did not see the Steeles' dog have any interaction with Officer Hill. (Def. Appendix 65).

58. Ms. Webb never heard the Steeles' dog bark or growl. (Def. Appendix 66).

59. Ed Ranck witnessed portions of the shooting incident on January 6, 2015 from approximately 50 feet away, kitty-corner across the intersection from the incident. (Def. Appendix 72-81; 90-91).

60. Mr. Ranck did not hear the Steeles' dog growl at any time. (Def. Appendix 82; 89).

61. Mr. Ranck testified that the Steeles' dog did not bark while Officer Hill was near the Steeles. (Def. Appendix 82; 89).

62. Mr. Ranck testified generally that he believe the Steeles' dog was being "playful" based on his observations at the time. (Def. Appendix 87).

63. However, Mr. Ranck further testified that his opinion about the playfulness of the dog would change if had growled at Officer Hill because growling is an "aggressive thing to a certain degree." (Def. Appendix 89).

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 54th Street
Davenport, IA 52807-2708
T: 563-326-4491
F: 563-326-4498
E: mls@bettylawfirm.com
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

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

John M. Shelnett
Shelnett Law Firm
601 S 5th
Gadsden, AL 35901
T: 256-547-4988
E: 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

/s/ Brandon W. Lobberecht