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October 22, 2019

Certified Mail - Return Receipt

City of Phoenix
City Manager
PO Box 330
PHOENIX OR 97535

Certified Mail - Return Receipt

Lt. Jeff Price
City of Phoenix
PO Box 330
PHOENIX OR 97535

Hand Delivery

City of Phoenix Police Department
114 2nd Street
PHOENIX OR 97535

Hand Delivery

City of Phoenix
City Manager
112 W 2nd Street
PHOENIX OR 97535

Certified Mail - Return Receipt

City of Phoenix Police Department
City Manager
PO Box 330
PHOENIX OR 97535

RE: ORS 30.275 TORT CLAIM NOTICE

To Whom It May Concern,

This letter serves as a Tort Claim Notice pursuant to ORS 30.275. On behalf of the surviving heirs of Dennis Day, I assert that the City of Phoenix Police Department, and specifically Lieutenant Jeff Price, engaged in tortious and wrongful conduct, causing irreparable damage to Nelda (Day) Adkins, Denise Norris, Janel Showers, Marla Seese, and Fred Richardson ("heirs").

The City of Phoenix Police Department and Lieutenant Jeff Price acted with negligence and bad faith in conducting an investigation into the disappearance of Dennis Day. A missing person report was filed on July 27, 2018. During the two-week period that followed that missing person report, the City of Phoenix Police Department and Lieutenant Jeff Price had access to and possession of all evidence sufficient to lead the investigating officer to find Mr. Day's deceased body. Discovery of Mr. Day's deceased body would have allowed law enforcement to determine

the cause of death, solve the case, arrest the suspect, and begin prosecution of the suspect in a timely and efficient manner in the interest of justice. However, due to the City of Phoenix Police Department and Lieutenant Jeff Price's negligence, neglect, and failure to conduct an investigation at even a minimum professional standard, Mr. Day's body was found in April, 2019 and not identified until June, 2019. Worse, Lieutenant Jeff Price made statements that certain investigative tools were used in the Summer of 2018, such as cadaver sniffing dogs, which were knowingly false and further delayed the investigation. As a result, Dennis Day's family members suffer irreparable harm in the form of emotional distress and mental anguish, invasion of privacy, and costs associated with their attempts to solve the case themselves and seek the help they ultimately needed in doing so.

FACTS

Dennis Day, a long time Phoenix, Oregon resident, who lived at 510 North Pine Street, was last seen alive on or about July 15, 2018. During the Summer of 2018, a man by the name of Daniel Burda, was staying at Mr. Day's house, purportedly performing handiwork, shopping, and other tasks around the house in exchange for a place to live. On July 11, 2018, Mr. Day called the Phoenix Police Department to report that Mr. Burda behaved violently toward him and asked how he could be removed from the house. He was told by the person who answered the call that if Mr. Burda was a tenant, Mr. Day would have to begin the eviction process.

On July 13, 2018, Mr. Day's husband, Ernie Caswell, suffered a fall and was taken to the hospital, leaving Mr. Day alone in the house with Mr. Burda.

On July 14, 2018 Mr. Day wrote a note that stated Mr. Burda had hit him in the head and hands and that Mr. Burda had threatened to kill him. That note was later found by a neighbor in a driveway sometime within ten days after Mr. Day went missing.

On July 15, 2018, Mr. Day told his friend, Kirk Pederson, that Mr. Burda was behaving violently toward him by hitting and threatening him. Mr. Pederson offered to take him to the Phoenix Police Department on Monday, July 16, since the police office was closed on Sundays.

On July 17, 2018, representatives from the hospital where Ernie Caswell was treated, notified police that Mr. Day was not responding to their phone calls to pick up Mr. Caswell. A police officer visited the house and found no one home. The officer visited the house again on July 18, 2018 and found Daniel Burda. The police officer told Mr. Burda to leave the premises. Over the next three days, July 19-21, neighbors called the police to report that Mr. Burda and other people were on the Day/Caswell property again. On July 21, police questioned Mr. Burda outside the home, but did not hold him. In July, 2018, the Phoenix Police Department approached and spoke to Mr. Burda twice, and he had obvious battle wounds on his hands and forearms. Both



encounters were recorded on police body camera. On July 24, 2018, Lieutenant Price trespassed Mr. Burda on the Pine Street property, but did not hold him for further questioning or take him into custody.

On July 27, 2018, a Meals on Wheels delivery woman notified police that no one had been home accepting the meal deliveries for a week. After receiving this report, Lieutenant Jeff Price interviewed Mr. Caswell at a memory care facility, where he had been transferred, since he had no one at home to take care of him. Mr. Caswell seemed confused, but Lieutenant Price asked him to sign a missing person report and officially opened the case on that day.

