

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

GABRIEL STEELE, individually, and as
Executor of the Estate of AUTUMN STEELE,
and as next of friend for minor G.S., Sean
Schoff, as next of friend for minor K.S., and
GINA COLBERT, individually,

Plaintiffs,

vs.

CITY OF BURLINGTON and JESSE HILL,

Defendant.

Civil No. 3:16-cv-105

FILED UNDER SEAL

**DEFENDANTS' AMENDED RESPONSES
TO PLAINTIFFS' ALLEGED MATERIAL
AND UNDISPUTED FACTS IN SUPPORT
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

COME NOW Defendants, City of Burlington and Jesse Hill, by and through their attorneys, Betty, Neuman & McMahon, P.L.C., and hereby Amends the following Responses to Plaintiffs' Alleged Material and Undisputed Facts in Support of Plaintiffs' Motion for Summary Judgment:

...

37. Hill had plenty of time to consider how to handle Sammy using less than lethal force since he knew the Steele's had a dog from a previous call at the Steele home, he saw the dog and "it was in [his] mind" as he exited his patrol cruiser to approach Autumn, Gabriel and G.S. Dep. 71:2-5 and Dep. 52:2-5. (App. pp. 47 and 50).

ORIGINAL RESPONSE:

Defendants admit that Officer Hill testified he knew the Steeles had a dog from a prior call he responded to at their home, that he saw the dog during the incident on

January 6, 2015, and that the dog was “in his mind” during the incident on January 6, 2015.

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

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

AMENDED RESPONSE:

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

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

...

39. Training for how to handle dogs in the course of police work, although not provided to Hill, was available prior to the shooting of Autumn Steele. Vaughn Dep. 17:16-18:2. (App. pp. 55-56). That available training included the following directives:

- a. More people are killed by lightning every year than dog bites. Dep. Ex. 32, p. 4 (App. p. 31);
- b. The overwhelming majority of dog bites are minor, causing either no injury, or injury so minor that no medical care is required. Dep. Ex. 32, p. 4. (App. p 31);
- c. Fatalities from dog attacks are extremely rare, and most often affect the weak, such as elderly and small children. Dep. Ex. 32, p. 4. (App. p. 31);
- d. There is no documented case of a Police Officer dying as the result of a dog-bite related injury. Dep. Ex. 32, p. 4. (App. p. 31);
- e. Dogs communicate by barking and some dogs will growl to talk to you, this does not always mean they are being aggressive. Dep. Ex. 32, p. 11. (App. p.32);
- f. A running police officer is likely to be chased by any dog in the vicinity. Dep. Ex. 32, p. 14. (App. p. 33);
- g. You cannot judge the aggressiveness of a dog by its size, shape or breed. Dep. Ex. 32, p. 18. (App. p. 34);
- h. Dogs will bite the first thing they can grab so offer them you baton, flashlight, or you forearm if nothing else available. Dep. Ex. 32, p. 27. (App. p. 35);
- i. Taser may be used to subdue dogs. Dep. Ex. 32, p. 32. (App. p. 36); and
- j. Pepper spray can be effective if not used in confined quarters. Dep. Ex. 32, p. 33. (App. p. 36);

ORIGINAL RESPONSE:

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

Defendants further deny that the training Angela Vaughn provided to Burlington police officers was intended to be instructional on how to handle dogs in the course of all

types of police work and scenarios/situations presented to law enforcement officers. Plaintiffs do not cite to any authority in support of that allegation.

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

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

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

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

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

Defendants deny subparagraph (j) because Plaintiffs’ Appendix pg. 36 does not mention pepper spray or the use of pepper spray in confined quarters to support the

statement. (Pl. Appendix p. 36). Defendants further deny that this statement is material or relevant to Plaintiffs' summary judgment claims.

AMENDED RESPONSE:

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

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

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

Defendants admit that subparagraph (e) contains excerpts of the materials prepared by Angela Vaughn but the excerpts are misleading by failing to include additional information contained in the materials. The materials cited by Plaintiffs further state “the *tones of the growl* [of dogs] will communicate whether they are being aggressive or just communicating the best they know how.” (emphasis added). Defendants further deny that this statement is material or relevant to Plaintiffs' summary judgment claims.

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

Defendants deny subparagraph (g) because the content of Plaintiffs' Appendix pg. 34 does not support that some one can not judge the ‘aggressiveness of a dog’ by its size,

shape or breed. (Pl. Appendix p. 34). Plaintiffs' Appendix pg. 34 only states "the most dangerous thing you can do is judge a dog based on media reports or size and shape of a dog" and does not use the phrase "aggressiveness" at all. (Pl. Appendix p. 34). Defendants further deny that this statement is material or relevant to Plaintiffs' summary judgment claims.

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

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

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CERTIFICATE OF SERVICE FOR ELECTRONIC FILINGS

I hereby certify that on April 18, 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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