

092308 5:55 pm by Oliver Martin Theophilus, 476 Colorado Drive, Cedar Creek, Tx 78612, 512-303-1472

On August 5, 2008 we sold Mr Nam Hoang Nguyen and his wife our 1998 Nissan Pathfinder for \$5,000. At his request, we brought the Pathfinder to Mr. Nguyen's's restaurant M&C's Airport Cafe and Bar at the Quality Inn, 2751 Highway 71 East, Austin 78617. Also at Mr. Nguyen's request , the deal was completed inside the M&C restaurant. Mr Nguyen gave us \$3,000 cash and we accepted a \$2,000 postdated check dated 09/05/08. Mr Nguyen said he would try to make the check good before the due date. Mr Nguyen made us a copy his drivers license and Geico auto insurance. Our Pathfinder's Title, extra key and Insurance coverage remained with us. Mr Nguyen signed an statement agreeing to the details above.

My wife (Chris Theophilus) called Mr Nguyen on September 4, 2008 and said we would be depositing the check tomorrow. Mr Nguyen asked that we wait until Monday, September 8, 2008 to be sure the check was covered. The check was written on an account in Mr Nguyen's name at the Wachovia bank and was deposited to our Credit Union account on September 8th.

On September 12th, the Univ. FCU informed us Mr Nguyen's check was returned for insufficient funds. Credit Union notice said they would re-submit for payment . Called Mr Nguyen and he apologized and said he would give us \$2000 cash on Monday Sept. 15th, plus \$30 bounced check fee. At first Mr Nguyen asked Chris to wait for another week until Sept. 22nd. Chris said we would not. He promised to come to our house between 2:00pm and 5:00pm on Monday, Sept. 15th. Chris called him at 3:00pm. He said he was very busy and couldn't come, but would come by at 2:00pm on Tuesday Sept. 16th. Martin called him and left a message stating we needed to finalize this deal.

On September 16, 2008 Martin stopped by the M&C Cafe & Bar telling Mr Nguyen we needed to either have the \$2,000, or he needed to return the Pathfinder. Mr Nguyen said we should re-submit check for payment tomorrow. Mr Nguyen said the Pathfinder is in Houston where his wife is

currently. Mr. Nguyen said his wife had failed to deposit the necessary funds.

Later on September 16, 2008 we received a legal copy of Mr Nguyen's returned check from Univ. FCU. Chris phoned Univ. FCU and they said check had been re-submitted and was again returned for Insufficient funds. They suggested we go to Wachovia Bank and see if we could get cash. At this point we noticed that Mr Nguyen had given us a check with an old address. Chris went to Wachovia, on San Jacinto and they said that account had not been active for some time and was in fact overdrawn. Chris went by the address that was on the check, 5204 TWO IRON ST, AUSTIN TX 7874 and determined that the Pathfinder was not there.

On Sept 17, 2008 we stopped by the address at 200 Race Track Drive to see if Pathfinder was at the address on Mr. Nguyen's drivers license. It was not. We secured legal advise and were advised to file a Small Claims Court action with Travis County Precinct 4 against Nam Hoang Nguyen.

Our attorney advised that we should attempt to recover the vehicle as soon as possible before it was damaged or more wear placed on it. Chris filed the court action with Travis County and was advised Mr. Nguyen would be served within a few days. A Constable at the Precinct 4 stated that we should work to recover the vehicle as soon as possible. He further stated that we should file a complaint with the District Attorney regarding the \$2,000 check. We contacted the DA's office. The District Attorney's office advised us that they could pursue the hot check as a courtesy to us and if they could secure the money, they'd give it to us. However since the check was postdated and not for the entire amount of the vehicle, they could not charge Mr. Nguyen with a felony.

It seemed Mr. Nguyen knew what he was doing by writing a partial check for the vehicle on an old account that had not been used in some time with an address he'd not lived at for several years. It was all looking very fraudulent.

On Sept 19th we stopped by 200 Race Track Drive again. No Pathfinder. We stopped by the M&C Café on our way home and asked Mr Nguyen why he was not following through with his promises. We said we were tired of

being lied to and told him what the Wachovia Bank had told us about the bank account he'd written the check on. He said the Pathfinder was still in Houston, but his wife was returning on Monday Sept. 22nd. We had him write and sign a note stating that he would either return the vehicle on Monday evening (September 22nd), or would pay us \$2,000 plus whatever our expenses were. Due to all the missed deadlines and conflicting stories, we videotaped this meeting.

September 22nd Mr Nguyen did not show up with the promised payment, nor the Pathfinder.

