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IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

STATE OF FLORIDA,

Plaintiff,

vs. CASE NO. 23-02935CF

TOMASZ KOSOWSKI,

Defendant.
_____/

VIRTUAL DEPOSITION OF AUSTIN BARNES

DATE: January 9, 2025

TIME: 3:02 p.m.

PLACE: Various Remote Locations
Via Zoom Video Communications

REPORTER: KIMBERLY L. RENFROE, RPR
Stenographic Reporter

ELECTRONICALLY FILED 02/25/2025 10:52:36 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY
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VIRTUAL
APPEARANCES:

NATHAN T. VONDERHEIDE, ESQUIRE
Assistant State Attorney
Post Office Box 17500
Clearwater, Florida 33762
For the State

BJORN E. BRUNVAND, ESQUIRE
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For the Defendant

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DEPOSITION IN DISCOVERY

AUSTIN BARNES

Pursuant to notice duly given, the virtual deposition of AUSTIN BARNES, called by the Defendant in the above-styled cause, was taken by me, a Notary Public in and for the State of Florida at Large, at the time and place and in the virtual presence of counsel enumerated on Page 2 hereof.

Thereupon, it was stipulated and agreed by and between the attorneys for the respective parties, by and with the consent of the said AUSTIN BARNES, that signature to the said deposition be reserved.

THE COURT REPORTER: Raise your right hand, please.

Do you swear or affirm that the testimony you're about to give in this cause will be the truth, so help you God?

THE WITNESS: I do.

AUSTIN BARNES, having been first duly sworn via Zoom Video Communications, upon interrogation in discovery, testified as follows:

DIRECT EXAMINATION

BY MR. BRUNVAND:

Q. Mr. Barnes, as I indicated earlier, my name is Bjorn Brunvand. I'm an attorney in Florida. I

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represent Tom Kosowski. We're here in the matter of State of Florida versus Tom Kosowski. And you have been listed as a witness and it relates to some interaction, I believe, that you had with Tom Kosowski at some point --

A. Yes, sir.

Q. -- is that correct? Okay.

A. That is correct.

Q. If you could start by telling us your full name?

A. It's Austin Thomas Barnes.

Q. And -- and, Mr. Barnes, what's -- what state do you live in?

A. I live in Tennessee.

Q. In what city?

A. Memphis.

Q. Okay. And how long have you lived in Memphis, Tennessee?

A. My entire life, so 30 -- 39 years now with the exception of a couple of years that I went to college at Mississippi State.

Q. Okay. Do you have a bachelor's degree or what -- what --

A. I do. I have a Bachelor's Degree in Architecture.

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Q. Okay. All right. And are you employed?
A. I am.
Q. What do you do?
A. I am a graphic designer -- actually, a creative director at a large format printing company here in Memphis.
Q. Okay.
How long have you been so employed?
A. Ten years now.
Q. Okay.
And the -- the next question is not intended in any way to embarrass you or what have you, it's just a question that we have to ask.
Have you ever been arrested or -- and/or convicted of any felony offenses or crimes involving dishonesty, which would be like a theft-type charge, misdemeanor theft or lying-related misdemeanor, that type of stuff?
A. I have not. I have no criminal record whatsoever.
Q. Okay. All right.
Do you recall when you first had contact with an individual who you learned or -- or -- or -- that was Tom Kosowski?
A. I do. I believe I sold him a guitar in 2016.
Q. Okay. And how did that happen?

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A. Via -- it was either through eBay or Reverb, an online retailer. He reached out to me and we arranged a private sale of a guitar.

Q. Okay. And what kind of a guitar was it?

A. I believe it was a Gibson Les Paul.

Q. Okay. And do you recall how much the agreed-upon price for the guitar was?

A. If I remember correctly I think it was $1,400.

Q. Okay.

Did you have any type of bill of sale or do you have any emails or anything like that that --

A. I think that -- I think, just from doing my cursory search after being contacted here, I believe I do have the emails where we agreed upon a price and everything but I don't -- I don't think I have any kind of bill of sale at this point since it was so long ago.

