

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

Best Buy Stores L.P. (“Best Buy”), by and through its attorneys of record, Montgomery | Amatuzio, hereby submits its reply brief in support of its Motion for Summary Judgment. In support thereof, Best Buy states as follows:

**INTRODUCTION**

While Best Buy will respond individually to the facts alleged by Plaintiff, the Court has in its possession two videos for its review. These videos would supersede any of Plaintiff’s factual allegations asserted by way of affidavit. *See, Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007) (on summary judgment, a court should disregard a party’s version of events

when contradicted by video evidence). The first video, **Ex. L**, demonstrates that Plaintiff knows that if a store suspects theft, it will conduct an investigation that often involves a brief detention, and that stores will let individuals go upon presenting a receipt. This video, along with Plaintiff's near-identical legal proceedings against other companies,<sup>1</sup> demonstrates Plaintiff's modus operandi<sup>2</sup> – to engage in behavior that raises suspicion of shoplifting,<sup>3</sup> to get detained, and to not show his receipts<sup>4</sup> in order to test his perceived “rights.”<sup>5</sup> Based upon this video, combined with Plaintiff's receipts showing fourteen purchases across eight Best Buy locations on the date of the subject incident, there is no reasonable questionable of material fact.<sup>6</sup> Plaintiff entered this Best Buy store with the intent to and then actually acted in a manner intended to provoke Best Buy employees into believing he was concealing property of the store, thus triggering the “shopkeepers’ privilege” created by section 18-4-407, C.R.S. 2022. *See, Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

The second video, attached as **Ex. M**, depicts a portion of the subject incident. On numerous occasions, Best Buy employees told Plaintiff he was free to leave if he just returned the stolen merchandise, or implicitly, if he could prove that the merchandise was not stolen by showing a receipt. Plaintiff was not confined because he knew that he could escape without causing unreasonable harm to himself by merely presenting his receipt to Best Buy employees, *See,*

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<sup>1</sup> **Ex. A-K**.

<sup>2</sup> “That’s the crux of my whole sting operation!” **Ex. M**, 5:55.

<sup>3</sup> **Ex. M**, 4:00-5:00 (Plaintiff describing his behaviors that tend to raise suspicion, including using registers in the back and not using plastic bags).

<sup>4</sup> Now I don’t show my receipt everywhere I shop.” **Ex. M**, approximately 1:25.

<sup>5</sup> “Refusing to show a receipt is just a refusal to a consent to being searched. Cops don’t get to use to bootstrap with that. Merchants don’t either.” **Ex. M**, 5:40; “By them asking [to see a receipt], which they have a right to do, you have the right say no.” **Ex. M**; 8:09.

<sup>6</sup> **Ex. N**; *see also*, **Ex. O** (a Google map demonstrating the travel required to complete such purchases).

*Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023).

The Colorado Court of Appeals held summary judgment is properly granted on either theory – (1) that Plaintiff was not confined because he knew he could escape without causing unreasonable harm to himself, or (2) that Plaintiff’s intended to provoke store employees into believing he was concealing property of the store in order to induce detention. *Id.* Likewise, the Court can find summary judgment here on either grounds, or both grounds. Thus, summary judgment is warranted here.

### **REPLY TO MATERIAL FACTS**

To the extent that Best Buy fails to respond to every allegation in Plaintiff’s lengthy response brief, Best Buy denies any allegations not explicitly admitted herein.

1-11. Plaintiff’s partial denials of each paragraph rest upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Facts Nos. 1 through 11 and find that there is no genuine issue of fact. *See*, C.R.C.P. 56(e).

12. Plaintiff’s partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 12 and find that there is no genuine issue of fact. *See*, C.R.C.P. 56(e).

13. Plaintiff’s partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 13 and find that there is no genuine issue of fact. *See*, C.R.C.P. 56(e).

14. Plaintiff presents no evidence demonstrating that he showed a receipt to Best Buy employees during the alleged false imprisonment. As such, the Court should find that there is no

genuine issue of fact that Plaintiff did not show a receipt. *See*, C.R.C.P. 56(e). However, Best Buy concedes there is a question of fact whether Best Buy employees made an explicit request to see Plaintiff's receipt<sup>7</sup> and that the Court can find in favor Plaintiff for this fact for purposes of determining this Motion.

15. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 15 and find that there is no genuine issue of fact. *See*, C.R.C.P. 56(e).

