

JEFFERSON COUNTY DISTRICT COURT 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	<p style="text-align: center;">▲ Court Use Only ▲</p>
WILLIAM MONTGOMERY Plaintiff vs. BEST BUY STORES, L.P. Defendant	
Attorney Or Party Without Attorney: William Montgomery 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 zoinbergs@gmail.com	Case Number: 2023CV226 Division: 6 Courtroom: 520
PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ	

Plaintiff, proceeding *pro se*, hereby responds in opposition to Defendant's MOTION FOR SUMMARY JUDGMENT (*herein "Def's MSJ"*), and in support thereof, states as follows:

INTRODUCTION

Never before in Plaintiff's life has he ever seen a Defendant claim *so much*, yet offer *so little* [read: ***literally nothing***] to otherwise *even begin to* substantiate such bold claim(s) with. Defendant's reliance on Plaintiff's prior cases (filed against a wholly different merchant) is equally unavailing. This is because Defendant has failed to show this Court, with **ANY** tangible, admissible evidence, *whatsoever*; that Plaintiff's instant case *has anything to do with receipts*. Moreover, Courts have certainly been known to "get it wrong," see *U.S. v. Chanthasouxat*, 342 F.3d 1271 (11th Cir. 2003); and *Dred Scott v. Sandford*, 60 U.S. 393 (1856), so this Court should be mindful of that when familiarizing itself with said "prior cases." Let's see just how wrong Defendant also "got it," now...

**RESPONSE TO DEFENDANT'S STATEMENT
OF UNDISPUTED MATERIAL FACTS**

1. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See Plaintiff's Response To Defendant's MSJ (herein "PRTDMSJ") Exhibit #1.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

2. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #2.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

3. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #3.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

4. Plaintiff ADMITS that he filed said Complaint. **However, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

5. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #3.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case** that Defendant has failed to show *has anything to do with receipts.*

6. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #4.* **Moreover, Plaintiff DENIES that said prior case is, in any way, materially related**

to his instant case that Defendant has failed to show *has anything to do with receipts*.

7. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #4. Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case* that Defendant has failed to show *has anything to do with receipts*.

8. Plaintiff ADMITS that he filed said Complaint, but DENIES that said Order granting said MSJ is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #3. Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case* that Defendant has failed to show *has anything to do with receipts*.

9. Plaintiff ADMITS that said Order was issued, but DENIES that it is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibits #5 through #7. Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case* that Defendant has failed to show *has anything to do with receipts*.

10. Plaintiff ADMITS that said Order was issued, but DENIES that it is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibits #8 through #12. Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case* that Defendant has failed to show *has anything to do with receipts*.

11. Plaintiff ADMITS that said Order was issued, but DENIES that it is a true and accurate statement of both the facts and the law. *See PRTDMSJ Exhibit #13. Moreover, Plaintiff DENIES that said prior case is, in any way, materially related to his instant case* that Defendant has failed to show *has anything to do with receipts*.

Plaintiff incorporates, as if fully set forth herein, the above Briefs, Responses, Replies, Petitions, and Writs – contained in Exhibits #1 through #13 – into his current RESPONSE.

12. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of his case. Specifically, Plaintiff's generic use of the phrase "I have it all planned"

means nothing more than him refusing thenceforth to “prove his innocence” [which he thought would surely help him prove a Defendant's guilt; and to which in a fair courtroom, naturally would] as doing so has ultimately shown to not benefit him due to how attorneys and judges have decided to impermissibly twist and warp such “pre-arguments” of his to be *miraculously* used *against* him! In other words, no longer will Plaintiff be so kind. Rather, when discussing a Defendant's affirmative defenses, Plaintiff will forevermore be placing the burden of persuasion strictly back to where it belongs – exclusively on the Defendant.