At some time in July, 2018, the Phoenix Police Department searched the interior of house on three separate occasions and walked on and over a pile of clothing that Dennis Day was hidden under causing multiple post mortal skeletal fractures. All three searches were recorded on Police Department body camera.

On August 8, 2018, Phoenix Police Department confiscated Dennis Day's ATM card from Mr. Burda and still did not take him into custody or hold him for further questioning. In August, 2018, the Phoenix Police Department received several 911 calls regarding the horrific smell coming from the residence. The Meals on Wheels delivery woman also reported horrific smell coming from the house.

For approximately six months, the City of Phoenix Police Department took no substantive action to attempt to locate Mr. Day despite abundant and obvious evidence that his deceased body was decaying in the Pine Street house and that Mr. Burda was responsible for his death. The Pine Street house is located a mere four blocks, or .3 miles, from the police station in a dense residential area in downtown Phoenix. Mr. Burda remained in the Phoenix area, and police had ample probable cause to arrest him. In an episode of *The Vanished* podcast, which aired on March 24, 2019, two weeks before Mr. Day's body was discovered, Lieutenant Price stated that he had not arrested Mr. Burda in connection with Mr. Day's disappearance because he did not believe he would "stick around" the Phoenix area after killing Mr. Day. Lieutenant Price also stated in that podcast interview that he spoke to the individuals who were caught with Mr. Day's vehicle. He stated that they told him they were with Mr. Burda at the Pine Street residence shortly after Mr. Day disappeared, and left quickly with the vehicle because they were fearful of Mr. Burda.

The heirs of Dennis Day did not find out he was missing until a news story ran in January, 2019. At that point, the heirs applied pressure to the Phoenix Police Department to enlist the help of state police. Once state police were involved and cadaver dogs were sent to the house, Mr. Day's decomposed body was found. The body was sent to a lab and later identified months later to in fact be Mr. Day.



POTENTIAL CLAIMS

After opening the missing person case, Lieutenant Price failed to make reasonable efforts to locate Mr. Day or apprehend the now accused suspect, Mr. Burda, despite ample and obvious evidence. Lieutenant Price exercised negligence and gross negligence in carrying out the investigation in the following particulars, including but not limited to:

1. Failing to open a missing person report prior to July 27, 2018;
2. Failing to adequately search the home of Dennis Day to find his body lying under a pile of clothes;
3. Failing to adequately investigate the couple responsible for taking Mr. Day's vehicle;
4. Failing to arrest Mr. Burda despite considerable probable cause, including evidence that he had assaulted Mr. Day, simply because Mr. Burda didn't "take off" and stayed in the Phoenix area after Mr. Day's disappearance;
5. Failing to locate and notify next of kin regarding Mr. Day's disappearance;
6. Failing to timely enlist the assistance of Oregon State Police to take over the investigation; and
7. Making false statements to family members about use of cadaver sniffing dogs to search the residence, when such investigative tools were never used.

The City of Phoenix Police Department and Lieutenant Price's negligence caused an unnecessary and lengthy delay in discovering Mr. Day's body and arrest of Daniel Burda. Currently, the prosecution of Mr. Burda is severely limited, if not completely thwarted, because the cause of death of Mr. Day cannot be determined and because Mr. Burda's attorney has been able to establish that Mr. Burda is unfit to stand trial due to mental health limitations. At this point, proper justice for the death of Mr. Day will not be served, all due to the fact that the City of Phoenix Police and Lieutenant Price handled the missing person investigation with gross negligence and bad faith.

DAMAGES

As a result, Dennis Day's heirs are irreparably damaged in the following ways, including but not limited to:



1. Painful thoughts and feelings associated with knowing their family member's corpse decayed under a pile of clothes in his house for nine months, and then endured learning that Phoenix Police officers had stepped on him, during three separate searches, causing multiple post mortal skeletal fractures and still did not find him;
2. An inability to seek justice under the law as victims in the criminal case against Mr. Daniel Burda;
3. Months of not knowing and imagining what happened to their family member;
4. A year of, and continued, unwanted media attention and invasion of privacy due to the unnecessary delay in investigation, unnecessary mystery, and resulting public interest in the case;
5. The stress and time of consulting a private investigator to conduct an investigation that should have been unnecessary had the City of Phoenix Police Department taken basic steps to connect the evidence in front of them and adequately search the residence; and
6. The shock and stress of finding out about their family member's disappearance through the news media six months after the fact.

Dennis Day's heirs will pursue any and all remedies under state or federal common law or statute available to them relating to the above facts and damages. If you wish to discuss resolution of this matter, please direct this Tort Claim Notice to your legal counsel and have them contact my office.

Sincerely,



Erin E. Gould

EEG:bf

cc: Clients (via email)