16. Plaintiff's partial denial rests upon a paragraph in Plaintiff's Affidavit that appears wholly unrelated to the corresponding fact at issue in Best Buy's Motion. As such, the Court should find in favor of Best Buy on Fact No. 16 and find that there is no genuine issue of fact. *See*, C.R.C.P. 56(e).

17. Plaintiff's partial denial rests upon mere allegations, or are statements of opinion rather than fact. As such, the Court should find in favor of Best Buy on Fact No. 17 and find that there is no genuine issue of fact. *See*, C.R.C.P. 56(e).

18. Plaintiff admitted Fact No. 18; thus, there is no genuine issue of fact.

19. Plaintiff admits that Best Buy employees did not physically touch Plaintiff; thus, there is no genuine issue of fact. Best Buy disputes Plaintiff's allegations in ¶¶18 through 21 of his affidavit to the extent that they contradict the video submitted as **Ex. M**. *See, Scott v. Harris*, 550 U.S. 372 (2007) (on summary judgment, a court is not required to rely upon a party's version of events when discredited by video evidence). Best Buy concedes that there is a genuine issue of fact concerning whether there was an "implicit" threat to Plaintiff and that the Court can find in

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<sup>7</sup> *See, Ex. P*, ¶ 6.

favor Plaintiff for this fact for purposes of determining this Motion. Plaintiff's remaining allegations concern Plaintiff's personal opinion, subjective commentary on the incident, or unsupported allegations and should not be considered by the Court in determining this Motion. *See*, C.R.C.P. 56(e).

20. Plaintiff's denial rests upon mere allegations, or are statements of opinion rather than fact. Furthermore, Plaintiff understood that stores will cease As such, the Court should find in favor of Best Buy on Facts No. 20 and find that there is no genuine issue of fact. *See*, C.R.C.P. 56(e).

21. Plaintiff admitted Fact No. 21; thus, there is no genuine issue of fact.

#### **RESPONSES TO PLAINTIFF'S STATEMENT OF ADDITIONAL FACTS**

22. Best Buy will not dispute this fact for purposes of this Motion only. The Court can find in favor Plaintiff for this fact for purposes of determining this Motion.

23. Receipts demonstrate that Plaintiff was in the store at 2:20pm and made a purchase of Chromecast with Google TV; thus, Best Buy denies Plaintiff had not been waiting outside of the building for five minutes. **Ex. N**, p. 18-19 (DEF\_0000018-19). Based on this objective evidence, the Court should find in favor of Best Buy that Plaintiff had been inside the Best Buy making a purchase within the five minutes prior to Best Buy employees approaching him. *See*, *Scott v. Harris*, 550 U.S. 372 (2007) (where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.)

24. For purposes of this Motion only, Best Buy will not dispute this fact that "Shane," "Mahmoud," and a third employee (James Robinson) were involved in the alleged incident. The Court can find in favor Plaintiff for this fact for purposes of determining this Motion.

25. Best Buy denies that Plaintiff correctly quoted the video. **Ex. M.** Furthermore, there is objective documentation that Plaintiff had been inside Best Buy shortly before the Plaintiff's recording of the incident began. **Ex. N**, p. 18-19 (receipt for William Montgomery at 14:20, compared to timestamps for **Ex. M** beginning at 2:19pm). In light of this objective evidence, because no rational trier of fact would find for the nonmoving party, the Court should find in favor of Best Buy on this fact. *Scott v. Harris*, 550 U.S. 372 (2007).

26. Best Buy admits that Mahmoud told Plaintiff something to the effect of "I need my stuff back." **Ex. M.** Best Buy concedes that there is a genuine issue of fact concerning whether Best Buy employees made an explicit request to see a receipt; thus, the Court can find in favor of Plaintiff for this fact for purposes of determining this Motion. *See, Ex. P*, ¶ 6.

27. Best Buy will not dispute this fact for purposes of determining this Motion only.

28. Best Buy has no way of confirming or denying whether Plaintiff "had any adverse interactions with Best Buy or its employees in the past." However, for purposes of this Motion only, the Court can find in favor of Plaintiff on this fact. Best Buy denies that the "employees' choice to interact with Plaintiff took him by surprise," as Plaintiff deliberately elicited this type of interaction and it was not a "surprise." On the date of the incident, Plaintiff made fourteen purchases across eight Best Buy locations, traveling approximately 124 miles to do so, all with the purpose of eliciting the precise response he received from the three Best Buy employees. **Ex. N-O**; *see also, Ex. L* (describing Plaintiff's modus operandi for eliciting theft investigations from stores). Best Buy denies that the interaction can be characterized as Best Buy employees "accosting" Plaintiff. *See, Ex. M.* In light of the objective evidence in the record, because no

rational trier of fact would find for the nonmoving party on these remaining facts in paragraph 28, the Court should find in favor of Best Buy. *Scott v. Harris*, 550 U.S. 372 (2007).