Q. Okay. All right. Are those emails that Mr. Vonderheide has requested copies of and are you in the process of providing those or --

A. Not -- no, he has not requested those. I'm happy to provide them if necessary.

Q. Okay. Sure. I'd ask that you go ahead and provide them to him when you have the opportunity and -- and then he'll --

A. Of course.

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Q. -- send them to us.

So, basically, you had listed this guitar online for sale, you're contacted by Tom Kosowski and -- and he agrees to purchase it for $1,400?

A. Yes, sir.

Q. Okay.

Do you know, was that a reasonable amount for that particular guitar?

A. As far as I know. I do buy and sell guitars a lot. It's kind of a -- something that I do on the side to make money. I'm also a musician so it's a way that I'm able to, you know, try out multiple instruments and at -- at the time I believe I was in a band so it was a -- a way for me to, you know, cycle through different instruments and try different things out. So, yeah, I do believe it was a reasonable price.

Q. Okay. All right.

How does he end up getting it from you?

A. I shipped it to him.

Q. You shipped it to him. And how did --

A. Yeah.

Q. -- how did he pay you?

A. I believe it was via PayPal at that time.

Q. Okay. All right.

After you shipped -- shipped the guitar to him and

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you had been paid, were there any issues?

A. Yes. He actually left me a voicemail after receiving the guitar that he thought that it was either a fake or a counterfeit or however you want to say it. And under normal circumstances I would have been receptive to that. It was a Gibson guitar. I don't really deal in Gibson guitars, I deal mostly with Fender guitars. I'm not by any means an expert on Gibson guitars, so I would have been more than willing to hear him out had he not left an unhinged voicemail on my phone saying that, you know, I didn't know who I was dealing with and that I -- you know, he's not the type of person that I wanted to mess with.

So, you know, after that I figured this is not a person that I really wanted to have any kind of dealings with so from there I just kind of ignored him.

Q. Okay. So -- so do I understand that -- that you're uncertain as to whether or not it may or may not have been a counterfeit Les Paul-style guitar?

A. Yeah. I mean, I have no way of knowing. I bought it from someone else and sold it to him. It could have been, may have been, I don't know. I have no way of knowing.

And, like I said, had he been reasonable in contacting me like a normal human being I might have

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been receptive to giving him his money back and doing a refund on the guitar. Sometimes things like that happen and I -- like I said, I run -- I -- I kind of run a business on the side of buying and selling guitars, returns are just part of the process. But he chose instead to -- to call -- call me and leave an unhinged voicemail on my phone that was -- you know, contained veiled threats and he sounded incredibly unhinged and angry, so I decided this is not a person that I really want to deal with any further.

Q. Okay.

In that voicemail did he ask to return the guitar for a refund?

A. Yes, he did. I believe that was part of the voicemail, at least, that --

Q. Okay.

A. -- he -- he would have to return, give him his money back, pay for the return shipping, basically, or else. Like I said, he said I -- that I didn't -- I had no idea who I was dealing with and that, you know, he -- basically, like I said, see -- seemed like a really veiled threat. He seemed extremely angry and kind of unhinged.

Q. Okay.

Did -- do you also recall receiving an email

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requesting a refund in addition to the voicemail?

A. Yeah. That was after the -- after the voicemail. I did receive a few emails. Like I said, I just ignored them. I decided this is not a person that I wanted to deal with at that point.

Q. Okay.

A. I deal with reasonable people and I wasn't going to deal with somebody who was contacting me in that -- in that manner.

Q. And did he also at one point make a social media post like on Facebook?

A. I have no idea. I don't have Facebook or any kind of social media so could be --

Q. Okay.

A. -- but I'm not aware of that.

Q. Okay.

And you said that he had paid $1,400 for the guitar?

A. Yes, sir.

Q. Okay.

Do you know what the guitar that -- that you sold, do you know what the actual value is of that guitar?

A. Maybe -- man, it's hard to say because they've gone up in the past few years. At the time that was a reasonable -- I think that was a reasonable value for

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it. Now it would probably be worth $2,500, but that --

Q. So when you -- when you say at the time that was a reasonable value, is that assuming that it was not counterfeit?

A. Yeah, absolutely. Like I said, I had no reason to believe that it was not a legitimate guitar.

Q. And any idea what the value would be if -- if, in fact, it was counterfeit?

A. No, I have no idea. I'm not -- I'm not in the business of buying and selling counterfeit guitars so I don't know.

Q. Understood. Understood.

So the reason you didn't respond to any of his attempts to -- to get in touch with you was because of -- of his demeanor and -- and -- and the voicemail in particular?