13. Plaintiff DENIES that the asserted material fact – that he “targeted” the Best Buy store located in Westminster, CO – is true. If Defendant wants to call any and all patrons who happen to visit its stores [and who happen to know their rights while doing so] “targeters” of its particular business, it certainly can. But this would be an irrational, paranoid, delusional, arrogant, disingenuous, cognitively dissonant, intellectually dishonest, and statistically frauded position to take in the matter. Moreover, Plaintiff DENIES that he “exited” the store, or that he did so with any of the store's “merchandise” in his possession, as Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, to substantiate the validity of either fact. Moreover, neither of these asserted facts are material to the outcome of Plaintiff's case (i.e. neither are required for him to prove his False Imprisonment claim with / both are strictly tied to Defendant's own affirmative defense of “shopkeeper's privilege” in the matter). However, Plaintiff does ADMIT that he produced bodycam video of the encounter, as captured via his pen camera.

14. Plaintiff DENIES that this asserted material fact is true. Nowhere in Plaintiff's bodycam video does it show that he “did not show a receipt to Best Buy staff,” let alone that they “requested [that he] do so.” *See Plaintiff's Affidavit (herein “PA”) at ¶ 6. Not only should Defendant be charged with violating Colorado Revised Statutes § 18-8-306 [Attempt to influence a public servant by means of deceit] for making this claim, it should be reprimanded, sanctioned, and reported by this Court to the Attorney Regulation Council for violating Colorado Bar*

Association Rules Of Professional Conduct Rule 8.4(c) [Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation] and 8.4(d) [Engaging in conduct that is prejudicial to the administration of justice]. Moreover, this is a perfect example of the downright **flagrant** intellectual dishonesty that Plaintiff has had to endure an umpteen number of times now in Court, whereby attorneys will do just about anything to “win” a case – including breaking the law. *Aren't attorneys supposed to be pretty much the most honest, upstanding members of society?*

15. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of his case. Moreover, while said Best Buy employees may certainly have “suspected” Plaintiff of stealing items from their store, the dispositive inquiry is whether or not they **reasonably** suspected him of stealing from it [and to which they categorically **DID NOT reasonably** suspect such].

16. Plaintiff ADMITS that this asserted material fact is true. Indeed, Defendant's own self-admitting statement made of, “we haven't had people stand here and wait for us to come out and get 'em though” is substantive evidence that it **lacked** “shopkeeper's privilege” to [lawfully] detain him that day. That is, such a statement made establishes that Defendant **had not** “ever once met, seen, identify, watch pass by, or been located anywhere physically near Plaintiff on that day of November 25, 2022” prior to approaching him for the very first time on the side of its particular building [and that it likewise **had not** ever been “posted up” at its store's exit, nor “followed” Plaintiff “out” of said store, either]. *See PA at ¶ 5.*

17. Plaintiff ADMITS that this asserted fact is true, but DENIES that it is material to the outcome of his case.

18. Plaintiff ADMITS that this asserted material fact is true. Indeed, after nearly ten minutes of being detained by Defendant, Plaintiff was finally released after it failed in its **sloppy, backwards, post-hoc, bootstrapped** investigation to reasonably establish that he stole anything from its store.

19. Plaintiff ADMITS that the asserted fact is true – that “At no time during the

interaction did Best Buy employees touch Plaintiff” – but DENIES that it is material to the outcome of his case. This is because “Physical force is not required to complete a false imprisonment.” *Crews-Beggs Co. v. Bayle*, 97 Colo. 568, 571 (Colo. 1935). However, Plaintiff DENIES that “At no time during the interaction did Best Buy employees . . . threaten to harm him.” Rather, Defendant made **numerous** implicit threats to “jump” Plaintiff “off camera” should he attempt to leave in that direction. While Defendant never personally used the word “jump” in its correspondence with Plaintiff, every single time that Plaintiff used the word “jump” himself, **it actively chose to not correct him**. This “choice to not correct” only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See PA at ¶¶ 18 through 21. See Def’s Exhibit M from timestamps 9:23 to 9:33, 9:48 to 9:52, 10:07 to 10:48, and 11:27 to 11:36.*

20. Plaintiff DENIES that this asserted material fact is true, as Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff even had a receipt on him in the first place, let alone that whatever he had been holding in his hands that day was even store merchandise for which one might have been associated. Moreover, **EVEN IF** these facts could be assumed, such “receipt showing” would **STILL** be **legally incapable** of being the *a-c-t-u-a-l* *cause* of Plaintiff’s release [as will be discussed later].

