

DISTRICT COURT, JEFFERSON COUNTY, STATE OF COLORADO 100 Jefferson County Parkway Golden, CO 80401	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>WILLIAM MONTGOMERY,</p> <p>Plaintiff,</p> <p>v.</p> <p>BEST BUY, L.P.,</p> <p>Defendant.</p>	
Attorneys for Best Buy, L.P.: Lori K. Bell, Reg. No. 31714 Glenn D. Germany, Reg. No. 59722 Montgomery Amatuzio 4100 East Mississippi Avenue, Suite 1600 Denver, CO 80246-3048 Telephone: 303-592-6600 lbell@mac-legal.com ggermany@mac-legal.com	Case No.: 2023CV00226 Division: 6
DEFENDANT BEST BUY, L.P.'S MOTION FOR SUMMARY JUDGMENT	

Best Buy Stores L.P. (“Best Buy”), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits this Motion for Summary Judgment seeking dismissal of Plaintiff’s claims against Best Buy pursuant to C.R.C.P. 56:

CERTIFICATION PURSUANT TO C.R.C.P. § 121 1-15(8)

Undersigned counsel conferred with pro se Plaintiff concerning the substance of this Motion. Plaintiff opposes the relief requested herein.

I. INTRODUCTION

It is important for this Court to understand that Plaintiff has filed numerous lawsuits against a variety of businesses claiming he was unlawfully detained, assaulted, and defamed. Plaintiff has been told by Colorado State Courts, the Colorado Court of Appeals, the United States District Court for the District of Colorado and the Tenth Circuit that the Shopkeeper's Privilege, codified in C.R.S. § 18-4-407, provides that stores, and their employees, are immune from allegations of slander, false imprisonment, and other similar complaints when they stop individuals they suspect of theft to ascertain whether they possess stolen items. See *Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 (Colo. App. June 1, 2023); *Montgomery v. Calvano*, No. 21-1134, 2022 WL 1132212 (10th Cir. Apr. 18, 2022) (unpublished opinion); *Montgomery v. Cohn*, Civ. Case No. 22-cv-000111-PAB- MEH, 2023 WL 2366732 (D. Colo. Mar. 3, 2023) (unpublished order); *Montgomery v. Holweger*, 529 F. Supp. 3d 1212, (D. Colo. 2021); *Montgomery v. Cruz*, Civ. A. No. 20-cv-03189-PAB-MEH, 2023 WL 1437878 (D. Colo. Feb. 1, 2023) (unpublished order); *Montgomery v. Lore*, Civ. Case No. 21-cv-02553-PAB-MEH, 2023 WL 2423325 (D. Colo. March 9, 2023) (unpublished order); *Montgomery v. Anderson*, Civ. A. No. 21-cv-03191, PAB-MEH, 2022 WL 3584895 (D. Colo. Aug. 22, 2022) (unpublished order).

Plaintiff seeks to change well established case law and statutes because he simply disagrees with the statute. Because Plaintiff has been told multiple times by numerous courts that his complaints against retailers are not permissible pursuant to the Shopkeeper's Privilege, and Plaintiff yet chose to file this lawsuit against Best Buy, this Court should dismiss the matter summarily and award Best Buy attorney's fees for having to defend this frivolous lawsuit.

II STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On March 31, 2020, Plaintiff filed a Complaint against Walmart alleging false imprisonment claims, similar to the allegations in the matter before this Court (Jefferson County case 2020CV76). See *Exhibit A, Plaintiff's Complaint in 2020CV76 and Order granting Defendant's Motion for Summary Judgment*.

2. On September 3, 2020, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment against Walmart employees, similar to the allegations in the matter before this Court (Adams County cases 2020CV067). See *Exhibit B, Plaintiff's Complaint in 2020CV067 and Order granting Defendants motion for summary judgment*.

3. On September 3, 2020, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2020CV148). See *Exhibit C, Plaintiff's Complaint in 2020CV148 and Order granting motion for summary judgment*.

4. On November 27, 2020, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment, assault, and defamation against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2020CV209). See *Exhibit D, Plaintiff's Complaint in 2020CV209 and Order granting Defendant's Motion for Summary Judgment*.

5. On January 4, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment and defamation against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2021CV1/21CV231). See *Exhibit E, Plaintiff's Complaint in 2021CV1 and Order granting Defendant's Motion for Summary Judgment*.

6. On August 6, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment against Walmart employees, similar to the allegations in the matter before this Court

(Adams County case 2021CV68). See *Exhibit F, Plaintiff's Complaint in 2021CV68 and Order granting Defendant's Motion for Summary Judgment*.

