

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

<p>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,</p> <p>Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>CITY OF BURLINGTON and JESSE HILL,</p> <p>Defendant.</p>	<p>Civil No. 3:16-cv-105</p> <p style="text-align: center;"><b><u>*FILED UNDER SEAL*</u></b></p> <p style="text-align: center;"><b>DEFENDANTS' SUPPLEMENTAL APPENDIX IN SUPPORT OF THEIR MOTION SUMMARY JUDGMENT</b></p>
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**COME NOW**, Defendants, City of Burlington and Jesse Hill, by and through their attorneys, Betty, Neuman & McMahon, P.L.C., and for their Supplemental Appendix in support of their Motion for Summary Judgment, pursuant to Federal Rule of Civil Procedure 56 and Southern District of Iowa Local Rule 56 state:

**SUPPLEMENTAL APPENDIX**

<u>Document/Media:</u>	<u>Dated</u>	<u>Appendix #</u>
Excerpts Of Deposition Testimony Given By Defendant Jesse Hill	8/2/17	63 - 65
Excerpts Of Iowa DCI Interview With Defendant Jesse Hill	1/9/15	66 - 72
Excerpts Of Deposition Testimony Given By Laura Mellinger (Including Deposition Exhibits 83-85)	12/12/17	73 - 90
Excerpts of Deposition Testimony Given By Courtney Webb (Including Deposition Exhibit 82)	12/12/17	91 - 106
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Iowa Supreme Court Notice Re: Oral Argument in <i>Baldwin v. Estherville, Iowa</i> , Iowa Appeal No. 17-1592	Filed 1/12/18	140 - 143
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BETTY, NEUMAN & McMAHON, P.L.C.

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BURLINGTON and JESSE HILL**

**CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS**

I hereby certify that on February 9, 2018, I electronically filed the foregoing document with the Clerk of Court using the ECF system and a true copy of the foregoing was served either electronically or by U.S. First Class Mail upon the following:

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**STEELE, et al vs CITY OF BURLINGTON, et al  
JESSE HILL - August 2, 2017**

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

Gabriel Steele, individually,	)	
as Executor of the Estate of	)	
Autumn Steele, and as next of	)	
friend for his minor child	)	
G.S.; Sean Schoff, as next of	)	
friend for his minor child	)	
K.S.; and Gina Colbert,	)	
individually,	)	Case No. 3:16-cv-105
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
City of Burlington and	)	
Officer Jesse Hill,	)	
	)	
Defendants.	)	

DEPOSITION OF JESSE HILL, taken on  
Wednesday, August 2, 2017, commencing at  
9:00 a.m., at 321 North 3rd Street, Burlington,  
Iowa, before Angela Weible-Jones, Certified  
Shorthand Reporter of the State of Iowa,  
pursuant to the within stipulation.

Angela Weible-Jones, CSR, RPR, CRR  
Carson Reporting, Inc.  
118 - 3rd Avenue, Southeast, Suite 301  
Cedar Rapids, Iowa 52401  
(319) 366-7450

**Angela Weible-Jones, CSR, RPR, CRR  
CARSON REPORTING, INC. - 319/366-7450**



**STEELE, et al vs CITY OF BURLINGTON, et al**  
**JESSE HILL - August 2, 2017**

2

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 5 Attorney for the Plaintiffs.

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 13 Attorney for the Defendants.

14 ALSO PRESENT: Gina Colbert  
 15 Gabriel Steele

11

12

13 I N D E X

14	WITNESS	EXAMINATION	PAGE
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17

18

19 E X H I B I T S

20	NUMBER	EXHIBIT	M	I
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22	2	Transcript of Hill Body Camera	23	23
23	3	1/6/15 Iowa DCI George Narrative	24	25
24	4	Photocopied Color Photographs	28	28
25		(9 pages)		

**Angela Weible-Jones, CSR, RPR, CRR**  
**CARSON REPORTING, INC. - 319/366-7450**

\*Direct Examination by Attorney David O'Brien

STEELE, et al vs CITY OF BURLINGTON, et al  
JESSE HILL - August 2, 2017

63

1 the dog continue to go after him at that point, and  
2 he said no. Do you see that?

3 A. Yes.

4 Q. Do you still want to maintain that the dog  
5 attacked you?

6 MS. SHAFF: Objection, argumentative.

7 A. Yes, sir.

8 Q. Now, the good news for you is all the  
9 eyewitnesses who had -- who had some observation of  
10 this incident all thought you believed that -- all  
11 believed that you were trying to shoot the dog.  
12 Right?

13 A. That's what --

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

16 A. It was.

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

20 A. I'd hope not.

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

22 A. No, I didn't.

23 Q. All right. Mr. Rank went on to say when  
24 he -- after he pulled his gun out, it was pretty  
25 clear he was trying to shoot the dog, but he thinks

Angela Weible-Jones, CSR, RPR, CRR  
CARSON REPORTING, INC. - 319/366-7450

**STATE OF IOWA**  
Department of Public Safety  
**INVESTIGATIVE REPORT**



**DIVISION OF  
CRIMINAL  
INVESTIGATION**

**CASE NUMBER: 15001378**

**Version I**

THIS INVESTIGATIVE REPORT IS THE PROPERTY OF THE DIVISION OF CRIMINAL INVESTIGATION AND IS  
MADE AVAILABLE TO YOUR AGENCY FOR OFFICIAL PURPOSES ONLY BY IOWA LAW. THIS IS NOT A PUBLIC  
RECORD AND IS NOT TO BE DISSEMINATED OUTSIDE OF YOUR AGENCY.

# IOWA DIVISION OF CRIMINAL INVESTIGATION

## INVESTIGATIVE REPORT

### TITLE PAGE

**CASE:** 15001378  
**TYPE:** OFFICER INVOLVED SHOOTING  
**LOCATION:** 100 BLOCK OF SOUTH GARFIELD AVENUE  
 BURLINGTON, IOWA

**VICTIM(S):**

**NAME:** AUTUMN MAE STEELE  
**SEX:** FEMALE  
**RACE:** WHITE  
**DCI:**  
**FBI:**

☐ See Next Page for Add'l Victims

**SUBJECT(S)**

**NAME:** OFFICER JESSE LEE HILL  
**SEX:** MALE  
**DCI:**  
**FBI:**

☐ See Next Page for Add'l Subjects

**DATE OF INCIDENT:** JANUARY 6, 2015  
**CASE AGENT:** S/A MATT GEORGE  
**REQUESTING AGENCY:** BURLINGTON POLICE DEPARTMENT  
**ASSISTING AGENT:** S/A RYAN KEDLEY; S/A RYAN HERMAN  
**ASSISTING AGENCY:** DES MOINES COUNTY SHERIFF'S OFFICE

**DISTRIBUTION:**

M	HD	PU	O	
				1. FILE-(ORIGINAL)
				2. SAC RICHARD RAHN – REVIEWED 02/24/2015
				3. S/A MATT GEORGE – 1
				4. DES MOINES COUNTY ATTORNEY'S OFFICE, ATTN: AMY BEAVERS – 1
				5.
				6.

Transcribed By/Date: Hawn/261255 02/20/2015

\*DCI PRODUCED - CONFIDENTIAL

## IOWA DIVISION OF CRIMINAL INVESTIGATION

CASE: 15001378

TYPED BY/DATE: MICHELE B./02-17-2015  
261053

JH: JESSE HILL

JD: JIM DENNIS (ATTORNEY)

KG: KEVIN GLENDENING (UNION REP)

BG: BROCC GALBREATH (JESSE'S UNCLE)

MG: MATT GEORGE, SPECIAL AGENT, DCI

JL: JOE LESTINA, SPECIAL AGENT, DCI

### RECORDED INTERVIEW

JANUARY 9, 2015

CASE AGENT: SPECIAL AGENT MATT GEORGE

1 MG: Case number 15001378. This is Special Agent Matt George. I'm here with  
2 Special Agent Joe Lestina at the, uh, DCI office, uh, at the casino here in  
3 Burlington, Iowa. We are going to be interviewing shortly, uh, here in a few  
4 minutes Officer JESSE HILL from the Burlington Police Department  
5 concerning an officer-involved shooting that took place on January 6<sup>th</sup>, 2015.  
6 Present during this interview will be Officer HILL'S attorney, JIM DENNIS. I  
7 believe it's D-E-N-N-I-S; and union rep KEVIN GLENDENING. I believe it's  
8 G-L-E-N-N-D-E-N-N-I-N-G. Again, today's date is January 9<sup>th</sup>, 2015. The  
9 time is 9:42 a.m. Also in the room will be JESSE HILL'S uncle, BROCC  
10 GALBREATH, G-A-L-B-R-E-A-T-H.

11  
12 (Sounds like door opens and closes)

13  
14 (Pause)

15  
16 MG: Okay. So I...I think before we get started at all, so it's...we have a record of  
17 who's here, I'll just go around and identify everybody. If I'm...if I'm wrong with  
18 your spelling of your name just let me know. Okay. So we have, uh, attorney  
19 JIM DENNIS. It's, uh, D-E-N-N-I-S.

20  
21 JD: Correct.

EXHIBIT #7-4A

**CASE: 15001378**

**RECORDED INTERVIEW – JESSE HILL, 01/09/2015 (CON'T)**

1066  
1067 MG: Okay. All right. Let me look at my notes here. In terms of, uh, uh, the...the  
1068 folks involved at, uh, was it 104 Garfield?  
1069  
1070 JH: Yes sir.  
1071  
1072 MG: Uh, the STEELES, uh, AUTUMN and GABRIEL STEELE. Had you ever dealt  
1073 with them before that day?  
1074  
1075 JH: Not that day, no. I've dealt with 'em...it was Christmas night.  
1076  
1077 MG: Okay.  
1078  
1079 JH: And, um, I mean the same kind of call. They were just domestic...I guess  
1080 verbal at the time. And, um, me and another officer arrived there and,  
1081 um...and, um, basically they were just kind of arguing over the kid. And, um, I  
1082 spoke with the...with the husband. And, uh, me and that officer spoke with  
1083 the wife together. Just tried to figure out a way to kind of resolve it, um...  
1084  
1085 MG: Okay.  
1086  
1087 JH: ...more or less. We can't tell either one of 'em to leave.  
1088  
1089 MG: Okay.  
1090  
1091 JH: I mean they both live at that house, so we...  
1092  
1093 MG: Right.  
1094  
1095 JH: ...we just kind of told 'em...I mean we dealt with domestics before and we  
1096 know somebody probably should leave just so...I mean things are kind of  
1097 heated right now.  
1098  
1099 MG: Right.  
1100  
1101 JH: Um, GABRIEL was very cooperative and he said I'll...I'll just go. So, um,  
1102 besides that we...GABRIEL left and we cleared from the call.  
1103  
1104 MG: Okay. Um, prior to the 6<sup>th</sup>, was...was that your one and only contact with the  
1105 STEELES?  
1106  
1107 JH: Yeah.