21. Plaintiff ADMITS that this asserted material fact is true.

**PLAINTIFF'S STATEMENT OF
ADDITIONAL MATERIAL FACTS**

22. On or about November 25, 2022, at approximately 2:19pm, Plaintiff was standing outside a Best Buy store located at 9369 Sheridan Blvd, Westminster, CO, 80031, waiting for his brother. *See PA at ¶ 2. See Def’s Exhibit M.*

23. Plaintiff had been standing on the east side of said building for about five minutes before he was approached by several Best Buy employees. *See PA at ¶ 3.*

24. Two of the employees, identified by company name tag as “Mahmoud” and “Shane,”

were later accompanied by a third employee, who didn't have a name tag on him [and who will thus be referred henceforth in this C-MSJ as “John Doe”]. *See PA at ¶ 4. See Def's Exhibit M.*

25. Prior to approaching him, at no time whatsoever had Mahmoud, Shane, or John Doe ever once met, seen, identify, watch pass by, or been located anywhere physically near Plaintiff on that day of November 25, 2022. Said employees had never been “posted up” at the store's exit, nor had they ever “followed” Plaintiff “out” of said store, either. Again, Plaintiff had been standing on the side of the Best Buy building for a full five minutes, “waiting for [them] to come out” (Defendant's words, not Plaintiff's, as Plaintiff was actually waiting for his brother at the time, see *Fact #23* above). *See PA at ¶ 5. See Def's Exhibit M at timestamp 8:08.*

26. Upon approach, Mahmoud told Plaintiff something to the effect of, “I need my stuff back.” Plaintiff was never asked to “show a receipt” by Mahmoud, Shane, or John Doe. *See PA at ¶ 6.*

27. Upon hearing Mahmoud's statement, Plaintiff discreetly activated his body-worn pen camera, located in his front jacket pocket, by pressing the power button on it. This video recording would later be stopped, saved, and labeled by Plaintiff based on the date/time he started recording it on/at. *See PA at ¶ 7. See Def's Exhibit M.* Later, a transcript of what Plaintiff personally heard that day was also prepared by him. *See Transcript Of Plaintiff's Bodycam Footage Of The Event.*

28. The three Best Buy employees' choice to interact with Plaintiff took him by surprise, as he had never had any adverse interactions with Best Buy or its employees in the past. That's why he had activated his body-worn pen camera only upon their initial accosting of him. *See PA at ¶ 8.*

29. Neither Mahmoud, nor Shane, nor John Doe, had any earthly idea, whatsoever, the nature or identity of whatever Plaintiff had been holding in his hands when they initially approached him that day of November 25, 2022. The same goes for whatever existed in one of his pant pockets, too. Said employees did not know if what Plaintiff had on him was a) store merchandise, b) stolen store merchandise, c) non-store merchandise, d) previously paid for store merchandise chosen by Plaintiff not to be returned, e) non-store merchandise Plaintiff had

