

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401-6002	
Plaintiff: <b>WILLIAM MONTGOMERY</b>  v.  Defendant: <b>BEST BUY, L.P.</b>	DATE FILED November 19, 2024 2:12 PM CASE NUMBER: 2023CV226  <b>▲ COURT USE ONLY ▲</b>  Case Number: <b>23CV00226</b>  Division: 06 Courtroom: 520
<b>ORDER RE: CROSS MOTIONS FOR SUMMARY JUDGMENT</b>	

THIS MATTER comes before the Court on Plaintiff’s (William Montgomery) and Defendant’s (Best Buy) respective Motions for Summary Judgment. The Court, having considered the motions as well as response and reply briefs from all parties and being otherwise fully advised, rules as follows:

**I. BACKGROUND**

Plaintiff William Montgomery filed his Complaint on November 21, 2023, alleging that Defendant Best Buy committed false imprisonment, defamation per se, and assault when its employees briefly detained Plaintiff and accused him of stealing after Plaintiff left its Westminster store.

Defendant filed a Motion for Summary Judgment on July 25, 2024, seeking summary judgment on all of Plaintiff’s claims under, among other things, Shopkeeper’s Privilege. Defendant also submitted to the Court a video made by Plaintiff wherein Plaintiff explains how he gets “free lawsuits” by going into stores and conducting a “sting operation” where he conducts himself in a manner that could be reasonably construed as suspicious and sues store employees for confronting him upon believing he is stealing.<sup>1</sup> Indeed, Defendant cites several nearly identical cases Plaintiff

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<sup>1</sup> See Defendant’s Exhibit Q at 04:20, explaining how Plaintiff uses registers in the back of the store, does not use bags, and refuses to show employees his receipt; Exhibit Q at 05:05, “That’s the crux of my whole sting operation!”; Exhibit Q at 17:13, “I’ve already got cases where I’ve got it all set up perfectly—a true sting—where I’m not going to say I have a receipt or not, I’m not even going to say I was a customer or not . . . all I’ve got to show is that I was surrounded . . . I’m done doing the merchants’ homework for them in lawsuits.”; Exhibit Q at 20:00, “That’s why I don’t show my receipt, for a free lawsuit. Because if somebody’s going to hand out free lawsuits at the door, I’m game!”

has filed against other stores around Colorado.<sup>2</sup>

Plaintiff filed a Cross Motion for Summary Judgment on September 19, 2024, also seeking summary judgment on all of Plaintiff's claims. In support of his motion, Plaintiff submitted body-worn camera footage of the detainment. Both parties subsequently filed response and reply briefs.

## II. LEGAL STANDARD

Summary judgment is appropriate where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits [submitted] . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” C.R.C.P. 56(c); Miller v. Van Newkirk, 628 P.2d 143, 145 (Colo. App. 1980). A material fact is simply a fact that will affect the outcome of the case. Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231, 239 (Colo. 1984).

The party moving for summary judgment bears the initial burden of presenting the basis for a motion for summary judgment and identifying those portions of the record which demonstrate the absence of any genuine issues of material fact or any triable issues of fact. Cont'l Air Lines, Inc. v. Keenan, 731 P.2d 708, 712 (Colo. 1987). Once this initial burden has been met, the burden shifts to the nonmoving party to establish that there is a triable issue of fact. Id. at 713. The nonmoving party must set forth specific facts through affidavits or other means to show that there is a genuine issue for trial and may not rest upon the mere allegations or denials in the pleadings or simple argument. Burman v. Richmond Homes Ltd., 821 P.2d 913, 917 (Colo. App. 1991). If the nonmoving party cannot muster sufficient evidence to establish that there is a triable issue of material fact, the moving party is entitled to summary judgment as a matter of law. Keenan, 731 P.2d at 713.

Summary judgment should be granted only when there is a clear showing that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. KN Energy, Inc. v. Great W. Sugar Co., 698 P.2d 769, 776 (Colo. 1985). In assessing a summary judgment motion, a court must view all facts in the light most favorable to the nonmoving party, give the nonmoving party the benefit of all favorable inferences that may reasonably be drawn from the evidence, and resolve all doubts as to the existence of a material fact against the moving party. Vigil v. Franklin, 81 P.3d 1084, 1086 (Colo. App. 2003), rev'd on other grounds, 103 P.3d 322 (Colo. 2004).

## III. ANALYSIS

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<sup>2</sup> See Jefferson County case 2020CV76, Adams County case 2020CV067, Arapahoe County case 2020CV148, Arapahoe County case 2020CV209, Arapahoe County case 2021CV1, Adams County case 2021CV68, Adams County case 2021CV88, and Arapahoe County case 2021CV235.

