

March 15, 2023

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Denise Archibald

City Clerk
City of Phoenix
200 W. Washington St.
Phoenix, Arizona 85003

Detective Michael Davidson

City of Phoenix
620 W. Washington St.
Phoenix, Arizona 85003

NOTICE OF CLAIM

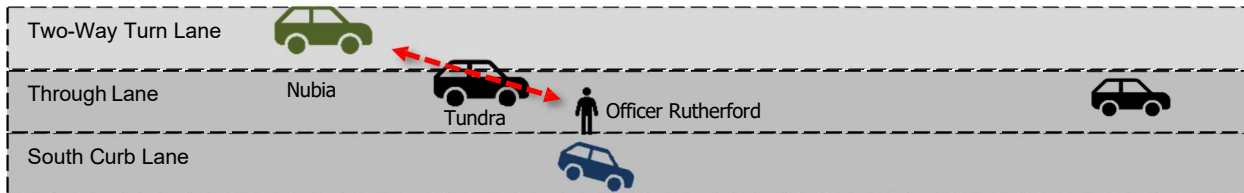
This firm represents Nubia Rodriguez and this is her notice of claim.

On March 21, 2019, Phoenix Police Department Officer Paul Rutherford and his partner, Officer Miller, were investigating a car crash near the intersection of 75th Drive and Indian School Road. During the investigation, the officers received a radio call about a disturbance at a nearby restaurant. The officers decided to let other members of the Phoenix Police Department respond to that call. After finishing the crash investigation, the officers went to check on what was happening at the restaurant.

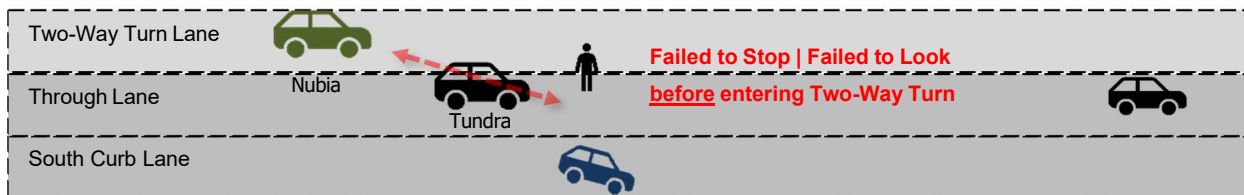
Officer Rutherford walked back to his police car and locked it. Video shows that he then decided to cross the street, but not in the crosswalk or in his vehicle. Instead, Officer Rutherford chose to walk into on-coming, eastbound traffic on Indian School. He looked left, saw a Toyota Tundra coming toward him in the middle lane, and motioned to the driver to slow and stop for him. At about the time the Tundra came to a stop, Officer Rutherford crossed in front of it. Then, inexplicably, instead of motioning to the driver of the next lane of travel, Officer Rutherford decided to dart across the lane without looking to make sure it was safe to cross.

At the same time, Nubia was driving in that lane. When Officer Rutherford ran into Nubia's lane, she had no time to react and a tragic accident occurred. There is no reasonable dispute about the following facts: (1) Nubia was driving lawfully at a reasonable and prudent speed; (2) she was not distracted; and (3) Nubia's line of sight into the middle lane (the lane to her right) was obstructed by the Tundra that Officer Rutherford had stopped. Thus, Nubia could not and did not see Officer Rutherford in front of the Tundra. This was the opinion of the Phoenix Police Department's own crash analysis, which is depicted here:

The Tundra Blocked Nubia's View of Officer Rutherford



Officer Rutherford's Failure To Act As A Reasonably Prudent Person



Tragically, Officer Rutherford did not survive his injuries. But Officer Rutherford's untimely passing was not caused by any wrongdoing on Nubia's part. It was an accident. The accident was avoidable and would not have happened if Officer Rutherford had used the crosswalk, used his vehicle with lights and sirens, or even attempted to slow and stop Nubia in a safe manner as he had done moments before with the Tundra. Indeed, that is exactly what the Phoenix Police Department conceded in its own crash analysis.

Despite its crash analysis, the Phoenix Police Department would not accept that Officer Rutherford's decisions and actions caused his death. Instead, the Phoenix Police Department made Nubia Public Enemy Number One. It turned her into a scapegoat for Officer Rutherford's death, stopping at nothing short of making sure she was convicted of homicide.