7. On September 3, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment and defamation against Walmart employees, similar to the allegations in the matter before this Court (Adams County case 2021CV88). See *Exhibit G, Plaintiff's Complaint in 2021CV88 and Order granting Defendant's Motion for Summary Judgment*.

8. On September 20, 2021, Plaintiff filed a complaint against Walmart Inc., alleging false imprisonment and defamation against Walmart employees, similar to the allegations in the matter before this Court (Arapahoe County case 2021CV235). See *Exhibit H, Plaintiff's Complaint in 2021CV235 and Order granting Defendant's Motion for Summary Judgment*.

9. On May 12, 2022, the Colorado Court of Appeals issued an Order Affirming the trial court's Order granting Defendants motion for summary judgement set forth in Exhibit A. See *Exhibit I, Order Affirmed, Court of Appeals No. 21CA0359*.

10. On October 26, 2023, the Colorado Court of Appeals issued an Order affirming the Adams County District Court Orders set forth in Exhibits B, F & G. See, *Exhibit J, Judgement Affirmed, Court of Appeals No. 23CA0159*.

11. On June 1, 2023, the Colorado Court of Appeals issued an Order affirming the Arapahoe County District Court Orders set forth in Exhibits C,D, E & H. See *Exhibit K, Judgment Affirmed, Court of Appeals No. 22CA0625*.

Best Buy incorporates, as if fully set forth herein, the above Orders granting defendants' motions for summary judgment, contained in Exhibits A through G and the Colorado Court of Appeals Orders affirming the District Court Orders, contained in Exhibits

12. YOUTUBE VIDEO “I have it all planned” *See Exhibit L, link to Youtube video.*

[https://mac-](https://mac-legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY)

[legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY](https://mac-legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY)

13. On or about November 25, 2022, Plaintiff targeted the Best Buy store located in Westminster, CO when he exited the store with merchandise in his possession (“the Incident”). The only evidence Plaintiff produced of the encounter was the body cam video captured by Plaintiff. *See Exhibit M, link to Body Cam footage.*

[https://mac-](https://mac-legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY)

[legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY](https://mac-legal.filev.io/r/s/2e6fQ9wB8C60uRrA2ItjpgTN1B8f2g3mJ3P592KytysdZEvfPrm9VTAY)

14. As seen on the video, Plaintiff did not show a receipt to Best Buy staff when requested to do so.

15. As seen on the video, Best Buy employees suspected Plaintiff of stealing items from Best Buy and confronted Plaintiff outside the store.

16. In the recording, a Best Buy employee stated that he had “never had someone stand here and wait for us to come get them” in reference to Plaintiff.

17. Best Buy employees repeatedly ask Plaintiff to return the store merchandise.

18. Eventually Best Buy employees leave Plaintiff, tell him to “have a good one.”

19. At no time during the interaction did Best Buy employees touch Plaintiff or threaten to harm him.

20. At all times, Plaintiff could have simply shown a receipt and ended the confrontation.

21. On November 21, 2023, Plaintiff filed a complaint against Best Buy, alleging False Imprisonment, Defamation *per se*, and Assault against the Best Buy. See *Exhibit N, Complaint against Best Buy*.

III. LEGAL STANDARD

Summary judgment is appropriate when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *American Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352, 360 (Colo. 1994). In deciding whether to grant a motion for summary judgment, a court must consider “the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, if any.” *Cary v. United of Omaha Life Ins. Co.*, 68 P.3d 462, 466 (Colo. 2003) (quoting C.R.C.P. 56(c)); *AviComm, Inc. v. Colo. Pub. Util. Comm’n*, 955 P.2d 1023, 1029 (Colo. 1998). The burden then shifts to the nonmoving party to establish that there is a triable issue of fact. *Id.*

In determining when summary judgment is proper, the nonmoving party is entitled to all favorable inferences that may reasonably be drawn from the undisputed facts. *Bayou Land Co. v. Talley*, 924 P.2d 136, 151 (Colo. 1996). However, once the moving party affirmatively shows specific facts probative of its right to judgment, it becomes necessary for the nonmoving party to set forth facts by affidavit, or otherwise, showing that there is a genuine issue for trial. *Civil Service Com’n. v. Pinder*, 812 P.2d 645, 649 (Colo.1991).