## **a. Defendant's Motion for Summary Judgment**

Defendant Best Buy filed a Motion for Summary Judgment on July 25, 2024. In its Motion, Defendant seeks this Court dismiss all of Plaintiff's claims and grant Defendant an award of attorney's fees and costs.

### **i. False Imprisonment**

For a plaintiff to prevail on a false imprisonment claim, he must prove that: "(1) The defendant intended to restrict plaintiff's freedom of movement; (2) plaintiff's freedom of movement was restricted for a period of time, however short, either directly or indirectly by an act of defendant; and (3) plaintiff was aware that his freedom of movement was restricted." Goodboe v. Gabriella, 663 P.2d 1051, 1055-56 (Colo. App. 1983). However, "[I]t 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.

Here, Plaintiff alleges he was falsely imprisoned by three Best Buy employees when they "surrounded [him] on all sides with [his] back against a wall and wouldn't let [him] leave or go anywhere for 12 minutes." (Complaint at p. 1.) Defendant argues that Best Buy cannot be held liable for false imprisonment because (in addition to Shopkeeper's Privilege, discussed below) Plaintiff had the tools of escape and unreasonably refused to use them.

There is no genuine issue of material fact for this claim. Defendant admits its employees detained Plaintiff briefly outside of the Best Buy after suspecting him of stealing store merchandise. Defendant has provided proof that Plaintiff had a receipt from Best Buy from the date and time of the incident with his name on it, providing proof of purchase. (Defendant's Exhibit N.) Plaintiff does not deny having a receipt at the time of the incident. During Plaintiff's detainment outside of Best Buy, Defendant's employees can repeatedly be heard telling Plaintiff that he can leave as soon as he gives back the stolen goods.<sup>3</sup> (Plaintiff's Exhibit 1.) Not once during the detainment does Plaintiff deny stealing or show proof of purchase. (See Plaintiff's Exhibit 1, showing body-camera footage of the entirety of the detainment.)

The Court agrees with Defendant that showing proof of purchase would have freed Plaintiff from the false imprisonment, and that showing proof of purchase is a slight inconvenience that it was unreasonable of Plaintiff not to utilize. Thus, the Court concludes that Defendant did not

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<sup>3</sup> See Plaintiff's Exhibit 1 at 00:05, "Can you just give it back to us now and you can leave?"; Exhibit 1 at 00:22, "You can just give us our product back and you can go on your own way"; Exhibit 1 at 01:26, "Give me the product back and I'll leave you alone, you can go on your own way"; Exhibit 1 at 01:35, "If you want to leave without any issues then just give me my product"; Exhibit 1 at 03:29, "You can make it easy dude, just give me my stuff and you can go."

“confine” Plaintiff and thus cannot be held liable for false imprisonment. As such, Plaintiff’s claim for false imprisonment is dismissed on summary judgment.

## ii. Defamation Per Se

For a plaintiff to prevail on a claim of defamation, he must prove that there was: “(1) A defamatory statement concerning another; (2) published to a third party; (3) with fault amounting to at least negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special damages or the existence of special damages to the plaintiff caused by the publication.” Williams v. Dist. Court, 866 P.2d 908, 911 n.4 (Colo. 1993). Statements that are actionable irrespective of special damages are defamatory per se. See Restatement (Second) of Torts § 570. “Historically, a statement constituted defamation per se if it imputed a criminal offense; a venereal or loathsome disease; improper conduct of a lawful trade, business, profession, or office; or unchastity of a woman.” Keohane v. Wilkerson, 859 P.2d 291, 301 (Colo. App. 1993).

“One who publishes a false and defamatory communication concerning a private person . . . is subject to liability, if, but only if, he (a) knows that the statement is false and that it defames the other, (b) acts in reckless disregard of these matters, or (c) acts negligently in failing to ascertain them.” Restatement (Second) of Torts § 580B. “Insofar as the truth or falsity of the defamatory statement is concerned, the question of negligence [is] . . . whether [the defendant] had reasonable grounds for believing that the communication was true.” Id. cmt g.

Here, Plaintiff alleges he was defamed by Best Buy employees when they “falsely, loudly, rudely, and publicly accused [him] of stealing in front of many others.” (Complaint at p. 1.) Because theft is a criminal offense, this qualifies as defamation per se. Defendant argues (again, in addition to Shopkeeper’s Privilege, discussed below) that the employees were acting on the good faith belief that Plaintiff was intentionally concealing merchandise stolen from Best Buy.