**CASE: 15001378**

**RECORDED INTERVIEW – JESSE HILL, 01/09/2015 (CON'T)**

1108  
1109 MG: That...that Christmas night?  
1110  
1111 JH: Yes sir.  
1112  
1113 MG: Christmas night of 2014?  
1114  
1115 JH: Of this year.  
1116  
1117 MG: Okay, so not...not too long ago.  
1118  
1119 JH: Right.  
1120  
1121 MG: A few...few weeks ago.  
1122  
1123 JH: Right.  
1124  
1125 MG: Uh, no arrests were made. They were just verbal and not physical?  
1126  
1127 JH: Yes sir.  
1128  
1129 MG: Okay. Um, did you have contact with their dog that...that evening? Do you  
1130 remember?  
1131  
1132 JH: No. I don't recall it being...I don't know where it was at, but I didn't see...we  
1133 were just kind of in the front. We walked in the door and kind of talked to her  
1134 right in the front door. I don't recall the dog being there.  
1135  
1136 MG: Okay. You don't recall seeing it or...or hearing the dog?  
1137  
1138 JH: No.  
1139  
1140 MG: Okay. Prior...prior to January 6<sup>th</sup>, again this would have been the day of the  
1141 shooting, um, even though you may not have had any contact with the dog,  
1142 uh, had you ever, during briefings or write a report or...or knew of any officer  
1143 that had dealt with this particular dog before? In other words, did you have  
1144 any intelligence on...on their dog, this German shepherd, that it was either  
1145 friendly or...or a problem dog either way?  
1146  
1147 JH: No sir.  
1148  
1149 MG: So you knew nothin' about the dog...



**CASE: 15001378**

**RECORDED INTERVIEW – JESSE HILL, 01/09/2015 (CON'T)**

1150  
1151 JH: No.  
1152  
1153 MG: ...prior to the 6<sup>th</sup>?  
1154  
1155 JH: I didn't know, no.  
1156  
1157 MG: Okay.  
1158  
1159 JH: Well, let me take that back.  
1160  
1161 MG: Oh, sure.  
1162  
1163 JH: When I spoke to GABRIEL the night of Christmas...  
1164  
1165 MG: Uh-huh.  
1166  
1167 JH: ...he was worried about his dog. He just... 'cause it was out in the garage.  
1168  
1169 MG: Oh, okay.  
1170  
1171 JH: So he just wanted us to tell, um, I'm sorry, the female's name...  
1172  
1173 MG: AUTUMN.  
1174  
1175 JH: AUTUMN. He wanted me to tell AUTUMN just to bring the dog in out of the  
1176 cold, uh...  
1177  
1178 MG: Okay.  
1179  
1180 JH: And that's...that's...  
1181  
1182 MG: That's it?  
1183  
1184 JH: I guess I did know that. I'm sorry.  
1185  
1186 MG: Okay. Okay. No, that's fine. No need to apologize. But in terms of the...of  
1187 the dog's temperament either way...  
1188  
1189 JH: No.  
1190



**CASE: 15001378**

**RECORDED INTERVIEW – JESSE HILL, 01/09/2015 (CON'T)**

1191 MG: ...you didn't know either way whether it was...it was known to be a friendly  
1192 dog or a problem, upset kind of dog?  
1193  
1194 JH: No, none, I did not know.  
1195  
1196 MG: Okay.  
1197  
1198 (Pause)  
1199  
1200 MG: Um...I forgot in looking at your duty belt, are you right or left-handed?  
1201  
1202 JH: Right-handed.  
1203  
1204 MG: You're right-handed. Okay. Um, in terms of gear, did you have a bulletproof  
1205 vest on?  
1206  
1207 JH: Yes sir.  
1208  
1209 MG: You did. Okay. Do you remember how much sleep you got the night before?  
1210 I know you were called early morning hours on the 6<sup>th</sup> but you had a couple of  
1211 drinks that night. How many hours of sleep if...if you were to guesstimate?  
1212  
1213 JH: Uh, I would say about five and a half.  
1214  
1215 MG: Five and a half hours.  
1216  
1217 JH: I usually get woken up in the middle of the night with a one-year-old at home.  
1218  
1219 MG: Yeah. I...I have small kids too so I...I definitely get that. When...when you  
1220 went down to work on...on the 6<sup>th</sup> around 9:00, I mean generally speaking  
1221 how were you feeling? I mean were you sick or did you feel okay, tired? I  
1222 mean how...how would you charac--...characterize yourself? Maybe you're  
1223 always tired...  
1224  
1225 JH: Well...well...  
1226  
1227 MG: ...as a new dad, but.  
1228  
1229 JH: I mean I was just more kind of upset of havin' to come into work.  
1230  
1231 MG: Okay.  
1232

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

Gabriel Steele, individually, )  
as Executor of the Estate of )  
Autumn Steele, and as next of )  
friend for his minor child )  
G.S.; Sean Schoff, as next of )  
friend for his minor child )  
K.S.; and Gina Colbert, )  
individually, ) Case No. 3:16-cv-105  
Plaintiffs, )  
vs. )  
City of Burlington and )  
Officer Jesse Hill, )  
Defendants. )

DEPOSITION OF LAURA MELLINGER, taken on  
Tuesday, December 12, 2017, commencing at  
1:55 p.m., at the Burlington Public Library,  
210 Court Street, Burlington, Iowa, before  
Angela Weible-Jones, Certified Shorthand Reporter  
of the State of Iowa, pursuant to the within  
stipulation.

Angela Weible-Jones, CSR, RPR, CRR  
Carson Reporting, Inc.  
118 - 3rd Avenue, Southeast, Suite 301  
Cedar Rapids, Iowa 52401  
(319) 366-7450

**STEELE, et al vs. CITY OF BURLINGTON, et al**  
**LAURA MELLINGER - December 12, 2017**

2

1

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 Northeast, Cedar Rapids, Iowa, 52402,  
 Attorney for the Plaintiffs.

4

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 Attorney at Law, 314 North 4th Street,  
 Burlington, Iowa, 52601, Attorney for the  
 Plaintiffs.

6

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Martha L. Shaff, of Betty, Neuman & McMahon,  
 P.L.C., Attorneys at Law, 1900 East 54th  
 Street, Davenport, Iowa, 52807-2708,  
 Attorney for the Defendants.

8

9

ALSO PRESENT: Gabriel Steele

10

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12

I N D E X

13

WITNESS

EXAMINATION

PAGE

14

Laura Mellinger

D(By Ms. Shaff)

4

C(By Mr. O'Brien)

24

15

RD(By Ms. Shaff)

29

16

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E X H I B I T S

19

NUMBER

EXHIBIT

M

I

20

83 Google Maps of 

7

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84 Google Maps of 

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85 Google Maps of 

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23

86 Laura Mellinger Interview Notes

26

27

24

25

Angela Weible-Jones, CSR, RPR, CRR  
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STEELE, et al vs. CITY OF BURLINGTON, et al  
LAURA MELLINGER - December 12, 2017

3

1 S T I P U L A T I O N

2 "The deposition of Laura Mellinger is being  
3 taken at this time and place pursuant to the Federal  
4 Rules of Civil Procedure and may be used for all  
5 purposes authorized by said Rules."

6

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Angela Weible-Jones, CSR, RPR, CRR  
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\*Direct Examination by Attorney Martha Shaff

**STEELE, et al vs. CITY OF BURLINGTON, et al**  
**LAURA MELLINGER - December 12, 2017**

7

1           **A.    Yes.**

2           Q.    Can you describe for me your home -- I  
3 believe it said you were on the second floor. So is  
4 it a story and a half or a two-story, or what is it?

5           **A.    A two-story home.**

6                   **(Exhibits 83 and 84 were marked for**  
7 **identification by the reporter.)**

8           Q.    I went on Google Maps, and I took some  
9 pictures off the computer of the neighborhood in  
10 general. And Exhibit 84 has your address at the  
11 top -- No, actually you're [REDACTED] but it's across the  
12 street. This one's taken further out than 83. 83's  
13 a closer up. But if we look at 83, can you identify  
14 your house?

15          **A.    I think there (indicating).**

16          Q.    Okay. And that would make sense because  
17 this is Garfield here (indicating), I think, if you  
18 look at the --

19          **A.    Okay.**

20          Q.    Correct?

21          **A.    Yeah.**

22          Q.    And then here's Market Street (indicating).  
23 And you're at the corner of Garfield and Market;  
24 would that be correct?

25          **A.    Yes, yes.**

**Angela Weible-Jones, CSR, RPR, CRR**  
**CARSON REPORTING, INC. - 319/366-7450**

\*Direct Examination by Attorney Martha Shaff

STEELE, et al vs. CITY OF BURLINGTON, et al  
LAURA MELLINGER - December 12, 2017

8

1 Q. So could we use that orange marker, and  
2 could you put an X on top of your house?

3 A. Sure.

4 Q. And actually . . .

5 (Exhibit 85 was marked for identification  
6 by the reporter.)

7 Q. I've got one more that I marked as  
8 Exhibit 85. This one actually shows Google Maps  
9 [REDACTED] at the top, and it puts that  
10 address above that house.

11 A. Okay.

12 Q. Does that help you --

13 A. Okay. Yeah.

14 Q. -- acquaint yourself?

15 A. Yeah.

16 Q. This one's just closer in.

17 A. Yeah, yeah. Okay.

18 Q. Okay.

19 A. That's it.

20 Q. All right. Now, do you know what direction  
21 Market Street is from your house?

22 A. Yes. Right there (indicating).

23 Q. Is it north, south, east, west?

24 A. Oh, boy.

25 Q. Do you know?

Angela Weible-Jones, CSR, RPR, CRR  
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\*Direct Examination by Attorney Martha Shaff

STEELE, et al vs. CITY OF BURLINGTON, et al  
LAURA MELLINGER - December 12, 2017

9

1           A.    Hm-um, no.

2           Q.    Okay. Do you know if Market Street goes  
3 east/west or north/south?

4           A.    Hm-um, no, I don't. Directions aren't --  
5 No.

6           Q.    Okay.

7           A.    Not my thing. Sorry.

8           Q.    That's okay. So would it be fair to say  
9 that you were looking towards Market Street as you  
10 observed the events on this day?

11          A.    Yes.

12          Q.    Okay.

13          A.    Yes.

14          Q.    And in the upstairs of your home, were you  
15 in a bedroom? What type of room were you in?

16          A.    A bedroom.

17          Q.    And there were windows facing towards  
18 Market Street; is that correct?

19          A.    Yes, yes.

20          Q.    Did they have shades or blinds on them?

21          A.    Drapery. I think -- yeah, drapery, but I  
22 probably -- I think I pulled it back. Yeah, I moved  
23 the drapery so I could see out the window.

24          Q.    Okay. What drew your attention to look out  
25 the window that day?

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10

1           A.    Actually I was just getting out of the  
2   bathtub, and I heard some fighting or loud voices.

3           Q.    Had you ever heard loud voices from that  
4   home before?

5           A.    No, no.

6           Q.    Had you ever observed police going to that  
7   home before?

8           A.    No.

9           Q.    It's January. Did you have your windows  
10   cracked at all?

11          A.    No, no.

12          Q.    So this -- You're hearing this through the  
13   windows?

14          A.    Yes, yes.

15          Q.    Was that unusual to hear noise like that  
16   through the windows?

17          A.    Kind of, yeah. It was kind of loud, yeah.

18          Q.    And what do you recall hearing?

19          A.    I heard a male and a female fighting, and  
20   the woman was saying give me -- give me my son, give  
21   me my child.

22          Q.    Had you ever observed either of those  
23   individuals before?

24          A.    Yes, yeah, I had seen them before, yeah.

25          Q.    So you go over and are you standing right by

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11

1 the window watching this or --

2 A. Yes.

3 Q. -- where --

4 A. Yes.

5 Q. Okay. And how far do you think it is to  
6 where you're observing these events?

7 A. Let's see. Maybe 50 feet. I'm not sure.  
8 I'm not very good with directions.

9 Q. Okay. And if we look at Exhibit 85 which  
10 shows [REDACTED] can you identify the  
11 structure where those people were located at?