erroneously attempted to return to the wrong store, f) personal items, g) medication, h) etc. Specifically, by their very own admissions, said Best Buy employees ***did not even tell the difference between*** what Plaintiff held in his hands, and what existed in one of his pant pockets, ***but whereby Plaintiff had never once placed into, or removed, anything from any pant pocket in front of anybody, ever, that day, period.*** See PA at ¶ 25. See Def's Exhibit M at timestamps 0:28 (“I want what's in your pocket, too.”), 7:58 (“Let me see the shit you grabbed, dude. What do you even got in there?”), 8:06 (“Oh we'll find out soon enough.”), 10:22 (“You have something in your pocket, you have something in your coat, just give it to me, and you can leave.”), and 10:48 (“You'll have zero problems if you hand me what's in your pocket, and what's in your coat.”). Moreover, ***EVEN IF*** what Plaintiff had on him was, in fact, stolen merchandise, such would ***STILL*** not have changed the ***COMPLETELY-UNKNOWN-TO-THEM-AND-COMPLETELY-UNIDENTIFIED-TO-THEM-AT-ALL-TIMES-AND-PLACES*** nature of the item(s), as said employees would not have known ***literally anything about anything, ABOUT ANYTHING***, regardless of the situation, and regardless of the pocket, because of how they had only seen Plaintiff ***for the very first time standing outside their building*** (and thereby would have never seen him take whatever-the-heck-he-may-have-had-on-him-that-day “from any walls, past any points of sale, and out any doors,” *whatsoever, period*). See PA at ¶ 5.

30. At about a minute into the interaction, Plaintiff tried to walk away from where he had been standing, but was told by Mahmoud that, “You're not going anywhere, dude. You're not going anywhere.” About a minute after that, John Doe told Plaintiff, “And you're not bigger than any of us.” See PA at ¶ 11. See Def's Exhibit M at timestamps 1:08 and 2:04.

31. For the next several minutes Plaintiff tried to step around Mahmoud, Shane, and John Doe, in order to leave the area, but whereby all three employees repeatedly physically prevented him from doing so. All three Best Buy employees had physically “corralled” Plaintiff against the building's wall, leaving him with no place to go [without otherwise having to physically touch the

employees in order to move past them, but to which he was unable to do for fear that he would be assaulted in return].¹ See PA at ¶ 12. See Def's Exhibit M from timestamp 2:05 onward.

32. At one point, John Doe called Plaintiff a “dumbfuck,” followed shortly thereafter with the statement, “You're fucking a thief.” These insults and accusations were made in a loud and brash tone, in front of several people walking by who would have also heard them be said to Plaintiff. See PA at ¶ 13. See Def's Exhibit M at timestamps 2:18 and 2:30. Later, John Doe continued to insult Plaintiff by repeatedly calling him a “miserable human being.” See Def's Exhibit M at timestamp 10:54. Toward the end of the interaction, Mahmoud said to Plaintiff, “You might be the dumbest motherfucker I ever met in my life.” See Def's Exhibit M at timestamp 12:08.

33. At another point, all three employees began taunting Plaintiff, telling him that it will be “fun” for them to watch the cops “jump him,” “tase him,” and “fuck him up.” See PA at ¶ 14. See Def's Exhibit M from timestamp 2:51 to 3:20, and 6:06.

34. Throughout the encounter, as Plaintiff continued to try to step around the Best Buy employees in order to leave the area, Mahmoud repeatedly affirmed his intent to detain him [and to which was accompanied by physical movements made by all three employees into the various directions Plaintiff attempted to go]. See PA at ¶ 15. See Def's Exhibit M at timestamps 2:10 (“Give me my shit, or you're gonna be right fucking here.”), 2:40 (“You're not going anywhere, you're giving us our shit back. You're not leaving.”), 3:34 (“You're not going anywhere, bro, you can keep trying to take a step to the left, a step to the right, you're not moving. Until I have my product in my hand, you're staying here.”), 3:51 (“Those are your only two options, you can keep looking around like something's gonna happen, and you're gonna be able to walk away, or you can give me my shit.”), 4:03 (“You're not going anywhere, bro.”), 5:11 (“You're not moving, dude. You're where

1 One Appellate Panel **impermissibly** held that because “Montgomery was not taken to a secluded room, was not forcibly moved within the store, and was not arrested,” his false imprisonment claim purportedly failed. See Def's Exhibit I at page 8. However, **such is not the law**, as the Court has long held that “Physical force is not required to complete a false imprisonment.” *Crews-Beggs Co. v. Bayle*, 97 Colo. 568, 571 (Colo. 1935). That is, “Without a showing of justification, any restraint, either by force or fear, is unlawful and constitutes a false imprisonment.” *Ibid.* See also *McDonald v. Lakewood Country Club*, 170 Colo. 355, 461 P.2d 437 (1969).

you're gonna be until the cops get here. I don't know how else to explain it to you.”), 6:00 (“*Well then give me my stuff, dude. You're not moving, man. Give me my stuff.*”), 7:25 (“*You're not going anywhere, dude.*”), and 8:51 (“*Okay, then you're gonna stand there until the cops show up.*”).