There is no genuine issue of material fact relevant to this claim. There is body camera footage from the detainment showing Defendant accusing Plaintiff, in public, of stealing merchandise from the store. (See Plaintiff’s Exhibit 1.) Defendant does not deny this.

However, to be liable for defamation, Defendant must have acted with actual knowledge of the statement’s falsity, reckless disregard for the truth or falsity of the statement, or negligence. Defendant has submitted proof that its employee saw Plaintiff in Best Buy on the day of the incident, saw Plaintiff remove merchandise from the shelf and place it in his pocket, and then saw Plaintiff immediately leave the store. (Defendant’s Exhibit P.) Plaintiff provides no evidence of his actions in the store to counter this. Rather, Plaintiff’s YouTube video provides corroborative proof of Defendant’s version of events, describing how Plaintiff goes to stores and acts in a manner that could reasonably be construed as suspicious in order to conduct his “sting operation.” (See Defendant’s Exhibit Q.)

“Of course, the determination of whether specific conduct or a proposed course of action is reasonable is a matter usually left to the jury.” *Montgomery v. Walmart Stores*, 21CA0359 (Colo. App. 2022) (not published pursuant to C.A.R. 35(e)). “However, 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.” *Id.*

Here, the case is clear, the facts are undisputed, and reasonable minds can draw but one inference: Defendant did not act with fault amounting to at least negligence in accusing Plaintiff of stealing. Rather, Plaintiff intentionally created the misunderstanding for purposes of his later lawsuit. As such, the Court concludes Defendant cannot be held liable for defamation and Plaintiff’s claim for defamation is dismissed on summary judgment.

### **iii. Assault**

For a plaintiff to prevail on an assault claim, he must prove: (1) The defendant acted “intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact,” and (2) “the other is thereby put in such imminent apprehension.” Restatement (Second) of Torts § 21. “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 cmt a.

Here, Plaintiff alleges Best Buy’s employees assaulted him when they “threatened to ‘jump’ [him] around the corner and off camera.” (Complaint at p. 1.) Defendant argues that its employees never threatened Plaintiff, and if anything said may be construed as a threat, no employee took any other step to show hostility toward Plaintiff.

Because the parties have submitted body-camera footage of the detainment, there is no genuine issue of material fact for this claim. The body-camera footage shows that Defendant’s employees never touched Plaintiff. As for “threats,” at one point one employee said, “We’ll take this off camera—walk away”<sup>4</sup> and throughout the encounter the employees did not correct Plaintiff when Plaintiff said he was worried about being jumped.<sup>5</sup> (Plaintiff’s Exhibit 1.) The footage also shows that the employees spent the detainment standing around Plaintiff at a respectable distance, making no threatening movements, and repeatedly saying that they would leave Plaintiff alone as soon as he gave back what he had stolen from their store. (See Plaintiff’s Exhibit 1.)

The Court agrees with Defendant that, even if the employees’ words could be construed as a threat, there was no additional act apparently intended to carry the threat into execution. As such,

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<sup>4</sup> Plaintiff’s Exhibit 1 at 09:27.

<sup>5</sup> Plaintiff’s Exhibit 1 at 09:48, “I don’t feel safe leaving now,” “You shouldn’t”; Exhibit 1 at 10:17, “I don’t feel like getting jumped off camera,” “Then give me my stuff, dude”; Exhibit 1 at 10:44, “I don’t feel safe leaving now,” “Then give me my shit”; Exhibit 1 at 11:28, “Like I’m just going to trust him that he’s not going to jump me,” “You shouldn’t trust him that he’s not. You should give me my stuff.”

the mere words were not enough to put Plaintiff in apprehension of imminent bodily contact, and so do not make Defendant liable for an assault. Therefore, Plaintiff's claim for assault is dismissed on summary judgment.

#### **iv. Shopkeeper's Privilege**

Under C.R.S. § 18-4-407, colloquially known as "Shopkeeper's Privilege," a merchant or any of its employees, "acting in good faith and upon probable cause based upon reasonable grounds therefor," may detain and question any person that "conceals upon his person or otherwise carries away any unpurchased goods . . . held or owned by any store," in a reasonable manner for the purpose of ascertaining whether the person is guilty of theft. "Such questioning of a person by a merchant, merchant's employee, or a peace or police officer does not render the merchant, merchant's employee, or peace officer civilly or criminally liable for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention." *Id.* Whether a defendant acted in good faith is a question of fact, meaning summary judgment should be granted "only if, assuming the truth of the plaintiff's evidence, and drawing every favorable inference of fact therefrom, reasonable persons could reach only one conclusion, that being these defendants acted in good faith." Goodboe v. Gabriella, 663 P.2d 1051, 1055 (Colo. App. 1983).