Shopkeeper’s Privilege

C.R.S. § 18-4-407

affords under certain circumstances a degree of protection from and against claims based on slander, false arrest, false imprisonment, malicious prosecution and

unlawful detention to one who acting in good faith and upon probable cause based upon reasonable grounds questions another for the purpose of ascertaining whether or not the person thus questioned is guilty of shoplifting and further that the protection thus afforded is not taken away when the questioning establishes that the person so questioned is in fact not guilty of any shoplifting.

J. S. Dillon & Sons Stores Co. v. Carrington, 169 Colo. 242, 248, 455 P.2d 201, 203 (1969).

IV. ARGUMENT

A. Plaintiff has failed to show that the Actions of the Best Buy Employees amounted to False Imprisonment and the actions of the Best Buy employees were further protected by the Shopkeeper’s Privilege, pursuant to C.R.S. 18-4-407.

In order to prove a claim for False Imprisonment, Plaintiff must show that 1) the defendant intended to restrict the plaintiff’s freedom of movement; 2) the defendant directly or indirectly, restricted the plaintiff’s freedom of movement for a period of time, no matter how short’ 3) the plaintiff was aware their freedom of movement was restricted. Freedom of movement is restricted when a “person’s freedom of movement is actually limited, or he believes that it has been limited to a certain area by physical barriers and does not know of any way to escape without causing an unreasonable risk of harm to him.” See CJI-21:2.

“It is unreasonable for one whom the actor intends to imprison to refuse to utilize a means of escape of which he is himself aware merely because it entails a slight inconvenience.” Restatement (Second) of Torts § 36 cmt. a (Am. L. Inst. 1965).

Plaintiff had the tools of escape and Best Buy cannot be held liable for False Imprisonment. If in fact, Plaintiff purchased items at Best Buy, he could simply comply with the request to show his receipt. It is presumed Plaintiff had such proof, because if he did not have proof of purchase, then Plaintiff committed theft and the Best Buy employees are exonerated from all Plaintiff’s

claims. Showing such proof was a minor inconvenience, and Plaintiff cannot claim that inconvenience is insurmountable and thus claim false imprisonment. It is unreasonable for Plaintiff to refuse to show his proof of purchase which would have freed him from the false imprisonment he alleges. Thus, the Court should dismiss Plaintiff's claim of false imprisonment.

Further, Plaintiff's claim necessarily fails as Best Buy's actions were protected by C.R.S. § 18-4-407, the Shopkeeper's Privilege, which provides that:

under certain circumstances a degree of protection from and against claims based on slander, false arrest, false imprisonment, malicious prosecution and unlawful detention to one who acting in good faith and upon probable cause based upon reasonable grounds questions another for the purpose of ascertaining whether or not the person thus questioned is guilty of shoplifting and further that the protection thus afforded is not taken away when the questioning establishes that the person so questioned is in fact not guilty of any shoplifting.

J. S. Dillon & Sons Stores Co. v. Carrington, 169 Colo. 242, 248, 455 P.2d 201, 203 (1969).

Here, Plaintiff intentionally concealed merchandise, exited the Best Buy store, waited to be confronted by employees and then refused to show a receipt for the merchandise. Best Buy acted in good faith and had probable cause to believe Plaintiff may have shoplifted merchandise from Best Buy and acted reasonably in questioning Plaintiff while waiting for police to respond.

Plaintiff's freedom of movement was not restricted, as required for a claim of false imprisonment and his claim is further barred by the Shopkeeper's Privilege and should be dismissed.

B. Plaintiff's claim for Defamation Per Se must be dismissed because Plaintiff has not shown that his reputation was harmed, and the only statements made were by the Plaintiff.

The elements of Defamation are 1) a defamatory statement concerning another; 2) published to a third party; 3) falsity of the statement; 4) special damages caused by publication.

Plaintiff must show that at the time of publication, the defendant knew that the statements were false or the defendant made the statements with reckless disregard as to whether they were false. CJI-22:1. A statement is “published” when it is communicated to and is understood by some person other than the plaintiff. CJI-22:7. A statement is defamatory if it tends to harm the person’s reputation by lowering the person in the estimation of at least a substantial and respectable minority in the community. CJI-8.

“Plaintiff alleges in his Complaint that Best Buy employees “falsely, loudly, rudely, and publicly accused me of stealing in front of many others.” Plaintiff has produced no evidence supporting any damages, including evidence of harm to his reputation – either economic or noneconomic. At the time Plaintiff was questioned by Best Buy employees they were acting on the good faith belief that Plaintiff was intentionally concealing merchandise stolen from Best Buy. Further, Plaintiff’s claim of defamation is frivolous given that Plaintiff actually publishes via social media and YouTube, his intent and plan to bait store employees into suspecting him of shoplifting and investigating his actions. See *Exhibit L*.