35. Finally, after being harassed and bullied by the three Best Buy employees for nearly ten minutes, John Doe finally told Plaintiff that he could leave. But then he immediately said to his fellow employees, “Or he can run off camera.” John Doe then confirmed what he meant by that by telling Plaintiff, “Oh yeah. Wait 'til you get off camera. We'll be following you. We're gonna wait until you're not on camera.” *See PA at ¶ 18. See Def's Exhibit M from timestamp 9:23 to 9:33.*

36. Plaintiff then said to the three Best Buy employees, “I don't feel safe leaving now,” after which Mahmoud told him, “You shouldn't” [followed by some laughter]. John Doe then chimed in and said to Plaintiff, “I wouldn't feel safe if I robbed somebody, either. Okay? When you rob somebody, or steal from somebody, I would feel threatened also.” *See PA at ¶ 19. See Def's Exhibit M from timestamp 9:48 to 9:52.*

37. After being told once again by John Doe to “Walk away,” Plaintiff once again responded to the three Best Buy employees by saying, “Yeah I don't feel like getting jumped off camera.” Mahmoud replied by saying, “Then give me my stuff, dude.” A few second later, after Plaintiff reaffirmed that he “doesn't feel safe leaving now,” Mahmoud once again followed up by saying, “You'll have zero problems if you hand me what's in your pocket, and what's in your coat.” *See PA at ¶ 20. See Def's Exhibit M from timestamp 10:07 to 10:48.*

38. Once again, after being told by Mahmoud of his “chance” to leave, Plaintiff told him, “Like I'm just gonna trust him that he's not gonna jump me.” Mahmoud then responded by saying, “You shouldn't trust him that he's not. You should give me my stuff. That's what you should do.” *See PA at ¶ 21. See Def's Exhibit M from timestamp 11:27 to 11:36.*

39. After Mahmoud told Plaintiff to “Have a good one,” all three employees quickly stepped away from Plaintiff and proceeded back into the Best Buy building. Plaintiff then spent

the next 14 minutes standing in place, on the side of the Best Buy building, because of how unsafe he felt that he might still get jumped, off camera, by the three employees who said to him they would. [Throughout that 14 minutes, no cops ever came, either]. *See PA at ¶ 23. See Def's Exhibit M from timestamp 12:16 to 26:16.*

40. During Plaintiff's detention by the three Best Buy employees, he counted at least 192 people that had walked past him [and who would have thus been within earshot of the conversation that took place between he and the three employees]. *See Def's Exhibit M generally.* Many times, people that were passing by looked directly at Plaintiff and the employees. One person even stopped literally *right* next to Plaintiff and the three employees to explicitly listen to the conversation that had been taking place between them. *See Def's Exhibit M from timestamp 4:36 to 4:53.*

41. At no point in time, on that day of November 25, 2022, had Plaintiff ever once “concealed” anything in front of [let alone not in front of] anybody, ever, period.² *See PA at ¶ 24.*

42. At no point in time, on that day of November 25, 2022, had Plaintiff ever once placed into, or removed, anything from any pant pocket in front of anybody, ever, period. Whatever was located in his pant pockets remained there before, throughout, and after his interaction with the Best Buy employees. *See PA at ¶ 25.*

43. At no point in time, in his entire life, has Plaintiff ever been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of “receipt showing.” Nowhere has Plaintiff ever seen such a policy posted in any Best Buy store, nor spoken to him by any Best Buy employee, nor available for