12 A. Okay. Let's see. This is me here  
13 (indicating). Okay. Let's see. I think, yeah,  
14 right along this sidewalk over here (indicating).  
15 They live at 104 South Garfield, and it was down a  
16 little bit kind of --

17 Q. Okay. Now, that's Market Street, so -- This  
18 (indicating) is Garfield, according to the map here.

19 A. Okay.

20 Q. Here, look at -- if you want to, you could  
21 use -- this one's (indicating) closer in --

22 A. Okay.

23 Q. -- which is 83.

24 A. Okay. So I was here (indicating), and yeah,  
25 it was -- it was South Garfield, I guess. Sorry.

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12

1 Q. And do you know whether it was the first or  
2 the second home?

3 A. It was kind of in between. Oh, I'd say the  
4 house right across the street from us. It was along  
5 the side of their house, so it was in between their  
6 house and the house on the corner.

7 Q. So can you use that marker and just kind of  
8 mark the general area where you were seeing them?

9 A. Yeah, right in there (indicating) --

10 Q. Okay.

11 A. -- on the sidewalk.

12 Q. On the sidewalk?

13 A. Um-hm.

14 Q. So they're up on the sidewalk close to --  
15 right as you could see the sidewalk to Market Street?

16 A. Yes, yes.

17 Q. Okay. And -- Okay. So you said that they  
18 were shouting. Or I guess you said you could hear  
19 them?

20 A. Um-hm, yes.

21 Q. Because you could hear them through the  
22 window of your home, would it be fair to say they  
23 were shouting at each other?

24 A. Yes.

25 Q. What -- Aside from the shouting, what did

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1 you observe them doing when you looked out?

2 A. Okay. He -- He was holding the little boy,  
3 walking down from their house kind of towards our  
4 house, towards the corner, and she was coming behind  
5 him reaching for the son trying to get the son,  
6 saying give me my son or something like that.

7 Q. Did you open the window so you could hear  
8 better what they were saying?

9 A. I don't think so, no.

10 Q. Okay. Did you observe them go back in the  
11 house at all at any time?

12 A. No, no.

13 Q. Did -- Was there a police officer there when  
14 you first looked out the window?

15 A. No, no.

16 Q. So when does the police officer arrive in  
17 this progression?

18 A. Well, probably, oh, I'd say five to ten  
19 minutes after I first started hearing them.

20 Q. So are you standing there watching them the  
21 whole five to ten minutes?

22 A. For -- for awhile, but then I'm -- I was  
23 kind of getting dressed in between, so I didn't  
24 probably constantly the whole -- once the -- I think  
25 I did 'til the police officer got there, and then a

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1 little bit after that I -- It wasn't constantly.

2 Q. So help me understand. When you say not  
3 constantly after the police officer gets there, what  
4 do you recall -- The police officer arrives. Where  
5 did you see him pull up at?

6 A. Just along the -- yeah, the street here  
7 (indicating), on South Garfield, kind of along the  
8 house right across the street from us. There's a  
9 fence -- a fenced in yard. Just kind of right  
10 alongside there (indicating).

11 Q. Okay. So there you're indicating that  
12 they're in front of this house that's up on the  
13 corner that appears to have maybe a little bit of a  
14 sidewalk towards Market; is that correct?

15 A. Yes, yes.

16 Q. Okay. Did you see the officer get out of  
17 his vehicle?

18 A. Yes.

19 Q. Did you recognize the officer?

20 A. No.

21 Q. And what did you observe him do when he got  
22 out of his vehicle?

23 A. I just saw him walk around his car and kind  
24 of walk up to -- kind of walk up to them a little  
25 closer, kind of still in the grass, I think, or snow.

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15

1 Q. And what did you observe then?

2 A. They -- we have -- there's a utility pole  
3 right kind of in the middle there, so I just saw him  
4 holding the child and her coming to reach to try to  
5 get him and --

6 Q. When you say him holding the child, which  
7 male are we speaking of?

8 A. Oh, I'm sorry.

9 Q. That's okay.

10 A. Is it Gabriel?

11 Q. Yeah.

12 A. Okay.

13 Q. So you saw Gabriel holding the child. And  
14 I'm sorry, where was she?

15 A. And she -- Autumn was kind of coming up from  
16 behind or to the side trying to -- trying to get the  
17 son.

18 Q. Was she still yelling?

19 A. Yes.

20 Q. Was she swinging her arms at all?

21 A. No, I don't -- not that I saw.

22 Q. Okay. And what did you observe the officer  
23 do?

24 A. I just saw him pull up and just kind of walk  
25 around the front of his car. And that's kind of

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1 where I think the pole was. I just remember him kind  
2 of, oh, just getting out, and I don't really -- I  
3 think the pole kind of obstructed -- I don't -- I  
4 just remember him kind of coming out and . . .

5 Q. So are you saying that the pole obstructed  
6 your view of what was happening?

7 A. I -- Part of it, I guess, yeah.

8 Q. Okay. Did you see -- Well, what did you  
9 observe next after you saw the officer walk up to  
10 them?

11 A. Well, actually I heard two gunshots.

12 Q. Okay. So did you observe the dog go near  
13 the officer prior to the gunshots?

14 A. I didn't, no. The only time -- My focus was  
15 mainly on Gabriel and his wife and the child. And I  
16 did notice the dog just to his right, I believe. The  
17 only time I saw the dog, it was kind of right by his  
18 side. I was -- That's when I saw the dog. That's --

19 Q. Was that before or after the officer arrived  
20 when you saw the dog to Gabe's side?

21 A. Probably before, before, yeah.

22 Q. Okay. Did you see the dog jump on the  
23 officer at any time?

24 A. No.

25 Q. Did you hear the dog bark?

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17

1 A. No.

2 Q. Did you hear anything the officer said?

3 A. No.

4 Q. When the officer got out of his vehicle and  
5 was going towards Gabe and Autumn, did you see if he  
6 had a weapon drawn?

7 A. I -- I don't really remember. I --

8 Q. That's okay if you don't remember.

9 A. Yeah, I --

10 Q. I mean, I just want to try to learn what you  
11 do or don't know.

12 A. Okay. Yeah, I -- I can't say that I did or  
13 don't. Yeah, I don't remember.

14 Q. Now, you said you heard the shots fired.  
15 Did you see the shots fired?

16 A. Yeah, yep. Yes, I did.

17 Q. Where was the officer located at when the  
18 shots were fired?

19 A. Again, he was kind of, I think, obstructed  
20 behind the pole, so I -- I wasn't really watching him  
21 so much.

22 Q. Okay. So when you say you saw the shots  
23 fired, you weren't looking at the officer at the time  
24 the shots were fired?

25 A. No, no.

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1 Q. Do you know if the officer was standing at  
2 the time he fired the shots?

3 A. The last I saw him, he was standing.

4 Q. Did you ever see him down on the ground?

5 A. I didn't, no.

6 Q. Did you ever see the dog near the officer?

7 A. No.

8 Q. And as I think I understood your testimony,  
9 the only time you remember seeing the dog was right  
10 by Gabe?

11 A. Yes, yes.

12 Q. Could you hear anything that was said after  
13 the shots were fired?

14 A. Yes. Gabriel said something about, oh, my  
15 gosh, did you shoot her, what -- why did you shoot  
16 her, something to that effect.

17 Q. And am I correct that you did not see how  
18 the gun was pointed at the time it went off?

19 A. No, no.

20 Q. So I am correct, you did not?

21 A. Yes, yes.

22 Q. Okay.

23 A. Can I say what I thought --

24 Q. Yeah.

25 A. -- was -- Okay. I just remember thinking

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Google Maps



Burlington, IA 52601



[https://www.google.com/maps/place/\[REDACTED\]3urlington,+IA+52601/@40.8097762,-91.1186532,107m/data=!3m1!1e3!4m5!3m4!1s0x87...](https://www.google.com/maps/place/[REDACTED]3urlington,+IA+52601/@40.8097762,-91.1186532,107m/data=!3m1!1e3!4m5!3m4!1s0x87...) 1/1

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

Gabriel Steele, individually, )  
as Executor of the Estate of )  
Autumn Steele, and as next of )  
friend for his minor child )  
G.S.; Sean Schoff, as next of )  
friend for his minor child )  
K.S.; and Gina Colbert, )  
individually, ) Case No. 3:16-cv-105  
Plaintiffs, )  
vs. )  
City of Burlington and )  
Officer Jesse Hill, )  
Defendants. )

DEPOSITION OF COURTNEY WEBB, taken on  
Tuesday, December 12, 2017, commencing at  
1:39 p.m., at the Burlington Public Library,  
210 Court Street, Burlington, Iowa, before  
Angela Weible-Jones, Certified Shorthand Reporter  
of the State of Iowa, pursuant to the within  
stipulation.

Angela Weible-Jones, CSR, RPR, CRR  
Carson Reporting, Inc.  
118 - 3rd Avenue, Southeast, Suite 301  
Cedar Rapids, Iowa 52401  
(319) 366-7450

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**COURTNEY WEBB - December 12, 2017**

2

1 APPEARANCES:

2 Dave O'Brien, of Dave O'Brien Law,  
 3 Attorney at Law, 1500 Center Street,  
 4 Northeast, Cedar Rapids, Iowa, 52402,  
 5 Attorney for the Plaintiffs.

6 Trent A. Henkelvig, of Henkelvig Law,  
 7 Attorney at Law, 314 North 4th Street,  
 8 Burlington, Iowa, 52601, Attorney for the  
 9 Plaintiffs.

10 Martha L. Shaff, of Betty, Neuman & McMahon,  
 11 P.L.C., Attorneys at Law, 1900 East 54th  
 12 Street, Davenport, Iowa, 52807-2708,  
 13 Attorney for the Defendants.

14 ALSO PRESENT: Gabriel Steele

10

11

12

13 I N D E X

14 WITNESS	EXAMINATION	PAGE
15 Courtney Webb	D(By Ms. Shaff)	4
	C(By Mr. O'Brien)	18
16	RD(By Ms. Shaff)	19

17

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19

20 E X H I B I T S

21 NUMBER	EXHIBIT	M	I
22 82	Google Maps of <span style="background-color: black; color: black;">[REDACTED]</span>	8	8

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3

1 S T I P U L A T I O N

2 "The deposition of Courtney Webb is being  
3 taken at this time and place pursuant to the Federal  
4 Rules of Civil Procedure and may be used for all  
5 purposes authorized by said Rules."

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7

1 Q. Do you have a recollection of coming upon an  
2 incident out in front of what would have been  
3 104 South Garfield Avenue in Burlington back in  
4 January 2015?

5 A. Yes.

6 Q. Did you by chance know the people who lived  
7 at that address?

8 A. No.

9 Q. Had you ever seen them before?

10 A. No.

11 Q. Had you ever seen any police officers at  
12 that address?

13 A. Just that day.

14 Q. Okay. How about -- well, let's -- Let me  
15 ask this. So as you came upon that address back in  
16 January 2015, it's my understanding you were driving  
17 a car. Is that correct?

18 A. Um-hm, yes.

19 Q. And were you alone in the car, or did you  
20 have anyone with you?

21 A. It was just me.

22 Q. And were you going -- What direction were  
23 you going?

24 A. Towards Division.

25 Q. Okay.

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1           (Exhibit 82 was marked for identification  
2 by the reporter.)