Defendant has submitted a Best Buy receipt with Plaintiff's name on it from the time and date of the incident, satisfying its initial burden as the movant of proving that there is no genuine issue of material fact as to whether Plaintiff was in Best Buy directly preceding the incident and whether Plaintiff had the store's merchandise on him at the time of the detainment. (Defendant's Exhibit N.)<sup>6</sup>

Plaintiff, in his response, denies having been in Best Buy, denies having the store's merchandise on him, and denies concealing anything. However, Plaintiff "may not rest upon the mere allegations or denials in the pleadings" and must set forth specific facts through affidavits or other means. Burman, 821 P.2d at 917. In Plaintiff's affidavit, he claims only that he had been waiting outside of the Best Buy for five minutes when he was approached by Defendant's employees. (Plaintiff's Affidavit of the Event.) This is not inconsistent with Defendant's affidavit, which argued that Defendant's employee saw Plaintiff in the store, watched store security video after Plaintiff exited, and then confronted Plaintiff outside. (Defendant's Exhibit P.) Plaintiff has made no statements and submitted no proof as to his actions inside the Best Buy immediately preceding the incident.

Even assuming the truth of Plaintiff's evidence and drawing every favorable inference of fact therefrom, reasonable persons could reach only the conclusion that Defendant acted in good faith. Under the circumstances presented by Plaintiff, a reasonable person would believe he may

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<sup>6</sup> Plaintiff argues that the receipt does not prove that he was in the store because anyone with his credit card at that date and time and place could have purchased the merchandise, but the question is whether there is any "genuine" issue of fact, not whether there is any conceivable issue of fact.

have been shoplifting. Indeed, Plaintiff designed his conduct to inspire this belief. (See Defendant's Exhibit Q.)

As for probable cause based upon reasonable grounds, Defendant has supplied an affidavit stating that its employee saw Plaintiff "remove two boxes of JLab headphones/earbuds from the shelf, place them in his pocket and immediately leave the Best Buy Store," which was then confirmed on store security video. Plaintiff also refused to show his receipt upon being asked. Again, Plaintiff has provided no evidence as to his actions inside the Best Buy store and "may not rest upon the mere allegations or denials in the pleadings." *Id.* As such, the Court agrees that Defendant had probable cause to believe Plaintiff was shoplifting.

Because Defendant is a merchant; Defendant's employees acted in good faith and upon probable cause in detaining Plaintiff; and Defendant's employees detained Plaintiff in a reasonable manner, Defendant is protected under C.R.S. § 18-4-407 from slander and false imprisonment. As such, even if Plaintiff were able to make a prima facie case of false imprisonment and defamation (which the Court has held above he does not), Defendant would fall within the statute's protections.

#### **b. Plaintiff's Motion for Summary Judgment**

Plaintiff William Montgomery filed his Cross Motion for Summary Judgment on September 19, 2024. Plaintiff requests that the Court enter summary judgment as to all of Plaintiff's claims. Plaintiff and Defendant make the same arguments in Plaintiff's pleadings as they had made in Defendant's pleadings.

For the reasons laid out above, the Court denies Plaintiff's request for summary judgment as to all of Plaintiff's claims.

#### **IV. ORDERS**

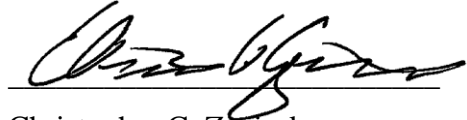
For the reasons stated above, the Motion for Summary Judgment for Defendant is **GRANTED, and Plaintiff's claims are dismissed with prejudice.** The Motion for Summary Judgment for Plaintiff is **DENIED.**

1. Defendant's request for summary judgment on Plaintiff's false imprisonment claim is GRANTED, and the claim is dismissed.
2. Defendant's request for summary judgment on Plaintiff's defamation per se claim is GRANTED, and the claim is dismissed.
3. Defendant's request for summary judgment on Plaintiff's assault claim is GRANTED, and the claim is dismissed.
4. Plaintiff's request for summary judgment on Plaintiff's false imprisonment claim is DENIED.
5. Plaintiff's request for summary judgment on Plaintiff's defamation per se claim is DENIED.

6. Plaintiff's request for summary judgment on Plaintiff's assault claim is DENIED.
7. Costs are awarded to Defendant.
8. Any motion for attorney's fees, if desired, shall be filed pursuant to C.R.C.P. 121 § 1-22.

Done in Golden, Colorado, this 19th day of November 2024.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Christopher C. Zenisek", written over a horizontal line.

Christopher C. Zenisek  
District Court Judge