² Such “concealing” is **precisely** what a District Court Judge *miraculously* [**but impermissibly**] held Plaintiff do in *Montgomery v. Walmart, Inc.*, Arapahoe County District Court Case No. 2021CV148 (Consolidated: 2020CV184, 2020CV209, 2020CV217, 2021CV1, 2021CV235). *See Def's Exhibits C / D / E / H, Order at page 25* (“Further, the undisputed facts show that Montgomery entered a Walmart store with the intent to and then actually acted in a manner intended to provoke Walmart employees into believing he was **concealing** property of the store, which he knew would lead to being detained and asked for his receipts.”). **OF COURSE**, Plaintiff has obviously **never** “concealed” *anything*, from *anybody*, on *any* shopping occasion, **ever, period, in the history of his existence**, for he knows full-well that doing such would undoubtedly [i.e. reasonably] supply a merchant with shopkeeper's privilege in the matter! Moreover, in all those cases, Plaintiff was **FIRST** asked to show his receipt, **THEN** detained. **Not the other way around!** Indeed, as Plaintiff argued, it was the mere refusal to show the receipts that was the cause of the detentions [i.e. “bootstrapping”].

him [or any others] to review on Best Buy's [or any other's] publicly available website. To this date, Plaintiff still has literally no earthly idea, whatsoever, what Best Buy's policy actually is regarding “receipt showing” [if such a policy even exists, unofficial or not, in the first place]. *See PA at ¶ 26.*

44. On November 25, 2022, Defendant made no “calls for service” to Westminster Police, *whatsoever*, in reference to Plaintiff purportedly shoplifting from its store. *See PRTDMSJ Exhibit #15.*

45. Ultimately, Plaintiff experienced numerous manifestations of significant mental anguish and emotional distress both during and after his adverse encounter with Defendant. Such manifestations include (but are not limited to): helplessness, anger, frustration, shock, disappointment, inconvenience, embarrassment, humiliation, severe indignity, devastation, reputational damage, apprehensiveness, anxiety, mistrust in authority, marked diminishment in quality of life, bitterness, insomnia, and overwhelming grief. *See PA at ¶ 27.*

ARGUMENT

I. DEFENDANT FALSELY IMPRISONED PLAINTIFF, AND LACKED SHOPKEEPER'S PRIVILEGE FOR ITS ACTIONS

a. Defendant misinterpreted and abused the relevant jury instructions at issue

Defendant begins its argument by listing off the various elements of a False Imprisonment claim, but then it fixates on the definition of “Restriction Of Freedom Of Movement” as defined in Colorado Civil Jury Instruction 21:2(1). Of course, it is surely doing this in high hopes of “piggy backing” off of previous arguments made on the subject. As will be discussed next, however, such arguments are **wholly without merit**, as they not only warp the English Language into nonsensical mumbo jumbo, they create “absurd” results not intended for by the Colorado Legislature.

Let's begin by reviewing the Colorado Civil Jury Instruction at issue, **21:2(1)**. When reviewing the interpretation of a statute [or in this case, a jury instruction], “A court's primary goal in interpreting [it] is to determine and give effect to the intent of the legislature, and a court should first look to the plain and ordinary meaning of the statutory language.” *Ball Corp. v.*

Fisher, 51 P.3d 1053, 1056 (Colo. App. 2002). Moreover, when a court construes a [jury instruction], it should read and consider the [jury instruction] “as a whole in order to give consistent, harmonious, and sensible effect to all of its parts.” *Welby Gardens v. Adams County Bd. of Equalization*, 71 P.3d 992, 995 (Colo. 2003); *see also People v. Andrews*, 871 P.2d 1199, 1201 (Colo. 1994) (“Legislative intent is the linchpin of statutory construction.”). Most importantly, a court should not interpret a [jury instruction] in ways that defeat the legislature's obvious intent or render part of the [jury instruction] either “meaningless” or “absurd.” *Reg'l Transp. Dist. v. Lopez*, 916 P.2d 1187, 1192 (Colo. 1996).