A. Yeah. It kind of scared me really. And I don't really -- I don't deal well with confrontation, so I just decided that wasn't something that I was going to do. Like I said, had he contacted me in a normal manner, reasonable manner, I would have been more than happy to -- to work with him and -- and, you know, rectify whatever situation there might have been.

Q. How -- how old were you in -- in 2000 -- this was in 2016; right?

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A. Yeah. I -- I believe I was 33, according to the incident report.

Q. Okay. So tell me about the incident report. Did you end up reaching out to law enforcement?

A. I did. Yep.

Q. Okay.

A. Even though Mr. Kosowski asked that I did not do -- do so, I immediately did.

Q. Okay. And where did he -- where and how did he ask you not to reach out to law enforcement?

A. I guess I can just tell that story.

So, I -- after that incident I continued buying and selling guitars like normal. And two years later I had a guitar listed on Reverb.com and someone contacted me and asked to purchase the instrument in-person. I agreed to meet them at a local Kroger, which has tons of surveillance and should be a fairly safe place to meet someone for a -- an in-person transaction, but it turns out that it was really Mr. Kosowski who had created a fake account on Reverb.com under a pseudonym Chad Cox and that's how he got me to meet him under false pretenses at Kroger.

And upon arriving, he told me that he wanted to meet me there so as not to scare my wife Meagan and my two children Jack and Sam; he knew them by name, said

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them by name, he told me my address and told me that I needed to give him his money back for that guitar plus his travel expenses for traveling from Tampa to Memphis, Tennessee; and that if I did not do so that things would get worse for me. And told me not to contact the police, not to tell my wife, not to tell anybody about it.

And at that point I left, I drove off and immediately called the police and called my wife and let everybody know what was going on. And that's when the incident report was taken.

Q. Okay.

So up until that point you had not filed any type of reports, but once you had that encounter --

A. Yeah, there was no reason to file a report previous to that. I didn't feel like I was in any danger or threatened or anything. I -- I had completely forgotten about it at that point. I mean, it was two years later.

Q. Okay.

Do you know whether or not law enforcement reached out to Tom Kosowski?

A. They did. They contacted him and -- and basically told them -- told him that, you know, he was really putting his practice at risk by traveling here

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and -- and intimidating me in such a manner and asked that he not contact me anymore. And as far as I'm aware, he has -- he did not contact me at all after that.

But it really -- I mean, my -- my family was scared, my parents were scared, my kids were scared. I mean, it really shook us up. For -- for a while they were kind of looking over our shoulders, like, wondering what this guy's going to do 'cause it's pretty -- it's pretty insane to drive from Tampa -- to rent a car, drive from Tampa, Florida to Memphis, Tennessee, set up a fake account on Reverb.com under a pseudonym, all to lure me to a place where he could confront me in person and threaten me and, you know, tell me not to get law enforcement involved and everything. So we didn't know what the guy was capable of, so it really did -- it scared us.

Q. Do you recall -- do you recall what he was wearing?

A. I, honestly, in my mind I can see he was wearing all black but that's just -- you know, I can't -- I can't say for sure. There -- at -- at that time, I do believe the Memphis police pulled the surveillance footage from that Kroger there.

Q. Okay. And Kroger is a grocery store?

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A. Yes, sir. I'm sorry I didn't specify that.
Q. It's okay. Okay.
How long was your encounter with him at the Kroger?
A. It was fairly short. It felt like a long time but it -- it -- I mean, it couldn't have been more than five minutes I don't think.
Q. Okay.
Have you had any other contact with him?
A. No, sir. That was the last time that I've heard about him. Really after that died down, I -- I completely forgot about the incident. It's been -- it's been, you know, I think almost -- it's been over six years now, I think --
Q. Okay.
A. -- since that happened.
Q. Okay.
I don't think I have any other questions. Is there anything that you think that I should know that I have not asked you about your contacts with Tom Kosowski?
A. I don't think so. I think I've covered everything and I -- and I went over the police report again this morning just to kind of refresh my memory since it's been a long time and I don't want to, you know, put forth any information that I'm -- I'm not sure of. But I think -- I think that covers everything.