3           Q. I have printed off Google Maps an overhead  
4 picture of the area that would include 104 -- this  
5 says [REDACTED] but it also has Garfield,  
6 and then there's Market Street and there's Smith  
7 Street. Do you see that?

8           A. Um-hm.

9           Q. Yes?

10          A. Yes.

11          Q. So when you say you were going towards  
12 Division Street, can you with a marker -- I'm giving  
13 you an orange marker. Just point the direction --  
14 draw with an arrow on -- You were on Garfield,  
15 correct?

16          A. Yes.

17          Q. The direction you were proceeding.

18          A. I was going that way (indicating).

19          Q. Okay. And can I just look at that real  
20 quickly? Thank you. And had you started at your  
21 home?

22          A. Yeah.

23          Q. And do you remember where you were going?

24          A. Work.

25          Q. And you would go down to Division, and then

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9

1 which way would you go on Division?

2 **A. Right.**

3 Q. Okay. Do you recall what the weather was  
4 like that day?

5 **A. Snowy.**

6 Q. Was it cold?

7 **A. Yes.**

8 Q. Any idea what time you were going to work?

9 **A. Not anymore.**

10 Q. Do you recall approximately what time of day  
11 it was?

12 **A. Afternoon.**

13 Q. Okay.

14 **A. Morning. I don't know.**

15 Q. That's fine. And as you were -- And I'm  
16 sorry, I think I asked you this, but what kind of car  
17 were you driving?

18 **A. A Galant.**

19 Q. And you said you were alone in the car. And  
20 as you're proceeding down Garfield, is there a stop  
21 sign at the intersection of Market and Garfield?

22 **A. Yes.**

23 Q. And did you stop there?

24 **A. Yes.**

25 Q. Did you observe anything occurring at

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10

1 104 South Garfield at the time you stopped at that  
2 intersection?

3 A. I saw the police officer get out of his car  
4 and run up to the house, and then I saw them running  
5 out of the house.

6 Q. Okay. So let me take this through the  
7 order. Are you -- As you observed the police officer  
8 pull up to the house, are you stopped at the  
9 intersection?

10 A. Yes.

11 Q. And as he gets out of his car and runs up  
12 towards the house, are you still at the intersection,  
13 or have you proceeded to go through it?

14 A. I started to go through it.

15 Q. So you come up to the intersection at  
16 Market, you stop, you see the officer come up. You  
17 go through the intersection, correct?

18 A. Um-hm.

19 Q. Is that a yes?

20 A. Yes.

21 Q. Now, when you were at the intersection of  
22 Garfield, did you observe people out in front of that  
23 home, or was that after you went through the  
24 intersection that you observed them?

25 A. I think it was after, like as I was going

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11

1 through.

2 Q. Okay. And how many people did you observe?

3 A. Two -- Well, three.

4 Q. Okay.

5 A. And the dog.

6 Q. All right. And when did you see all three  
7 of those individuals and the dog? Did you see them  
8 all at the same time, or did you -- was it as -- Tell  
9 me how it went that you saw them.

10 A. Well, I saw the officer get out of his car  
11 and go up to the house, and then I saw them coming  
12 out of the house.

13 Q. Okay. So as the officer gets out of his  
14 vehicle, they're still in the house?

15 A. I think so.

16 Q. And then you think that they came out of the  
17 house as he was approaching?

18 A. Yes.

19 Q. And as he is approaching, is he walking?  
20 Running? How is he --

21 A. He was running.

22 Q. Okay.

23 A. He was going pretty fast.

24 Q. All right. And did you know who the officer  
25 was?

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12

1       **A.    No.**

2       Q.    You had never seen him before?

3       **A.    Huh-uh.**

4       Q.    And do you recall where he parked his  
5 vehicle?

6       **A.    Across the street next to the brick house on  
7 the corner.**

8       Q.    So as you're going down Garfield, is it on  
9 your right or your left?

10      **A.    Right.**

11      Q.    And then he ran across the street?

12      **A.    Um-hm.**

13      Q.    Is that a yes?

14      **A.    Yes.**

15      Q.    And so when he -- How fast are you going as  
16 you proceed past the house?

17      **A.    Like probably 10 miles an hour.**

18      Q.    Okay. So as you get right next to this  
19 house, 104 South Garfield, where are all of the  
20 people located?

21      **A.    Like on the sidewalk.**

22      Q.    And are they talking, or what are they  
23 doing?

24      **A.    I'm not sure.**

25      Q.    Okay. Were they -- Was anyone touching

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1 anyone?

2 A. At that time, no.

3 Q. So you have a -- You have three people. Are  
4 they all adults?

5 A. Yeah, that I seen, yes. I didn't see a -- I  
6 didn't know there was a kid until after the fact.

7 Q. Okay. So the three adults you see, does  
8 that include the officer, or does that -- or not?

9 A. Yes.

10 Q. It includes the officer?

11 A. Yes.

12 Q. And you said you found out after the fact  
13 there was a child?

14 A. Um-hm.

15 Q. Is that a yes?

16 A. Yes.

17 Q. And how did you learn after the fact that  
18 there had been a child there?

19 A. I saw the police officers and -- Well, I saw  
20 like the whole street like swamped with the police  
21 cars, and I was like what happened, because like I  
22 heard the shots fired when I was at the next stop  
23 sign.

24 Q. So as we look at Exhibit 82, would that be  
25 Smith Street then?

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14

1       A.    Yes.

2       Q.    So by the time you go past the house, the  
3 officer is there, you get to Smith Street, and it's  
4 at that intersection I take it that you have another  
5 stop sign?

6       A.    Um-hm.

7       Q.    Is that a yes?

8       A.    Yes.

9       Q.    So you are at that intersection, and that's  
10 when you hear the shots?

11      A.    Yes.

12      Q.    So did you see the officer use his weapon?

13      A.    No.

14      Q.    How many shots do you think you heard?

15      A.    Two.

16      Q.    Did you hear anything that was being said by  
17 any of the individuals by 104 South Garfield as you  
18 went by?

19      A.    No.

20      Q.    It's January. Can I assume you had your  
21 windows up?

22      A.    Yes.

23      Q.    Did you have your radio on?

24      A.    Yes.

25      Q.    Were you listening to music or --

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15

1       **A.     Yes.**

2       Q.     So as you go by, did you turn to look, or do  
3     you recall?

4       **A.     I think I looked because I saw him running.**  
5     **But that's all I saw.**

6       Q.     Do you remember seeing any interaction  
7     between the two other people who were not the  
8     officer?

9       **A.     No.**

10      Q.     You were interviewed shortly after this  
11     incident by an Officer Merryman. Do you remember  
12     that?

13      **A.     Yes.**

14      Q.     Okay. And you told him that you thought it  
15     was a couple kids playing in the snow with a dog. Do  
16     you remember that?

17      **A.     That's what it kind of looked like.**

18      Q.     Okay. And at what point as you're going  
19     down the street did it look to you like there were a  
20     couple kids playing with a dog?

21      **A.     When I was like crossing the street.**

22      Q.     Okay. So as you're going through the  
23     intersection with Market Street?

24      **A.     Um-hm. Yes.**

25      Q.     It's okay. So at that point you thought

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1 that there were a couple people playing in the snow  
2 with the dog, and then you keep going towards  
3 Smith Street?

4 A. Yes.

5 Q. So you didn't stop to watch the events?

6 A. No.

7 Q. You kept going because you had to get to  
8 work?

9 A. Yes.

10 Q. Okay. Did you see the dog have any  
11 interaction with the police officer?

12 A. No.

13 Q. So you never saw the dog get close to the  
14 police officer?

15 A. No.

16 Q. When you were interviewed by Officer  
17 Merryman, you said you were going to pick up your  
18 boyfriend. Did he work at the same place as you?

19 A. No.

20 Q. Do you have any recollection of going to  
21 pick him up that day?

22 A. No. I mean, I could -- I might have been  
23 picking him up on my way to work. I know I was going  
24 to work --

25 Q. Okay.

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17

1 A. -- at some point.

2 Q. All right. Would you have been proceeding  
3 this direction though if you had been going to pick  
4 up your boyfriend?

5 A. Yes.

6 Q. And when I say this direction, I'm talking  
7 about how the arrow is pointed in Exhibit 82 --

8 A. Yes.

9 Q. -- correct, towards Smith Street?

10 A. Yes.

11 Q. Did you -- At any time as you were going  
12 past the two individuals in front of 104 South  
13 Garfield, did you see them fighting physically,  
14 either one of them?

15 A. Not physically.

16 Q. And you never heard anything?

17 A. Right.

18 Q. Did you hear the dog bark at all?

19 A. No.

20 Q. Did you hear the dog growl?

21 A. No.

22 Q. Did you hear anything the police officer  
23 said?

24 A. No.

25 Q. So is it fair to say that the only thing you

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1 heard were the two gunshots?

2 **A. Yes.**

3 Q. And that was when you were down at the  
4 intersection with Smith Street?

5 **A. Yes.**

6 MS. SHAFF: Okay. I don't have any other  
7 questions then.

8 CROSS-EXAMINATION

9 BY MR. O'BRIEN:

10 Q. Ms. Webb, I'm Dave O'Brien, and I represent  
11 the Estate of Autumn Steele and Gabe Steele and some  
12 others who filed a wrongful death claim. I'm going  
13 to ask just a couple of questions. Okay? First of  
14 all, have you had a chance to review any of the  
15 recorded statements that you gave either to  
16 Officer Merryman of the Burlington Police Department  
17 or one of the DCI agents that interviewed you later?

18 **A. No.**

19 Q. All right. So you have not reviewed  
20 anything that you previously said about this case or  
21 about what you saw?

22 **A. Right.**

23 Q. So what you're providing us here today is  
24 your best recollection of that -- of those events  
25 from going a few years back now?

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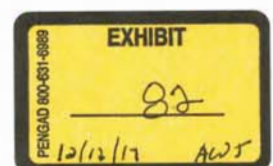
Google Maps



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Burlington, IA 52601



<https://www.google.com/maps/place/██████████,IA+52601/@40.8095235,-91.1191342,214m/data=!3m1!1e3!4m5!3m4!1s0x87...> 1/2

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

Gabriel Steele, individually,	)	
as Executor of the Estate of	)	
Autumn Steele, and as next of	)	
friend for his minor child	)	
G.S.; Sean Schoff, as next of	)	
friend for his minor child	)	
K.S.; and Gina Colbert,	)	
individually,	)	Case No. 3:16-cv-105
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
City of Burlington and	)	
Officer Jesse Hill,	)	
	)	
Defendants.	)	

DEPOSITION OF EDWARD RANCK, taken on  
Tuesday, December 12, 2017, commencing at  
11:10 a.m., at the Burlington Public Library,  
210 Court Street, Burlington, Iowa, before  
Angela Weible-Jones, Certified Shorthand Reporter  
of the State of Iowa, pursuant to the within  
stipulation.

Angela Weible-Jones, CSR, RPR, CRR  
Carson Reporting, Inc.  
118 - 3rd Avenue, Southeast, Suite 301  
Cedar Rapids, Iowa 52401  
(319) 366-7450



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1 APPEARANCES:

2 Dave O'Brien, of Dave O'Brien Law,  
 3 Attorney at Law, 1500 Center Street,  
 4 Northeast, Cedar Rapids, Iowa, 52402,  
 5 Attorney for the Plaintiffs.