The Phoenix Police Department investigation was completed when its crash analysis report was issued on August 2, 2019, nearly 6 months after the accident. Yet a year after the completion of the investigation, Nubia was indicted by a grand jury for negligent homicide. The indictment and subsequent prosecution of Nubia was secured or otherwise made possible by lies and intentional omissions by the Phoenix Police Department and its employees.

At the grand jury, Phoenix Police Department Detective Michael Davidson spent a significant amount of time making false statements to the grand jury, such as:

- It was not illegal for Officer Rutherford to step into oncoming traffic;
- Officer Rutherford, not Nubia, had the right of way;

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- Officer Rutherford was acting under the color of his authority thus giving him the right of way;
- Nubia was driving illegally in her lane; and
- Nubia breached her duty of care as a driver.

All of these statements were materially false and Detective Davidson knew it because he: (1) had seen video from police body-worn cameras which recorded the crash, (2) had seen the security camera from a nearby business which recorded the crash, and (3) presumably reviewed all of the reports created by him and his fellow officers who investigated the crash. Additionally, prior to testifying before the grand jury, Detective Davidson was also aware of the Phoenix Police Department crash analysis which showed no wrongdoing on Nubia's part.

But Detective Davidson's testimony was not only striking for what he said, but also for what he didn't tell the grand jury. The Phoenix Police Department crash analysis stated two material conclusions:

1. It needs to be considered that the officer could have also avoided the collision if he had stopped and looked west, down the two-way left turn lane, prior to entering it.
2. Nubia's and Officer Rutherford's view of each other was obstructed.

Detective Davidson never told these facts to the grand jury. Had Detective Davidson been honest with the grand jury, the only reasonable conclusion that it could reach, based upon the video and Phoenix Police Department's own crash analysis, was that Nubia was not responsible for Officer Rutherford's death. But Detective Davidson knew that fact and thus intentionally kept those exculpatory conclusions from the grand jury. Detective Davidson put his thumb on the scales of justice to construct the outcome he and the Phoenix Police Department wanted.

To support the Phoenix Police Department's theory that Nubia was a reckless driver in the moments leading to the accident, the department used a novel extraction software called Berla iVe ("Berla") which led to false assumptions taken from the infotainment system in Nubia's car. Berla extractions produce a calculation of speed, but that calculation was never intended to be accurate for purposes of accident reconstruction. Berla determines speed by comparing a vehicle's prior GPS location to that vehicle's current GPS location. Thus, the accuracy of Berla's speed calculation depends on the accuracy of the GPS locations. If the infotainment system inaccurately marks prior or current GPS locations, an inaccurate speed calculation is likely to occur. Stated differently, garbage in, garbage out.

Berla itself does not conceal that speed calculations cannot be verified (because calculating a vehicle's exact speed is not the primary objective of Berla's software). Indeed, Berla even warned the Phoenix Police Department, prior to the completion of its investigation and prior to the grand jury presentation, that the accuracy of speed calculations using Berla were not verifiable.

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Phoenix Police Department Detective Dennison, who was tasked with extracting the Berla data from Nubia's car, identified a significant issue with the Berla data and sought Berla's assistance and guidance. In his report, Detective Dennison wrote that Berla "indicated the source of the location data and speeds reflected in the Berla extraction were a result of global positioning data (GPS) and...unable to quantify the accuracy."

Detective Davidson nevertheless testified to the grand jury that the Berla software was reliable and that it showed that Nubia engaged in a pattern of reckless conduct leading up to the accident. In an affidavit, Detective Davidson claimed that, according to the Berla data, Nubia accelerated to speeds of 50 miles per hour just prior to crashing into Officer Rutherford. This came from the Phoenix Police Department crash analysis which cited a study co-written by Robert Anderson, a well-known and prominent accident reconstructionist and biomechanical engineer, to support the proposition that studies have shown Berla data to be accurate in calculating a vehicle's actual speed.

Nubia's attorneys consulted with Mr. Anderson, and he agreed to prepare a report to present to the court. In that report, Mr. Anderson concluded that:

- the Phoenix Police Department improperly used the Berla data beyond its limits;
- the Berla data contained flaws which were material to the crash analysis;
- Berla did not have sufficiently reliable GPS data (nor enough data) to make a trustworthy speed calculation for any given point in time;
- Berla data limitations are well known and generally accepted in the relevant accident reconstruction community; and
- the Phoenix Police Department's crash analysis materially mistakes and misapplies the findings of his published study.