29. Best Buy admits that Plaintiff had an object in his pockets. *See also*, **Ex. M**, 0:38. 10:25; **Ex. P**. The remaining facts alleged here are based upon Plaintiff's speculation and are insufficient to summary judgment. *People v. Hernandez & Assocs., Inc.*, 736 P.2d 1238, 1240 (Colo. App. 1986). Plaintiff is merely speculating about what Best Buy knew or did not know about the object in Plaintiff's pockets and has no personal knowledge of this fact. A sworn affidavit by Mahmoud Abu-Shaweesh states that he had personal knowledge of the items in Plaintiff's pockets. **Ex. P**. Thus, the Court should find that Best Buy had information about the nature of objects in Plaintiff's pockets. *See*, **Ex. P**, ¶ 4.

30. For purposes of this Motion only, Best Buy does not dispute this fact.

31. For purposes of this Motion only, Best Buy will admit that Plaintiff tried to leave the area. Best Buy denies Plaintiff's remaining characterization of the Best Buy employees' actions to the extent that it is contradicted by the video attached as **Ex. M**. Best Buy denies that Plaintiff had "no place to go without otherwise having to physically touch the employees," as Plaintiff knew he could have left upon showing proof of purchase or by returning any allegedly stolen merchandise. **Ex. A-M**.

32- 39. Best Buy denies Plaintiff's characterization of the Best Buy employees' actions to the extent that it is contradicted by the video of the incident, attached as **Ex. M**. *See, Scott v. Harris*, 550 U.S. 372 (2007).

40. For purposes of this Motion only, Best Buy does not dispute this fact.

41. Best Buy denies this fact. **Ex. A-L.** Plaintiff visibly had an object in his pocket during the interaction. **Ex. M,** 0:38. 10:25; **Ex. P.** In light of the objective evidence in the record, because no rational trier of fact would find for the nonmoving party, the Court should find in favor of Best Buy on these facts. *Scott v. Harris*, 550 U.S. 372 (2007).

42. This fact is unduly confusing and vague, and Best Buy denies it out of an abundance of caution. However, Plaintiff made a purchase shortly before he began recording the video of the subject incident, and Plaintiff visibly had an object in his pocket during the interaction. **Ex. M,** 0:38. 10:25; **Ex. N.**

43. This fact is unduly confusing and vague, and Best Buy denies it out of an abundance of caution. To the extent Plaintiff is denying knowledge of Best Buy's practices and policies concerning "receipt showing," Best Buy denies this. Plaintiff is generally aware that stores will allow suspected shoplifters to leave upon showing proof of purchase. **Ex. L.**

44. For purposes of this Motion only, Best Buy will not dispute this fact.

45. Best Buy denies that Plaintiff experienced any of the described adverse impacts as a result of the subject incident. In fact, Plaintiff proceeded to make five other purchases at four other Best Buy locations in the Denver metro area that same day, traveling more than 80 miles to do so. **Ex. N,** p. 18-29; **Ex. O.** He even made two additional purchases of the same item that he purchased shortly before the subject incident. **Ex. N,** p. 19, 23, 27. In light of the objective evidence in the record, because no rational trier of fact would find for the nonmoving party, the Court should find in favor of Best Buy on these facts. *Scott v. Harris*, 550 U.S. 372 (2007).

## ARGUMENT

### I. Plaintiff's freedom of movement was not restricted here.

Although reasonableness is usually a matter left to the jury, in the clearest of cases where the “facts are undisputed and reasonable minds can draw but one inference from them,” the issue may be resolved as a matter of law. *Allen v. Martin*, 203 P.3d 546, 566 (Colo. App. 2008). In the instant case, there are myriad indisputable material facts, including but not limited to Plaintiff’s YouTube video,<sup>8</sup> receipts from the date of the incident,<sup>9</sup> and the vast number of lawsuits filed by Plaintiff involving the same or similar factual and legal allegations that were dismissed.<sup>10</sup> The record unquestionably proves that Plaintiff intended, *inter alia*, to provoke the detention in the subject incident. Further, once the detention occurred, Plaintiff took no reasonable action such as showing his receipts, proving his pockets were empty and/or proving anything that may have been in his pockets belonged to him in order to shorten or end the detention. **Ex. M; Ex. P.**