6 Trent A. Henkelvig, of Henkelvig Law,  
 7 Attorney at Law, 314 North 4th Street,  
 8 Burlington, Iowa, 52601, Attorney for the  
 9 Plaintiffs.

10 Martha L. Shaff, of Betty, Neuman & McMahon,  
 11 P.L.C., Attorneys at Law, 1900 East 54th  
 12 Street, Davenport, Iowa, 52807-2708,  
 13 Attorney for the Defendants.

14 ALSO PRESENT: Gabriel Steele



11

12 I N D E X

13 WITNESS	EXAMINATION	PAGE
14 Edward Ranck	D(By Ms. Shaff)	4
	C(By Mr. O'Brien)	35
15	RD(By Ms. Shaff)	43
16	RC(By Mr. O'Brien)	43

17

18 E X H I B I T S

19 NUMBER	EXHIBIT	M	I
20 79	Google Maps of 	2	7
21 80	Google Maps of 	2	7
22 81	Ranck Interview Notes	38	38

23

24 (Exhibits 79 and 80 were marked for  
 25 identification by the reporter.)

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3

1 S T I P U L A T I O N

2 "The deposition of Edward Ranck is being  
3 taken at this time and place pursuant to the Federal  
4 Rules of Civil Procedure and may be used for all  
5 purposes authorized by said Rules."

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1           **A.    Yes.**

2           Q.    Okay. As I recall from listening to the  
3 videotapes that you've given or that you gave, you  
4 were getting ready to take your child to either  
5 daycare or school. Is that correct?

6           **A.    Yes.**

7           Q.    Do you recall about what time of day the  
8 events occurred?

9           **A.    I would have to guess. I don't remember**  
10 **what grade he was in, so it was probably like 7:30 or**  
11 **8:30, depending on which school he was at.**

12          Q.    And that would be in the morning?

13          **A.    Yeah.**

14          Q.    Do you recall what the weather was like that  
15 day?

16          **A.    Cold.**

17          Q.    Was there any precipitation?

18          **A.    Not on that -- Not that exact moment. There**  
19 **was snow on the ground.**

20          Q.    But nothing coming down at that moment?

21          **A.    No.**

22          Q.    Okay. Mr. Ranck, I got into Google Maps,  
23 and I printed off an aerial of the general  
24 neighborhood. There's Exhibit 79 and Exhibit 80.  
25 Exhibit 79's a little bit closer in than Exhibit 80.

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1 And unfortunately they're not maybe as clear as they  
2 could be. But can you identify your house in one of  
3 these two exhibits?

4 **A. Yeah.**

5 Q. I have an orange marker here, if you could  
6 maybe put an X by where your home is in either one of  
7 those exhibits for us, please.

8 **A. (Witness complies.)**

9 Q. Okay. You -- On Exhibit 79 you've marked an  
10 X by your house; is that correct?

11 **A. Yes.**

12 Q. And would it be fair to say that's on the --  
13 it's a corner property?

14 **A. Yes.**

15 Q. Can you identify for me on either one of  
16 those exhibits where you observed some events take  
17 place on that day which we're here about? Basically  
18 what I'm asking you is, where did you see  
19 Autumn Steele and Gabe Steele having their  
20 altercation?

21 **A. You can't see it. It's covered by trees.**

22 Q. Okay.

23 **A. Right about there-ish (indicating).**

24 Q. So that's where you were at?

25 **A. Yes.**

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1 Q. Okay. So you've put a dot where you were  
2 at?

3 A. Right.

4 Q. Where were they at? Can you mark with a  
5 green marker where they were at?

6 A. When?

7 Q. Well, let's stay --

8 A. When it started or when it ended?

9 Q. How about when it ended. Let's start there.

10 A. I don't know. You can't really see it --

11 Q. How about if you put an X? That might help  
12 a little bit.

13 A. (Witness complies.)

14 Q. Okay. And when it started, can you make  
15 a -- maybe an X1 by where it started?

16 A. (Witness complies.)

17 Q. Okay. Tell me how you first became aware  
18 that anything was happening over across the street  
19 from you.

20 A. Shouting.

21 Q. What could you identify from the shouting?  
22 I mean, did you know it was a man and a woman, or did  
23 you --

24 A. Yeah.

25 Q. Okay.

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1           **A.    It sounded like a domestic dispute.**

2           Q.    Had you ever heard a domestic dispute come  
3    from that particular address before?

4           **A.    Never.**

5           Q.    Had you -- Were you aware that the police  
6    had been called to that location, which would be  
7    104 South Garfield, on prior occasions?

8           **A.    No.**

9           Q.    Back in January 2016, once you dropped your  
10   child off at school or daycare, would you have gone  
11   on to work?

12          **A.    No.**

13          Q.    Were you home during the day?

14          **A.    Yes.**

15          Q.    Did you know the people who lived at  
16   104 South Garfield?

17          **A.    Is it that house?**

18          Q.    Yes, it is.

19          **A.    No, I have had no knowledge of them or**  
20   **interaction, I guess.**

21          Q.    So would you agree that based upon the way  
22   you've marked the map on this Google Map, which is  
23   Exhibit 79, that where you observed the altercation  
24   from where you were at was kitty-corner across the  
25   intersection?

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1       **A.    Yes.**

2       Q.    About how far away do you think that was?

3       **A.    Where it ended, probably 50 feet.**

4       Q.    How about where -- from where it started?

5       **A.    75, 80.**

6       Q.    Did you stay outside from the time that you  
7 first knew something was going on to when it ended,  
8 or did you come and go?

9       **A.    I stayed outside.**

10      Q.    And how long do you think you were outside  
11 observing this go on?

12      **A.    What do you mean? Do you mean from when I**  
13 **seen that there was issues going on 'til everything**  
14 **was done and there was police and the incident**  
15 **happened or just the argument or --**

16      Q.    Well, let's -- Good question. How about  
17 from when you first realized there was an argument  
18 'til the shots go off?

19      **A.    Five minutes maybe, maybe ten. I wasn't**  
20 **really timing it.**

21      Q.    And what are you doing during that five to  
22 ten minutes? Are you just watching or --

23      **A.    Yes.**

24      Q.    And where are your children at at that --  
25 was it one or two children?

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1 A. One.

2 Q. Okay. And where was your child at at that  
3 time?

4 A. He was in my truck.

5 Q. So what -- You hear yelling, and is that  
6 what first gets your attention?

7 A. Yes.

8 Q. Could you understand what was being said?

9 A. Yes.

10 Q. What did -- Do you remember what words were  
11 being used?

12 A. Not without paraphrasing or saying -- I  
13 can't exactly tell you what was said at this point.

14 Q. Paraphrasing, what do you recall?

15 A. The gentleman was telling her that she  
16 needed to leave, that -- I believe he -- he said the  
17 police were on the way. I'm not positive on that.  
18 She was saying something about I'm not leaving  
19 without my child.

20 Q. And were they both yelling or just one more  
21 than the other?

22 A. I would say she was yelling more than he  
23 was.

24 Q. So when you first observed them, it appears  
25 from the mark you made on the map that they're near

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1 the house. Would that be accurate?

2 **A. They were on the porch.**

3 Q. Okay. And we can see trees in the --  
4 because the picture's taken from aerial. But when  
5 you're on ground level, are there trees that block  
6 your view of the porch, or could you see directly  
7 towards the porch?

8 **A. There was no trees blocking my view.**

9 Q. Was there anything that blocked your view at  
10 all?

11 **A. No.**

12 Q. Can you identify the gentleman who is  
13 sitting at the end of this table as one of the people  
14 that was involved in that altercation?

15 **A. Yes.**

16 Q. Okay. Did you know that at the time, or you  
17 just know that now? I mean, if you --

18 **A. What do you --**

19 Q. -- had been asked that day --

20 **A. Yeah.**

21 Q. -- is this the person --

22 **A. Yes.**

23 Q. -- would you have known that? Okay. Had  
24 you seen him before that day?

25 **A. No.**

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1 Q. Any idea how long they lived at that  
2 residence?

3 A. No.

4 Q. So you observed them on the porch yelling.  
5 Tell me what happens next.

6 A. They argue back and forth. When I first --  
7 When they first started arguing, I believe one of  
8 them was sitting in a chair next to the door. They  
9 continued to argue. They went back inside a couple  
10 different times. At one of those times, the dog  
11 followed them out. As they continued to argue, the  
12 dog was jumping up and down on them, running around  
13 playing. Eventually she tried to yank the baby out  
14 of his arms. Or I think it was a baby. I don't know  
15 how old the kid was. And he started to walk away  
16 from her trying to keep control of the child.

17 Q. Did you get a good look at the child?

18 A. No. It was cold out. It was all wrapped  
19 up.

20 Q. Did it appear to be a young child to you?

21 A. Yeah.

22 Q. How young?

23 A. I don't know. Maybe -- I don't know. I  
24 don't know how old it was.

25 Q. Now, when --

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1 A. I'd say it was under two --

2 Q. Okay.

3 A. -- but I don't know for sure.

4 Q. When they went back inside the house, was  
5 there any particular reason why you didn't leave at  
6 that time?

7 A. They were still arguing.

8 Q. You could hear them inside the house  
9 yelling?

10 A. Um-hm.

11 Q. Is that a yes?

12 A. Sorry. Yes.

13 Q. Were you concerned for anyone's safety when  
14 you're hearing this arguing?

15 A. That was the only reason I stayed was just  
16 because I wanted to make sure that nobody was in a  
17 physical altercation.

18 Q. Did you eventually see a physical  
19 altercation between the two of them?

20 A. Can you define what you mean?

21 Q. Well, what do you mean by a physical  
22 altercation?

23 A. I just wanted to make sure, you know,  
24 somebody wasn't slapping or punching or, you know,  
25 beating somebody.

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1 Q. Did you ever see anyone slap or punch?

2 A. No. The closest thing that I seen was her  
3 trying to take the child.

4 Q. So you never saw her hit him at all?

5 A. I don't believe so.

6 Q. Okay.

7 A. Not that I recall. It was like two years  
8 ago.

9 Q. Are you a dog owner?

10 A. Not anymore. I was.

11 Q. How about back in 2016, did you own a dog  
12 then?

13 A. Yes.

14 Q. What kind of dog did you own?

15 A. I owned a Shih Tzu and a Boxer.

16 Q. What kind of dog did you observe at this  
17 house where you saw the two people?

18 A. German Shepherd.

19 Q. Have you ever owned a German Shepherd?

20 A. No.

21 Q. Have you ever -- Do you have any dog  
22 training in your background?

23 A. No.

24 Q. Now, at any time from the time that you  
25 see -- you first are hearing these people start

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1 shouting to the time of the gunshots, did you ever  
2 hear a dog bark?

3 A. Yeah.

4 Q. When did you hear the dog bark?

5 A. When it came out of the house.

6 Q. When did it come out of the house during  
7 this --

8 A. One of the times that they come out, he ran  
9 out the door with them.

10 Q. And how long do you think he barked?

11 A. I don't know. Maybe a minute or so. Not  
12 even that. It was when he first came out.

13 Q. Were the police present when he barked?

14 A. When he first came out, he was barking. I  
15 don't -- I don't recall him barking when the police  
16 were there.

17 Q. Did you ever hear the dog growl?

18 A. No.

19 Q. Did you ever move closer to watch what was  
20 going on, or did you stay in the same location  
21 throughout the --

22 A. I stayed in the same general location,  
23 within, you know -- within about 10 feet of probably  
24 where I put that X.