Further, the Shopkeeper’s Privilege bars Plaintiff’s claim for defamation against Best Buy.

C. Plaintiff has failed to establish that the actions of Best Buy employees constituted assault and the Best Buy employees actions in confronting Plaintiff were protected by the Shopkeeper’s Privilege.

For the plaintiff to recover from the defendant, on his claim of assault, he must prove that 1) The defendant intended to cause an offensive or harmful physical contact with the plaintiff or intended to place the plaintiff in apprehension of such contact; and 2) The defendant placed the plaintiff in apprehension of immediate physical contact.

“Mere words alone, unless accompanied by an actual act of hostility [does] not justify an assault.” *Goldblatt v. Chase*, 121 Colo. 355, 363, 216 P.2d 435, 440 (1950). “Ordinarily mere words, unaccompanied by some act apparently intended to carry the threat into execution, do not put the other in apprehension of an imminent bodily contact, and so cannot make the actor liable for an assault...” Restatement (Second) of Torts § 31 (1965). Indeed, “[t]his is true even though the mental discomfort caused by a threat of serious future harm on the part of one who has the apparent intention and ability to carry out his threat may be far more emotionally disturbing than many of the attempts to inflict minor bodily contacts which are actionable as assaults.” *Id.*

Best Buy employees told Plaintiff to “walk away; we’ll take this off camera.” This is the only statement that could be vaguely construed as a threat. However, this employee makes no other action nor takes any other step to show hostility towards Plaintiff. Even if the statement made caused Plaintiff mental discomfort, the words alone cannot constitute an assault. Once again, it is notable that Plaintiff orchestrated the interaction with Best Buy employees in Order to bait them into confronting him about suspected shoplifting.

D. In addition to Plaintiff’s failure to prove the individual claims against Best Buy, the entirety of the encounter between Best Buy employees and Plaintiff is protected by the Shopkeepers’ Privilege.

Aside from Plaintiff’s failure to prove his claims of false imprisonment, defamation and assault, Best Buy’s actions are protected by the Shopkeeper’s Privilege.

Plaintiff left the Best Buy store with merchandise in a manner that caused Best Buy employees to suspect Plaintiff did not pay for said items. Plaintiff left the store with merchandise that was not in a bag and did not have a receipt to show Best Buy employees. To prevent possible

theft, these employees stopped Plaintiff, questioned him and investigated further. These employees had probable cause to stop Plaintiff and their actions were taken in good faith. The employees, therefore, are protected from any allegation of slander/defamation, false imprisonment/arrest, and assault.

The Court should also note that Plaintiff left the store with the merchandise and then waited outside the store for Best Buy employees to approach him. On November 16, 2023, Plaintiff posted a video on YouTube wherein he stated, in relation to challenging the Shopkeepers' Privilege, he "had it all set up perfectly, a true sting" and that all he had to show was that he was surrounded. Plaintiff waited to get surrounded by Best Buy employees, just like he stated he would in his video. Even though this video was made a year after the initial incident, Plaintiff filed this complaint five days after making this video. Plaintiff was waiting for an opportunity to make these allegations against Best Buy, and this Court should not reward Plaintiff for his entrapment.

V. CONCLUSION

Plaintiff's sting operation was an attempt to bring unsupported allegations against a major corporation to either win a large settlement or to overturn well established case law and statutes. All of Best Buy employees' actions were protected and permissible because Plaintiff took Best Buy inventory and refused to show proof of purchase. He had the keys of escape and refused to use it. The words used by Best Buy employees were both protected and do not rise to the level of assault.

WHEREFORE, for the foregoing reasons, Best Buy respectfully requests that this Court grant its Motion for Summary Judgment and dismiss the claims for relief asserted against Best Buy in Plaintiff's Complaint, as such claims fail to state a state a claim upon which relief can be

granted under the facts presented and existing Colorado law. Best Buy further requests an award of attorney's fees and costs incurred in defending against this matter as the claims were frivolous and such other relief as the Court deems appropriate.

Served July 23, 2024.

MONTGOMERY | AMATUZIO

By: s/ Lori K. Bell

Lori K. Bell

Glenn D. Germany

Attorneys for Best Buy Stores, L.P.

CERTIFICATE OF SERVICE

I hereby certify that, on July 23, 2024 a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

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s/ Abigail Spohn

Abigail Spohn, Paralegal