

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,	Civil No. 3:16-cv-105
Plaintiffs,	PLAINTIFFS' REPLY TO DEFENDANTS' STATEMENT OF ADDITIONAL MATERIAL FACTS IN SUPPORT OF THEIR RESISTANCE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
vs.	
CITY OF BURLINGTON and JESSE HILL,	
Defendant.	

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

1. Admit.
2. 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).

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

4. Admit.

5. 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).

6. 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 Sammy on the other side of Gabriel and G.S. away from Defendant Hill right after the shots are fired. (Defense App. p. 2).

7. 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).

8. 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).

9. 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).

10. 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).

11. Denied for the same reasons identified in paragraph 10 above.

12. 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).

13. Admit.

14. Admit and note that within that first seven seconds (the firing of the first shot) that Defendant Hill was on the scene, according to the Defendants' version of what happened, Sammy went from being playful and nonaggressive as identified by three eyewitness, to being an imminent threat of serious physical harm to Hill, without any of the three eyewitnesses noticing any change in Sammy's behavior. (Plaintiffs' App. pp. 61 and 16-19).

15. 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).

16. Admitted that Defendant Hill gave no such verbal commands, but he physically grabbed Autumn during that time period. (Plaintiffs' App. 15).

17. 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).

18. Admit.

19. Admit.

20. Admit.

21. Denied. Gabriel said to Hill "you shot her." (Plaintiffs App. p. 4).

22. Admit.

23. Admit.

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

25. Admit that Hill said, “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).

26. Admit that within two minutes of shooting Autumn Steele Defendant Hill came to the realization that he had committed involuntary manslaughter by doing so in a reckless manner and would be going to prison.

27. 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).

28. Admit, within the context noted above in response paragraph 27. 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).

29. Denied. See the response to paragraph 48 which accurately sets out the exchange between Merryman and Gabriel. (Defense App. 3, 5:26-6:08).

30. 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).

31. 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).

32. Admit and note that Defendant Hill never claimed at the scene that he was either bit, mauled or anything of the sort. All Defendant Hill claimed was that Sammy “jumped” on him one time. A claim confirmed by eyewitness Ed Ranck who said the jump was not aggressive. (Plaintiffs’ App. pp. 4-10 and 17).

33. 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).

34. 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).

35. Admit, although they did not find to the contrary either. (Def. App. p. 22).

36. 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).

37. Admit.

38. Admit.

39. 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).

40. 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 39 above. (Plaintiffs’ App. p. 52).

41. Admit.

42. Admit, but note that Defendant Hill was able to make determinations of the size, breed and temperament as he arrived on the scene before shooting Autumn Steele.

43. Admit, and note this is the legal distinction between first or second degree murder and involuntary manslaughter. See I.C.A. 717.1-3 and 5. Also, note that under Iowa law an officer who shoots in the direction of a bystander knowing the bystander is there is considered to have intentionally used lethal force against that bystander. I.C.A. 704.2.

44. Denied. Mellinger witnesses the entire shooting incident although a telephone pole obscured a small portion of her view. (Plaintiffs' App. p. 61).

45. Admit.

46. Admit.

47. Admit that Mellinger stated she saw the shots being fired but did not know where Defendant Hill was because of the pole and she "wasn't really watching him so much."

48. Admit.

49. Admit.

50. Admit.

51. Admit.

52. Admit.

53. Admit that Webb testified she started going thru the intersection as Defendant Hill got out of his car and ran toward the house.

54. Admit.

55. Admit that Webb did not observe Defendant Hill during the 3 or 4 seconds that elapsed between him running toward the Steele and shooting Autumn Steele. (Plaintiff App. p. 41 and Defense App. p. 63).

56. Admit.

57. Admit.

58. Admit.

59. Denied. Ranck witnessed the entire incident. (Defense App. p. 76)(“I stayed outside”).

60. Admit.

61. Denied. Ranck answered “I do not believe so” when asked if heard Sammy bark. (Defense App. p. 89).

62. Admit.

63. Denied. Ranck testified that “generally [growling] is an aggressive thing to a certain degree. Which they do growl occasionally when they play.” (Defense App. p. 89). Note that Ranck’s assessment of growling behavior is right in line with the dog training module provided to Defendant Hill only after shooting Autumn Steele, even though available before. (Plaintiffs’ App. pp. 32 and 55-56).

Respectfully submitted,

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PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on the 9th day of February, 2018, by:

XEDMS/ECF

FAX

Hand Delivered

Certified Mail

FedEx/Airborne Express

Email

Signature: /s/ David A. O'Brien