25 Q. Was there anything that caused you to move

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1 closer?

2 A. No. It was just a matter of trying to keep  
3 an eye on my child in the car and making sure that  
4 everybody was okay over there. That's the only  
5 reason I -- that I stayed was to make sure that  
6 people were safe.

7 Q. Did you make any attempt to call for police  
8 assistance prior to the gunshots?

9 A. No.

10 Q. Did you observe a police officer pull up in  
11 the general vicinity where all this was occurring?

12 A. Yes.

13 Q. Okay. And can you mark for us with this red  
14 pen -- maybe you can mark for us -- When the police  
15 officer pulled up, can you mark where he parked his  
16 vehicle?

17 A. (Witness complies.)

18 Q. Could you see the officer as he got out of  
19 his vehicle?

20 A. Yes.

21 Q. Did you know that officer?

22 A. No.

23 Q. Okay. Had you ever seen him before, to your  
24 knowledge?

25 A. No.

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1 Q. What did you observe the officer do?

2 A. Come to a quick stop, jump out and start  
3 running.

4 Q. When he comes to a stop in front of that  
5 house, where are the two people located at? Are they  
6 still up on the porch, or had they moved?

7 A. No, they're at roughly the corner of the  
8 fence.

9 Q. Is that where you've marked the ending area?

10 A. No.

11 Q. Okay. Can you mark for us with a red pen  
12 where they are at the time -- and maybe you could put  
13 like X1 -- X2 by where they're at when he pulls up.

14 A. (Witness complies.)

15 Q. Okay. What were they doing at the time that  
16 he pulled up?

17 A. He was walking away. She was still trying  
18 to grab the baby out of his arms.

19 Q. How was she attempting to grab the baby out  
20 of his arms?

21 A. Forcefully.

22 Q. And is she behind him, or is she -- How is  
23 she trying to get the child from him? I mean, can  
24 you describe what she was doing with her arms?

25 A. Well, she was trying to reach in between him

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\*Direct Examination by Attorney Martha Shaff

STEELE, et al vs. CITY OF BURLINGTON, et al  
EDWARD RANCK - December 12, 2017

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1 and the child to get it, but he was, you know, moving  
2 to try to avoid her being able to take the baby.

3 Q. Are they -- Is there still yelling?

4 A. Yeah.

5 Q. Is the dog barking?

6 A. No, the dog isn't messing with them anymore.

7 Q. Do you know where the dog was at?

8 A. He was up around the other side of the light  
9 post.

10 Q. Where is the light post? Can you point that  
11 out to me?

12 A. It is somewhere in here (indicating). I  
13 don't know the exact location of it.

14 Q. So basically in front of the porch?

15 A. Yeah, it's around the -- around the  
16 sidewalk.

17 Q. The sidewalk that leads from the house down  
18 to the street sidewalk?

19 A. Yes.

20 Q. Were you concerned about the safety of the  
21 child as she was trying to -- attempting to grab it?

22 A. No.

23 Q. Why not?

24 A. Because he had control of the child.

25 Q. So the man had control of the child?

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23

1 Q. Okay. So the officer -- you said he jumped  
2 out of his vehicle. And what did he do?

3 A. He ran over to stop the confrontation.

4 Q. Did you continue to watch at that point?

5 A. Yes.

6 Q. What did you observe?

7 A. I observed the officer running over, at  
8 which time the dog seen somebody running and took  
9 chase. The dog jumped up on him. The officer pulled  
10 his gun, turned around, slipped on the ice or snow.  
11 I don't know what he slipped on, but slipped somehow  
12 or tripped, fell down. As he was falling, he  
13 discharged his gun.

14 Q. When the dog jumped on the officer, what  
15 part of his body did he jump on?

16 A. Lower back. Lower back to butt area, I  
17 guess. I mean, it's kind of hard -- that general  
18 area.

19 Q. Okay.

20 A. The officer was in a full run. He was not  
21 just lightly jogging over there. He was head down  
22 moving, so . . .

23 Q. At the time the dog jumped on him or --

24 A. Yeah, he hadn't -- he hadn't quite got to  
25 those two yet.

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**STEELE, et al vs. CITY OF BURLINGTON, et al**  
**EDWARD RANCK - December 12, 2017**

24

1 Q. Okay. So he hadn't had any opportunity to  
2 try to separate the two people yet?

3 A. It was close. It was within feet, so . . .

4 Q. Did you ever see the officer put his hands  
5 on the woman at any time to try to pull her apart or  
6 pull anybody apart?

7 A. I don't recall.

8 Q. Prior to the dog jumping on the officer, did  
9 he have his gun out?

10 A. No.

11 Q. Did you have any sense of what you thought  
12 the dog was trying to do when you saw him run towards  
13 the officer?

14 A. Play with him.

15 Q. Why did you think the dog was trying to play  
16 with the officer?

17 A. Because he acted the same way when he came  
18 out of the house. He was jumping up and down on  
19 the -- both of his owners. Well, I guess I don't  
20 know if -- I don't know if you both owned the dog or  
21 if it was one person over the other.

22 Q. Was there anything else about his -- the  
23 dog's demeanor that you observed when he went towards  
24 the officer?

25 A. No. It just ran over and started jumping.

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STEELE, et al vs. CITY OF BURLINGTON, et al  
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25

1 Q. Could you see his mouth?

2 A. I guess. I mean, it wasn't like -- it  
3 wasn't -- in my opinion it was not -- it was not a  
4 protective action. It was not him trying to defend  
5 somebody.

6 Q. And why don't you think he was trying to  
7 defend someone?

8 A. Just based on the way the dog was acting  
9 prior to that. It did not look like it was in that  
10 type of state of mind.

11 Q. Could you see the dog's tail?

12 A. Yeah.

13 Q. Where was it at when he went towards the  
14 officer?

15 A. When he was running, it was probably -- I  
16 don't know. It was like normal. I don't know how  
17 to --

18 Q. I mean, do you have a recollection for sure  
19 or --

20 A. Yeah, it was basically I guess straight out  
21 the back. I don't know. It wasn't up, it wasn't  
22 down, so -- I don't know how you would describe that.

23 Q. How big do you think this dog was, about how  
24 many pounds?

25 A. Based on the size of my dog, I'd say it was

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\*Direct Examination by Attorney Martha Shaff

**STEELE, et al vs. CITY OF BURLINGTON, et al**  
**EDWARD RANCK - December 12, 2017**

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1 a good hundred pounds. It's kind of hard to say with  
2 a German Shepherd. They're covered in hair.

3 Q. So as you see the dog come towards the  
4 officer, is he coming from behind the officer?

5 A. Yes.

6 Q. And he hadn't barked at all?

7 A. Not that -- I do not believe so.

8 Q. Okay. He wasn't growling as he approached  
9 the officer?

10 A. No.

11 Q. If the dog had been growling as he  
12 approached the officer, would that change your  
13 opinion on whether he was playing or not?

14 A. Yes.

15 Q. How would it change your opinion?

16 A. Because generally that is an aggressive  
17 thing to a certain degree. Which they do growl  
18 occasionally when they play, but . . .

19 Q. Did you hear anything that the officer said  
20 when he got out of the vehicle and started  
21 approaching the people?

22 A. He was yelling. I don't -- I couldn't tell  
23 you what he was saying at this point.

24 Q. So you indicated that he pulled his gun and  
25 is -- How many shots did you hear?

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12/12/2017

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12/12/2017

Google Maps



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Burlington, IA 52601



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<b>PROCEDURAL INSTRUCTION</b>	<b>NUMBER</b>
	<b>PP22</b>
<b>DATE OF ISSUE</b>	<b>EFFECTIVE DATE</b>
<b>September 1, 1998</b>	<b>September 1, 1998</b>
<b>SUBJECT</b>	<b>AMENDED</b>
<b>UNIFORM PATROL - DOMESTIC VIOLENCE</b>	
<b>BY ORDER OF CHIEF OF POLICE</b>	<b>RESCINDS</b>
Signature _____ Date: _____	

I. Purpose

- A. To establish guidelines and procedures for managing domestic and civil disputes both criminal and non-criminal.

II. Policy

- A. Domestic violence is a crime that differs from other crimes because of the intimate relationship between the victim and the accused. This department will respond to domestic violence as we would to any other crime. Officers shall arrest in all cases of Domestic Abuse Assault, where probable cause exists to believe a crime has been committed by the accused. In recognition of the difference between domestic violence and other crimes, officers should provide the victims with special assistance appropriate to the situation, and inform the victim of services provided by this department as well as any other available assistance provided by other private and government agencies.

III. Procedures

- A. Dispatcher Responsibilities
1. The dispatcher is likely to be the first person to receive a call; he/she is a key person in determining the type of response to be made to a call for service.
  2. The dispatcher is responsible for determining the following, if possible:
    - a. Who is complaining?
    - b. Is the crime/incident in progress?
    - c. Is a weapon involved?
    - d. Has the caller or anyone else at the address been injured? Is an ambulance needed?



- c. Officer will attempt to obtain all available information from the dispatcher before arriving on the scene.
- d. Approaching the scene:
  - i. Avoid the use of sirens and emergency light in the vicinity of the scene. The use of emergency warning equipment will increase the tension of persons and may result in an attack upon the officers. Emergency lights should be secured approximately two (2) blocks prior to arrival.
  - ii. Persons encountered while approaching the domestic dispute scene should be briefly questioned about the incident and parties involved. Remain alert for an assailant leaving the scene.
  - iii. Observe the location of the dispute before contacting the complainant.
  - iv. Consider the surroundings before knocking on door; look and listen to obtain additional information about the situation (layout of house, number of people involved, weapons).
  - v. Officers must be concerned for their own safety as well as the disputants. To minimize the possibility of injury, stand on the side of the door when knocking.
- e. Initial contact with occupant(s)
  - i. Identification: Officers should identify themselves as police officers by name, give an explanation of their presence and request entry into the home when conditions permit. If the complainant is in the home, ask to see him/her.
  - ii. Consent Search: Officers may enter and conduct a search of the premises if consent has been given to do so. Although a consent search eliminates the need for a warrant and for probable cause, such consent must be freely and voluntarily given. If two people have joint ownership of a place or item, neither one may give a valid consent. When in doubt, stop. Get a search warrant. A spouse can consent to the search of a ny premises used jointly by both the husband and wife. This is also true if a man and woman are only co-habitants. However, if one of the parties exercises sole control over any portion of the premises, the other cannot give valid consent to search that part.
  - iii. Refused Entry: When refused entry to a residence, be persistent, explaining that a complaint was received and must be verified. If entry is still refused, request the dispatcher to call the complainant to re-establish contact. If entry is still refused, contact a supervisor and explain the situation. The supervisor will decide whether to remain or leave.

17-1592  
FILED  
OCT 04 2017

CLERK SUPREME COURT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CENTRAL DIVISION**

GREGORY BALDWIN,

Plaintiff,

vs.

ESTHERVILLE, IOWA; MATT  
REINEKE, Individually and in his  
Official Capacity as an Officer of the  
Estherville Police Department; and  
MATT HELICKSON, Individually and  
in his Official Capacity as an Officer of  
the Estherville Police Department,

Defendants.