As such, Plaintiff cannot prove the elements of his cause of action for false imprisonment because (1) Best Buy did not restrict Plaintiff’s freedom of movement, as this can only happen when Plaintiff “does not know anyway to escape without causing an unreasonable risk of harm to himself;” and (2) Plaintiff cannot prove he was aware that his freedom of movement was restricted when he intended the detention, i.e., intended to be in one place for a period of time. *See*, CJI 21:2; *Montgomery v. Walmart, Inc.*, No. 22CA0625, 2023 WL 3794022 at ¶ 12 (Colo. App. June 1, 2023). There is overwhelming evidence that Plaintiff acted with an intent to be detained by Best Buy employees and failed to avail himself of a reasonable means of escape; thus, Best Buy is entitled to summary judgment here.

## **II. Real or perceived threats by Best Buy employees do not void the shopkeeper’s privilege**

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<sup>8</sup> **Ex. L.**

<sup>9</sup> **E. N.**

<sup>10</sup> **Ex. A-K.**

C.R.S. § 18-4-407 codifies the “shopkeeper’s privilege” and provides a complete affirmative defense to false imprisonment, slander, false arrest, malicious prosecution, or unlawful detention if a “merchant . . . acting in good faith and upon probable cause based upon reasonable grounds therefor, may detain and question such person, in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft.” To prove a claim of false imprisonment, one must prove the element of restriction of freedom of movement. CJI 12:1. While this element can be met by an array of conduct, two ways of meeting this element are to demonstrate (1) that the claimant is “restrained by physical force, however slight, which overpowered the person or to which the person submitted,” or (2) that the claimant “complied with actual or apparent threats that he . . . will be immediately harmed if he . . . moves beyond . . . a certain area.” CJI 21:2 (2)-(3).

Because false imprisonment by nature often involves some level of physical force or the threat of physical force, the shopkeeper’s privilege inherently provides a defense even when there are threats of physical force – or even actual physical force<sup>11</sup> – provided that such force or threat of physical force is reasonable. *See, Guijosa v. Wal-Mart Stores, Inc.*, 101 Wash. App. 777, 792, 6 P.3d 583, 591 (Wash. App. 2000) (the authority to detain under the shopkeeper’s privilege must necessarily carry with it the privilege of using all reasonable force); *Huynh v. Wal-mart Stores Texas, LLC*, No. CV 18-4257, 2020 WL 8300520, at \*6 (S.D. Tex. Oct. 8, 2020) (“Shopkeeper’s privilege is not vitiated when there is *any* use of force. Instead, it is the reasonableness of a defendant’s conduct . . . that controls.”); *In re Sienna B.*, No. D079535, 2022 WL 2712116, at \*3 (Cal. Ct. App. July 13, 2022) (shopkeeper’s privilege permits a merchant to use reasonable force);

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<sup>11</sup> No actual physical force is alleged by any party here. *See*, Plaintiff’s response to Fact No. 19.

*Cruz v. Johnson*, 823 A.2d 1157, 1160 (R.I. 2003) (merchant may use non-deadly force when the force is necessary to prevent escape or to prevent loss of property).

Here, Best Buy employees detained Plaintiff on the reasonable grounds that he appeared to be concealing merchandise in his pockets. Best Buy employees allegedly threatened to use force on Plaintiff if he attempted to escape.<sup>12</sup> Thus, shopkeeper's privilege is a complete affirmative defense because Best Buy had reasonable grounds to detain Plaintiff and only used reasonable threats of force in the event that Plaintiff attempted to escape. As such, summary judgment is warranted under the shopkeeper's privilege affirmative defense.

### CONCLUSION

Wherefore, for the forgoing reasons, Best Buy requests that this Court grant summary judgment in favor of Best Buy.

Filed **October 10, 2024**.

MONTGOMERY | AMATUZIO

By: s/ Lori K. Bell  
Lori K. Bell

*Attorney for Best Buy Stores, L.P.*

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<sup>12</sup> “Defendant made numerous implicit threats to ‘jump’ Plaintiff ‘off camera’ should he attempt to leave in that direction.” Plaintiff’s Response Brief, ¶ 6; “For the next several minutes Plaintiff tried to step around [the Best Buy employees] in order to leave the area.” *Id.* at ¶ 31.

**CERTIFICATE OF SERVICE**

I hereby certify that, on **DEFENDANT BEST BUY L.P.'S REPLY BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**, a true and correct copy of the foregoing was prepared for service to the following in the manner indicated below:

*Pro se Plaintiff:*

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*s/ Stephanie Boutsicaris*