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Q. Okay.

MR. BRUNVAND: Let me ask Mr. Vonderheide if he has any questions.

THE WITNESS: Yes, sir.

CROSS-EXAMINATION

BY MR. VONDERHEIDE:

Q. Do -- do you also have the emails from his pseudonym? I think you said it's Chad Cox, right?

A. That was all -- that was all -- that all happened within the -- the confines of the Reverb.com chat messaging --

Q. Okay.

A. -- thing. I can see if I can find them. I don't think so. But I can see if -- and I -- I may be able to reach out to them and see if they can maybe give me chat logs from that but I don't know if I have access to that at this point.

Q. Okay. All right. And if you want to just send me the emails that you do have saved --

A. I can do that.

Q. -- from the original transaction, that'll be great. I appreciate it.

THE WITNESS: Of course.

MR. VONDERHEIDE: Thank you, sir. I have no further questions?

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THE WITNESS: That wouldn't be a problem.

MR. BRUNVAND: All right. So, I appreciate your time.

The -- if we transcribe your deposition, you have the opportunity to either read or waive reading of the transcript prior to it being finalized. What that means is, regardless of, you know, whether or not you read or waive, the transcript would be the same. If you read you have an opportunity to write in the back of the transcript on what's called an addendum, things that you think might be incorrect. So -- so that's, you know, the -- I guess the plus of reading it. Obviously, if you waive, you still can make those same statements later on if you were to testify and what have you. So it's up to you if you want to read or waive but -- but I need to ask you that and you tell us what you want to do.

THE WITNESS: I think I -- I think it seems reasonable that I -- I would read it and look over it to make sure everything's correct. That sounds good --

MR. BRUNVAND: Absolute --

THE WITNESS: -- to me.

MR. BRUNVAND: Absolutely.

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I'm going to stop the recording and then the court reporter is going to want your contact information.

THE WITNESS: Okay.

THEREUPON, the virtual deposition concluded at 3:18 p.m.

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ERRATA SHEET

IN RE: State of Florida versus Tomasz Kosowski

DATE TAKEN: January 9, 2025

WITNESS: AUSTIN BARNES

Page	Line	Correction	Reason

Under penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true.

_____

DATE (AUSTIN BARNES)

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CERTIFICATE OF OATH

STATE OF FLORIDA

COUNTY OF PINELLAS

I, the undersigned authority, certify that AUSTIN BARNES personally appeared before me January 9, 2025 and was duly sworn via Zoom Video Communications.

Witness my hand and official seal this 31st day of January, 2025.



KIMBERLY L. RENFROE, RPR
Notary Public, State of Florida
Commission No.: HH 80650
Expiration date: 1/31/25

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REPORTER'S CERTIFICATE

STATE OF FLORIDA

COUNTY OF PINELLAS

I, KIMBERLY L. RENFROE, Registered Professional Reporter, certify that I was authorized to and did stenographically report the virtual deposition of AUSTIN BARNES; that a review of the transcript was requested; and that the transcript is a true and complete record as I understood it to be.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with this action, nor am I financially interested in the action.

Dated this 31st day of January, 2025.



KIMBERLY L. RENFROE, RPR
Stenographic Reporter

(Transcript was ordered by Bjorn E. Brunvand, Esquire, on January 9, 2025.)

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February 3, 2025

Austin Barnes
********@******.com

Dear Mr. Barnes:

Your deposition taken in the case of State of Florida v. Tomasz Kosowski on January 9, 2025 has been transcribed. Per your request to review the transcript, it is being held at our office at 728 South New York Avenue, Lakeland, Florida, until March 7, 2025.

Please call 863-500-3603 to make arrangements to do this during our regular business hours of 8:30 a.m. to 5:00 p.m.

Thank you for your prompt attention to this matter.

Sincerely,

Kimberly L. Renfroe, RPR

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