No. C 15-3168-MWB

**ORDER CERTIFYING QUESTION  
TO THE IOWA SUPREME COURT**

This case arises from the arrest of the plaintiff by city police officers for riding his ATV on and in a ditch beside a city street, allegedly in violation of a state statute that the officers believed had been, but was not, incorporated into the city's code of ordinances. I laid out the pertinent factual background in my ruling on the parties' cross-motions for summary judgment. *Baldwin v. Estherville, Iowa*, 218 F. Supp. 3d 987 (N.D. Iowa 2016). That factual background is incorporated here by reference. In that ruling, I granted the defendants' motion for partial summary judgment on the plaintiff's claims of a federal constitutional violation and state law false arrest, but stayed the parts of Baldwin's motion for summary judgment concerning his claims of Iowa constitutional violations pending determination by the Iowa Supreme Court of the question of further review in *State v. Conklin*, No. 14-0764, 863 N.W.2d 301, 2015 WL 1332003 (Iowa Ct. App. Mar. 25, 2015) (table op.). By Order filed February 17, 2017, I continued the



case indefinitely until the Iowa Supreme Court issued a ruling in either *State v. Godfrey*, No. 15-0695, or *State v. Conklin*, No. 14-0764, 863 N.W.2d 301, 2015 WL 1332003 (Iowa Ct. App. March 25, 2015) (table op.).

On June 30, 2017 the Iowa Supreme Court issued its opinion in *State v. Godfrey*, \_\_\_ N.W.2d \_\_\_, 2017 WL 2825878 (Iowa June 30, 2017), holding that the Due Process and Equal Protection Clauses of the Iowa Constitution, Article I, §§ 6 and 9, are self-executing, such that a tort claim for monetary damages exists for violations of each, when the legislature has not provided an adequate remedy. The Iowa Supreme Court left open the question of whether defendants could assert qualified immunity as a defense to such claims. On June 30, 2017, the Iowa Supreme Court issued Procedendo and an order denying further review in *State v. Conklin*, No. 14-0764, 863 N.W.2d 301, 2015 WL 1332003 (Iowa Ct. App. Mar. 25, 2015) (table op.).

This case is now before me on the defendants' August 11, 2017, Second Motion For Summary Judgment, incorporating by reference their prior Statements of Undisputed Material Facts and Appendices. The defendants concede, for the purposes of their motion and in light of *Godfrey*, that there are no genuine issues of material fact with regard to Baldwin's claim that the two defendant city police officers violated Baldwin's rights under the Iowa Constitution, Art. I, §§ 1 and 8, but the defendants seek summary judgment on the basis of qualified immunity to these claims for essentially the same reasons that I held that they were entitled to qualified immunity to Baldwin's federal constitutional claims pursuant to 42 U.S.C. § 1983. In his Resistance, filed September 1, 2017, Baldwin argues that the Iowa Supreme Court has previously rejected "probable cause" and "good faith" exceptions or defenses to claims of constitutional violations and that there are other reasons to conclude that the Iowa Supreme Court would not recognize qualified immunity to individual claims for damages for violations of the Iowa Constitution.

I conclude that, rather than guess whether the Iowa Supreme Court would recognize a qualified immunity defense to the claims of violations of the Iowa Constitution, such as the ones at issue in this case, it is appropriate to certify that question to the Iowa Supreme Court pursuant to IOWA CODE § 684A.1, Rules 6.301-6.305 of the Iowa Rules of Appellate Procedure, and N.D. Ia. L.R. 83. As the United States Supreme Court has recognized,

Certification procedure . . . allows a federal court faced with a novel state-law question to put the question directly to the State's highest court, reducing the delay, cutting the cost, and increasing the assurance of gaining an authoritative response.

*Arizonans for Official English v. Arizona*, 520 U.S. 43, 76 (1997); *see Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974) (by certifying a question of state law, the federal court may save “time, energy and resources and hel[p] build a cooperative judicial federalism”). Thus, “[t]aking advantage of certification made available by a State may ‘greatly simplif[y]’ an ultimate adjudication in federal court.” *Arizonans for Official English*, 520 U.S. at 76 (citing *Bellotti v. Baird*, 428 U.S. 132, 151 (1976)). Whether a federal district court should certify a question of state law to the state’s highest court is a matter committed to the district court’s discretion. *Schein*, 416 U.S. at 391 (“[Certification’s] use in a given case rests in the sound discretion of the federal court.”); *Babinski v. American Family Ins. Group*, 569 F.3d 349, 353 (8th Cir. 2009) (“Whether a federal court should certify a question to a state court is a matter of discretion.” (quoting *Johnson v. John Deere Co.*, 935 F.2d 151, 153 (8th Cir. 1991))).

As the Iowa Supreme Court has explained,

“Iowa Code section 684A.1 allows this court to answer questions of Iowa law certified to us by a federal court that concludes controlling precedent is lacking when the answer may be determinative of the federal proceeding.” *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 188 (Iowa

2011). In *Foley [v. Argosy Gaming Co.]*, 688 N.W.2d 244, 246 (Iowa 2004)], we noted our discretion to answer certified questions that (1) were certified by a proper court, (2) presented questions of Iowa law, (3) “may be determinative of the cause ... pending in the certifying court,” and (4) appeared to the certifying court to have no controlling Iowa precedent. 688 N.W.2d at 246 (quoting Iowa Code § 684A.1 (2003)).

*Board of Water Works Trustees of City of Des Moines v. SAC Cnty. Bd. of Supervisors*, 890 N.W.2d 50, 56 (Iowa 2017).

I conclude that the availability of a qualified immunity defense to claims of violations of the Iowa Constitution is a question of Iowa law that may be determinative of Baldwin’s case pending in this court and as to which there is no controlling Iowa precedent. *Id.* While the Iowa Supreme Court’s opinion in *Godfrey* may suggest that qualified immunity is applicable to Iowa constitutional claims, the Iowa Supreme Court’s entire discussion of the issue in *Godfrey* is only the following:

In any event, to the extent that a *Bivens*-type action might inhibit their duties, the doctrine of qualified immunity is the appropriate vehicle to address those concerns. The state courts that have considered whether immunity applies in *Bivens*-type actions are divided. *See, e.g., Moresi*, 567 So.2d 1093 (holding qualified immunity applies); *Corum*, 413 S.E.2d at 291 (holding no qualified immunity). The issue of qualified immunity, however, is not before the court today.

*Godfrey*, 898 N.W.2d at 879. This is hardly a definitive statement that qualified immunity is an available defense to Iowa constitutional claims. Moreover, Baldwin has cited Iowa Supreme Court decisions reasonably suggesting that such a defense would not be recognized under the Iowa Supreme Court’s analysis of claims pursuant to the Iowa Constitution, which is independent of the United States Supreme Court’s analysis of claims pursuant to the United States Constitution. *See, e.g., State v. Coleman*, 890



N.W.2d 284 (Iowa 2017); *State v. Turner*, 630 N.W.2d 601 (Iowa 2001); *State v. Cline*, 617 N.W.2d 277 (Iowa 2000); *McClurg v. Brenton*, 98 N.W. 881 (Iowa 1904).

I conclude that certifying this question and staying this case pending an answer are appropriate, notwithstanding that this case has previously been stayed pending the Iowa Supreme Court's decisions in *Godfrey* and *Conklin*. The question of qualified immunity remains just as important, now that the parties agree that Baldwin's Iowa constitutional claims are otherwise viable, because it is now the potentially dispositive question in the case. Indeed, this question is now of critical importance to claims brought directly under the Iowa constitution. It would be unwise, in my view, for a single federal district judge, in the absence of clear guidance from the Iowa Supreme Court, to decide this issue. This is precisely the type of legal question that must be left to the careful determination of Iowa constitutional law by the Iowa Supreme Court. I also find that neither party will be unduly prejudiced by awaiting an answer to the certified question, while unnecessary expenses and proceedings could result from my attempt to answer the question, with the likelihood of a subsequent appeal.

THEREFORE,

1. The proceedings in this court, on *all* issues, in their entirety, are **stayed** pending answer to the question certified to the Iowa Supreme Court, below.

2. I hereby certify the following question to the Iowa Supreme Court:

Can a defendant raise a defense of qualified immunity to an individual's claim for damages for violation of article I, § 1 and § 8 of the Iowa Constitution?

3. The Clerk of Court shall forward this order to the Iowa Supreme Court under official seal, as required under Iowa Code § 684A.4, as well as the portions of the record designated by the parties, as set out in the next paragraph.

4. Not later than October 23, 2017, the parties shall designate portions of the record for the Clerk of Court to forward to forward to the Iowa Supreme Court under official seal.

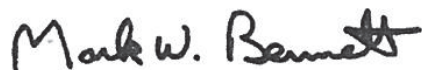
5. Pursuant to Rule 6.302(b)(4) of the Iowa Rules of Appellate Procedure, I designate the defendants as the parties to file the first brief, because the defendants assert qualified immunity as a defense to Baldwin's remaining Iowa constitutional claims.

6. The parties and their representatives are as follows: Plaintiff Gregory Baldwin is represented by Jack Bjorn Bjornstad of the Jack Bjornstad Law Office, 1017 Highway 71, PO Box 408, Okoboji, IA 51355; defendants Estherville, Iowa, Matt Reineke, and Matt Hellickson are represented by Douglas L. Phillips of the Klass Law Firm L.L.P., Mayfair Center Upper Level, 4280 Sergeant Road Ste 290, Sioux City, IA 51106.

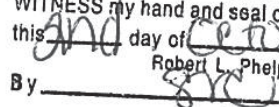
7. The parties shall file status reports *promptly* upon receiving notice of the Iowa Supreme Court's decision to consider or to decline to consider the certified question and, if the Iowa Supreme Court does consider such certified question, upon notice of a decision by the Iowa Supreme Court.

**IT IS SO ORDERED.**

**DATED** this 2nd day of October, 2017.



MARK W. BENNETT  
U.S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA

I, the undersigned Clerk of the United States District Court for the Northern District of Iowa, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.  
WITNESS my hand and seal of said Court  
this 2nd day of October, 2017  
By  Robert L. Phelps, Clerk  
Deputy



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**Other Orders/Judgments**

3:15-cv-03168-MWB Baldwin v. Estherville, Iowa et al

**U.S. District Court**

**Northern District of Iowa**

**Notice of Electronic Filing**

The following transaction was entered on 10/2/2017 at 10:41 AM CDT and filed on 10/2/2017

**Case Name:** Baldwin v. Estherville, Iowa et al

**Case Number:** 3:15-cv-03168-MWB

**Filer:**

**Document Number:** 56

**Docket Text:**

CERTIFICATION of Issue to the Iowa Supreme Court and ORDER Staying Case. The Clerk of Court shall forward this order to the Iowa Supreme Court under official seal, as required under Iowa Code § 684A.4, as well as the portions of the record designated by the parties, as set out in the next paragraph. Not later than October 23, 2017, the parties shall designate portions of the record for the Clerk of Court to forward to forward to the Iowa Supreme Court under official seal. The parties shall file status reports promptly upon receiving notice of the Iowa Supreme Courts decision to consider or to decline to consider the certified question and, if the Iowa Supreme Court does consider such certified question, upon notice of a decision by the Iowa Supreme Court. Signed by Judge Mark W Bennett on 10/02/2017. Cert order mailed to Iowa Supreme Court. (src)

**3:15-cv-03168-MWB Notice has been electronically mailed to:**

Douglas L Phillips [phillips@klasslaw.com](mailto:phillips@klasslaw.com), [lamprecht@klasslaw.com](mailto:lamprecht@klasslaw.com)

Rene Charles Lapierre [lapierre@klasslaw.com](mailto:lapierre@klasslaw.com), [lamprecht@klasslaw.com](mailto:lamprecht@klasslaw.com)

Jack Bjorn Bjornstad [jack@bjornstad.legaloffice.pro](mailto:jack@bjornstad.legaloffice.pro), [olivia@bjornstad.legaloffice.pro](mailto:olivia@bjornstad.legaloffice.pro)

**3:15-cv-03168-MWB Notice has been delivered by other means to:**

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UNITED STATES DISTRICT COURT

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IN THE SUPREME COURT OF IOWA

No. 17-1592

U.S. Dist. Ct. - Northern Dist County No. C 15-3168-MWB

NOTICE OF ORAL ARGUMENT

**GREGORY BALDWIN,**  
Plaintiff-Appellee,

vs.