Disturbingly, when the Phoenix Police Department was presented with Mr. Anderson's report during Nubia's prosecution, it told the prosecuting attorney (via email) that it could not dispute Mr. Anderson's opinions and suggested that the prosecutor retain an expert from Berla directly to testify against Nubia. This is clear evidence that the Phoenix Police Department intended to perpetuate the prosecution's case against Nubia, despite her innocence, by pressuring the prosecutor to continue forward without any credible evidence of Nubia's wrongdoing. Stated differently, the Phoenix Police Department conceded its case was baseless but was emboldened to continue to lie in the hopes that Nubia would be ultimately convicted of Officer Rutherford's death.

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At the conclusion of a three day long preliminary hearing wherein the Phoenix Police Department, through its employees, continued to omit exculpatory evidence that exonerated Nubia, Judge Joseph Kreamer dismissed the case against her. Judge Kreamer's ruling reflects what nearly everyone knew: Nubia needlessly endured a years-long torture at the hands of the Phoenix Police Department. Judge Kreamer stated on the record: "What matters is (Rutherford) appeared from a place he shouldn't have been to a regular driver. Whether he was an officer or not, he ran out in front of her."

The Phoenix Police Department and its employees engaged in malicious prosecution and judicial deception through its/their acts and omissions in this case. Nubia should never have been prosecuted for the unfortunate death of Officer Rutherford. But she was because the Phoenix Police Department was hell bent on making sure she was convicted for his death.

This is not the only instance of malicious prosecution for which the Phoenix Police Department has engaged in during years past. For example, because of the tragic deaths of multiple African Americans, at the hands of police agencies throughout the U.S., large protests broke out in Phoenix in support of the Black Lives Matter Movement. In response to these protests, the Phoenix Police Department promoted a highly suspect theory, from an informant known to be unreliable, that the protestors were members of a criminal street gang. Like in Nubia's case, at the grand jury proceedings to push charges through against those protestors, the Phoenix Police Department's officers and/or detectives omitted key evidence about the informant's reliability and the fact that the street gang did not exist. In that case, Judge Jennifer Ryan-Touhill found that the Phoenix Police Department engaged in disingenuous and unprofessional acts during the grand jury presentation.

Because of her arrest and prosecution, Nubia has suffered unimaginable losses. Prior to the crash, Nubia was the foster mom for a beautiful little girl. In fact, Nubia planned on adopting her foster daughter. However, after the crash, and because of her prosecution, the State took the girl away from Nubia and Nubia was prevented from adopting her. Even though Nubia was not the girl's biological mother, she loved that girl as her own daughter, caring for her with a nurturing and unconditional love. But that mother-daughter bond was forever broken by the Phoenix Police Department acts and omissions that led to Nubia's prosecution.

Beyond the loss of her foster daughter, Nubia lost job opportunities and expended significant sums of money to defend herself in the criminal prosecution.

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While Nubia's economic losses are identifiable, the loss of her foster daughter and her pain and suffering through years of the Phoenix Police Department's lies and omissions are immeasurable. If this case proceeds through litigation, Nubia will be entitled to recover punitive damages and attorneys' fees.

Should those who are receiving this notice, fail to resolve it, our client will bring an action against them under state law and federal law. The City of Phoenix is vicariously liable for the actions and inactions of all of its employees and will be responsible to pay any punitive damages award against them.

A.R.S. § 12-821.01 requires a claimant to include in a notice of claim a specific dollar amount for which their claim can be settled. That amount is \$7,250,000.00. That amount is eminently reasonable and intended to result in an early resolution to this case so that all of the parties may move forward and put this matter behind them. If this offer is not accepted and should our client choose to make any future settlement offers, our client's settlement expectations will increase given the additional and substantial attorneys' fees and expenses she will be forced to incur in pursuing this matter further.

Sincerely,

ZWILLINGER WULKAN PLC

A handwritten signature in black ink, appearing to be 'L. Wulkan', written over a horizontal line.

Larry J. Wulkan
For the Firm