On 09/23/08, I (Martin Theophilus) left UT around 2pm. As Mr. Nguyen had not brought us the Pathfinder, nor the \$2,000 yesterday as agreed, I called Chris and said I would go by 200 Racetrack Drive and the Quality Inn to see if the Pathfinder was at either location. We were told Mrs. Nguyen would be back from Houston yesterday (Sept 22, 2008) with the Pathfinder, or the money. If the Pathfinder was there, we would call the Austin Police Department and have them meet us, so we could repossess the vehicle.

As I arrived at 200 Racetrack Drive in South Austin, I saw Mr Nguyen in his garage. There was only Mr Nguyen's Silver Infinity in the driveway and a white car in his garage. So I stopped and asked where the Pathfinder was. He came out of his garage without a shirt and said he received our court papers and he would deal with it. I reminded him that he agreed to pay us or bring back the Pathfinder yesterday. The white car started to back out, almost hitting my vehicle. Mr. Nguyen said she (I assumed his wife) needed to leave to pick up their kids. Mr Nguyen jumped into the white car and backed it across his grass out of his driveway. The lady then drove off as Mr Nguyen went back into his house. I thought the white vehicle was his wife so I followed her to the HEB at Stassney and Manchaca, assuming she would know where the Pathfinder was.

When the lady got out of her car in the HEB parking lot, I videotaped my questions asking if she was his wife and if she could tell me where the Pathfinder was. She said she was not his wife and didn't know about the Pathfinder. Based on her license plate TX 315YBS, she was Tam Hua, 15018 Misty Bend, San Antonio, TX 78217. I got back in my vehicle and was leaving the HEB parking lot and called Chris to tell her that I was

unable to find our vehicle.

At around 3:00pm as I was pulling out of the South entrance of the HEB parking lot, Mr. Hguyen came up fast behind me in his gray Toyota honking continuously. He followed me West on Stassney as I was trying to turn around and head home. As I was waiting in the turn lane for East bound traffic to clear, Mr. Nguyen jumped out of his car and came up yelling at me that we were going to do this his way. He was so agitated, I grabbed our digital still/video camera to document his actions. Mr. Nguyen reached in and grabbed my sunglasses off my face and threw them across the vehicle, breaking them in the process. He then grabbed my arm and reached past me into my vehicle and grabbed our camera before I could start it. He pulled it out of the vehicle and attempted to slam it down, damaging the back viewfinder plate. I was able to catch the strap as it went by and worked to wrestle the camera back. This is a \$400 camera we use in our business and I did not want it lost or damaged. Mr. Nguyen tried to pull the camera away and began hitting my arm as I was holding the strap. I received a swollen bruised left arm in 2 places, a bleeding right finger, and scrapes and bruises to my right hand, damage to the camera and scratches to the side of our Nissan Murano. I was able to hang onto the camera strap, slowly wrestled the camera back and rolled up my window shutting Mr. Nguyen out.

I completed the turn around to go east on Stassney and he began following me, so I quickly turned (South) on Manchaca and drove a few blocks until I was sure he wasn't following. Chris was on the phone with me during the entire incident. I felt I needed to call the Police and should stay in the area so I pulled into the Neighborhood Hardware Store at 9924 South Manchaca and dialed 911 at around 3:08 pm to report I'd been assaulted.

My wife Chris had been on my cell phone the entire time. Some of the things Chris heard during the assault.

Martin said "Sir, you are making a big mistake." Nam Nguyen said "We'll do it my way." "How much of the \$3,000 will I get back". Martin said "Now you have assaulted me and I will file charges."

Austin Police Dept Officers K. Perryman (4062) and R. Smith (4501) documented the complaint and assigned case number 08-267-1302. The officers advised that a detective would be contacting us in a couple of days to take further information, if at that time we wished to continue to file charges.

ADDITIONAL INFORMATION:

09/23/08 At 3:33 pm, Mr Nguyen called and left a message on our phone that he received our court papers and to call him. This call came immediately after he attacked Martin on east Stassney. Chris called him back and Mr Nguyen stated he would have the Pathfinder at the M&C Cafe on the morning of September 24th at 9:00 am. Chris advised him we would pick it up and we would be asking the Austin Police Department to accompany us. Mr Nguyen asked how much of his money we would refund and Chris said we did not know what the expenses that he agreed to pay would total.

0924/08 Accompanied by Austin Police Dept officer A. Del Valle #2941, we retrieved the Pathfinder vehicle from Mr Nguyen. We once again documented this event with our video camera. With the officer present, Mr Nguyen admitted that he had physically attacked me. Mr Nguyen stated he was trying to get the camera, because it was illegal for me to take his picture. At all times we were in public places. Mr Nguyen signed an agreement we drew up that stated he would be responsible for expenses incurred in re-selling the vehicle and that after the vehicle sold, we would return the balance of the amount he paid initially after the expenses he agreed to pay were deducted.