**CITY OF ESTHERVILLE, IOWA; MATT REINEKE,** Individually and in his  
Official Capacity as an Officer of the Estherville Police Department; and **MATT**  
**HELLICKSON,** Individually and in his Official Capacity as an Officer of the Estherville  
Police Department,  
Defendants-Appellants.

---

After screening it has been determined pursuant to Iowa Rule of Appellate  
Procedure 6.908(3) that oral arguments will be permitted on this matter. Accordingly,  
this case has been assigned for oral argument to the Iowa Supreme Court on **Wednesday,**  
**February 14, 2018, at 1:30 p.m.** Each side will have 15 minutes and the appellant(s)  
will have an additional 5 minutes for reply. Multiple appellants or appellees, if any, must  
share the time allotted.

*Changes in the above-stated oral argument date and time will not be made absent  
a verified showing of a most unusual and compelling circumstance.*

If you require the assistance of auxiliary aids or services to participate in court  
because of a disability, immediately call the ADA coordinator at (515) 281-5911. If you  
are hearing impaired, call Relay Iowa TTY at 1-800-735-2942. Conference room 116 on

the first floor and the media room on the first floor, if not in use by media personnel, are available for private attorney/client discussion and preparation the day of oral argument. If the court of appeals is not in session, the attorney preparation room on the third floor will also be available for this purpose. Of course, the attorney preparation room on the fourth floor will continue to be open for attorney preparation when the supreme court is in session.

This is the only notice you will receive from the court.

Copies to:

Thomas Michael Boes  
801 Grand Avenue, Suite 3700  
Des Moines, IA 50309

Joel Fenton  
541 – 31st Street, Suite C  
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Okoboji, IA 51355





State of Iowa Courts

**Case Number**  
17-1592

**Case Title**  
Baldwin v. City of Estherville

So Ordered

A handwritten signature in black ink, reading "Mark S. Cady". The signature is written in a cursive style with a large, stylized "M" and "C".

---

Mark S. Cady, Chief Justice

Electronically signed on 2018-01-12 16:14:38

**STEELE, et al vs. CITY OF BURLINGTON, et al  
DOUGLAS BEAIRD - August 21, 2017**

1

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

Gabriel Steele, individually,	)	
as Executor of the Estate of	)	
Autumn Steele, and as next of	)	
friend for his minor child	)	
G.S.; Sean Schoff, as next of	)	
friend for his minor child	)	
K.S.; and Gina Colbert,	)	
individually,	)	Case No. 3:16-cv-105
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
City of Burlington and	)	
Officer Jesse Hill,	)	
	)	
Defendants.	)	

DEPOSITION OF L. DOUGLAS BEAIRD, taken  
on Monday, August 21, 2017, commencing at  
10:33 a.m., at the Burlington Public Library,  
210 Court Street, Burlington, Iowa, before  
Angela Weible-Jones, Certified Shorthand Reporter  
of the State of Iowa, pursuant to the within  
stipulation.

Angela Weible-Jones, CSR, RPR, CRR  
Carson Reporting, Inc.  
118 - 3rd Avenue, Southeast, Suite 301  
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**Angela Weible-Jones, CSR, RPR, CRR  
CARSON REPORTING, INC. - 319/366-7450**

**STEELE, et al vs. CITY OF BURLINGTON, et al**  
**DOUGLAS BEAIRD - August 21, 2017**

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1 APPEARANCES:

2 Dave O'Brien, of Dave O'Brien Law,  
 3 Attorney at Law, 1500 Center Street,  
 4 Northeast, Cedar Rapids, Iowa, 52402,  
 5 Attorney for the Plaintiffs.

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10 Martha L. Shaff, of Betty, Neuman & McMahon,  
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 12 Street, Davenport, Iowa, 52807-2708,  
 13 Attorney for the Defendants.

14 ALSO PRESENT: Gina Colbert  
 15 Sean Schoff

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I N D E X

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14 WITNESS	EXAMINATION	PAGE
15 L. Douglas Beaird	D(By Mr. O'Brien)	4

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18 E X H I B I T S

19 NUMBER	EXHIBIT	M	I
20 5	Photocopied Color Photographs (10 pages)	-	11
21 10	Webb, Rank, Mellinger Interview Notes	-	80
22 12	Screen Prints from Hill Body Camera (14 pages)	-	39
23 30	Amended Notice of F.R.C.P. 30(b)(6) Deposition	-	4

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E X H I B I T S

NUMBER	EXHIBIT	M	I
32	Dog-Related Incidents and Encounters, What Are Our Options, PowerPoint Presentation by Angie Vaughan	-	10
33	Police and Dog Encounters, COPS Learning Portal	-	10
34	Confidential Body Video of Officer Hill	67	67
35	Webb, Rank, Mellinger Interview Notes	80	81
36	Killings by Police Chart	85	85
37	2014 Dog Bite Fatality Statistics	87	87
38	2015 Dog Bite Fatality Statistics	87	87
39	2016 Dog Bite Fatality Statistics	87	87

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S T I P U L A T I O N

"The deposition of L. Douglas Beaird is being taken at this time and place pursuant to the Federal Rules of Civil Procedure and may be used for all purposes authorized by said Rules."

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1 investigative report or overturns Neer versus Iowa,  
2 it's an investigative report, and it's clearly  
3 confidential. That's why.

4 Q. All right. So your position is the same  
5 regardless of body cam -- of what it shows in this  
6 case. It's got nothing to do with -- it's just a --  
7 It's a principle that you're after that all body  
8 camera videos need to be kept secret?

9 MS. SHAFF: Objection, form.

10 A. I don't think to be kept secret. The law  
11 right now states that they are confidential in  
12 nature.

13 Q. Shouldn't be released publicly?

14 A. It's an investigative report, correct.

15 Q. Don't you release investigative reports  
16 publicly at times?

17 A. No, sir.

18 Q. Well, you released the first six or eight  
19 sentences of this video shortly after the incident,  
20 didn't you?

21 A. I did not.

22 Q. Somebody did.

23 A. Yeah, the DCI did. I didn't.

24 Q. Okay. So apparently somebody's under the  
25 belief that these videos are available for public

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## DIVISION OF CRIMINAL INVESTIGATION

CASE: 15001378

PAGE 1

### SECTION 3 - EVIDENCE AND EXHIBIT LIST AS OF FEBRUARY 20, 2015

LAB/DCI NUMBER	LOCAL AGENCY NUMBER	QTY/ WGT	DESCRIPTION	CHAIN OF EVIDENCE
			The Burlington (Iowa) Police Department will maintain most items of evidence in their evidence room. This section of the report contains <u>scanned property forms</u> generated by the Burlington Police Department.	
		1	Container containing urine sample from JESSE HILL collected 1/06/2015	S/A George – BPD Storage Room refrigerator – Det. Moret – S/A George – DCI Office – S/A Ryan Kedley – DCI Lab
		1	Box containing Glock .40 caliber handgun belonging to Officer JESSE HILL, serial # [REDACTED]	Det. Short – BPD Evidence Room – Det. Moret – S/A George – DCI Office – S/A Ryan Kedley – DCI Lab – S/A Kedley – S/A George – BPD
			Bag containing 1 magazine removed from Officer HILL's handgun and 14 rounds of ammunition	Det. Short – BPD Evidence Room – Det. Moret – S/A George – DCI Office – S/A Ryan Kedley – DCI Lab – S/A Kedley – S/A George – BPD
		2	Boxes containing spent .40 caliber shell casing recovered in the 100 block of South Garfield, Burlington, Iowa	S/A Lestina – Det. Short – BPD Evidence Room – Det. Moret – S/A George – DCI Office – S/A Kedley – DCI Lab – S/A Kedley – S/A George – BPD
		1	Projectile removed from AUTUMN STEELE's body during autopsy	SA Herman – S/A George – DCI Office – S/A Kedley – DCI Lab – S/A Kedley – S/A George – BPD
		1	DVD containing the January 9, 2015, interview of Officer JESSE HILL at the DCI Catfish Bend Casino	Catfish Bend DCI Evidence Room
		2	Original Affidavits prepared by S/A Matt George	Stockton DCI Office
		2	Not-to-scale diagrams prepared by Officer JESSE HILL	S/A Matt George – Stockton DCI Office
		1	Criminal Investigation Warning signed by Officer JESSE HILL	S/A Matt George – Stockton DCI Office
		2	Diagrams prepared by GABRIEL STEELE and S/A Ryan Kedley	S/A Kedley – S/A George – Stockton DCI Office
		2	DCI Receipts dated January 6, 2015	S/A Lestina – S/A George – Stockton DCI Office

**DIVISION OF CRIMINAL INVESTIGATION****CASE: 15001378****PAGE 2****SECTION 3 - EVIDENCE AND EXHIBIT LIST AS OF FEBRUARY 20, 2015**

LAB/DCI NUMBER	LOCAL AGENCY NUMBER	QTY/ WGT	DESCRIPTION	CHAIN OF EVIDENCE
		1	Consent to Provide Chemical Test of Urine signed by Officer JESSE HILL	S/ George – Stockton DCI Office
		1	DVD containing photos of shooting scene of 100 block of South Garfield in Burlington, Iowa, and AUTUMN STEELE's clothing	Stockton DCI Office
		1	DVD containing photos of packaged evidence stored at the BPD on January 6, 2015	Stockton DCI Office
		1	DVD containing photos of Officer HILL in uniform on January 6, 2015; Officer HILL's dog bite injury on January 6, 2015; Officer HILL's firearm and equipment; Officer HILL's duty pants	Stockton DCI Office
		1	DVD containing photos of AUTUMN and GABRIEL STEELE's dog taken January 6, 2015	Stockton DCI Office
		1	DVD containing photos taken by Det. Schwandt of AUTUMN STEELE on January 6, 2015, at Lunning Chapel	Stockton DCI Office
		1	DVD containing AUTUMN STEELE's autopsy photographs	Stockton DCI Office
		1	CD containing the audio recording of Officer JESSE HILL's January 9, 2015, DCI interview	Stockton DCI Office
		1	CD containing the audio recording of EBONY TURNER and CHRIS BURK's interview	Stockton DCI Office
		1	DVD containing (copy) of Officer JESSE HILL's body camera documenting the January 6, 2015, shooting incident	Stockton DCI Office
		1	DVD containing (copy ) of Officer TIM MERRYMAN'S body camera documenting his activity on January 6, 2015, post shooting	Stockton DCI Office
		1	DVD containing (copy) of 911 calls made on January 6, 2015, by GABRIEL STEELE and citizen	Stockton DCI Office
			DVD containing (copy) of in-dash camera from BPD Lieutenant Greg Allen's squad car on January 6, 2015 (maintained at Stockton DCI Office)	
			GRMC Medical Records documenting Officer HILL's dog bite injuries (maintained at the Stockton DCI Office)	