Colorado Civil Jury Instruction 21:2(1) states that “A person’s freedom of movement has been restricted when . . . A person’s freedom of movement is actually limited, or he or she 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 or herself or to property.”

First, the phrase “physical barriers” is being misinterpreted and abused by Defendant [and prior Courts] – in such a way that it “defeats the legislature's obvious intent” of the use of such a phrase [and to which, then, renders such interpretation manifestly “absurd”]. The Merriam-Webster Dictionary defines “barrier” as “something material that blocks or is intended to block passage” and/or “a natural formation or structure that prevents or hinders movement or action.” These definitions traditionally include things like “highway,” “concrete,” and “tree root” barriers, as the Dictionary suggests. Moreover, said Dictionary then goes on to suggest several synonyms that can be used in place of the word “barrier,” like “barricade,” “fence,” “hedge,” and “wall.” Thus, **it strains credulity** that the Legislature would have intended to include **ACTUAL PEOPLE** as some “physical barrier,” **especially when said Legislature already specifically refers to PEOPLE as a source of “restriction of freedom of movement” IMMEDIATELY NEXT in their list of possible ways to achieve a false imprisonment.** *See CJI 21:2(2)* (defining “the person is restrained by physical force” as a method of restriction); *and CJI 21:2(5)* (defining “the

person submits to another” as a method of restriction). Therefore, including *actual people* as a “physical barrier” would be duplicitous, at best [and intellectually dishonest, at worst].

Next, the phrase “unreasonable risk of harm” is being equally misinterpreted and abused by Defendant [and prior Courts] – in such a way that it likewise “defeats the legislature's obvious intent” of the use of such a phrase [and to which, then, also renders such interpretation manifestly “absurd”]. This is **ESPECIALLY** true when “reading and considering” the phrase **in conjunction with** its “physical barrier” counterpart [see above] “as a whole in order to give consistent, harmonious, and sensible effect to all of its parts.” *Welby Gardens v. Adams County Bd. of Equalization*, 71 P.3d 992, 995 (Colo. 2003). The Merriam-Webster Dictionary defines “harm” as “physical or mental damage.” Thus, it **strains credulity** that within the definition of “harm” the Legislature would have intended to include anything other than *physical or mental acts of violence*. **This is especially true considering that said Legislature further defines specific types of harm *INFLECTED BY PEOPLE* in its following three instructions.** See *CJI 21:2(2-4)*. Indeed, Plaintiff wholeheartedly *agrees* with Defendant that “showing a valid receipt” would not subject him to “physical or mental damage.” OF COURSE IT WOULDN'T! A store employee simply holding a receipt in their hands while cross-referencing it against a patron's purchases is not a physically or mentally violent act at all. **Thus, the Legislature would never have intended to mean as much when drafting said jury instruction.** *Meanwhile, attempting to break through a store employee (or group of store employees) physically blocking a patron's only path out of a store until they forcefully verify their receipt against their merchandise will practically always involve “an unreasonable risk of harm.”* In other words, this particular situation would be the only way to make meaningful sense of the jury instruction at issue, as presented, based on the specific use of its attendant phrase, “limited to a certain area.”

Next, ***but equally as important on this issue***, is that the definition of “escape” is being misinterpreted and abused by Defendant [and prior Courts] – in such a way that it likewise “defeats the legislature's obvious intent” of the use of such a word. To begin, there is a BIG difference

between having one's path **PARTIALLY blocked**, but whereby they can still **see** and **are able to use** “other avenues open to [them]” (see *Colorado Civil Jury Instruction 21:2, Notes On Use #3*) in order to **avoid altogether** some **ATTEMPTED** confinement of them **from occurring in the first place** (see *Merriam-Webster Dictionary definition of “escape” as meaning “to get away (as by flight)” or “to issue from confinement”*)³ and having **one's ONLY path FULLY blocked IN ALL DIRECTIONS, after which** they are merely **given the option** to **subsequently** be **SET FREE** by the prisoner **AFTERWARDS if** (and only if) **they give into the prisoner's demands** (see *Merriam-Webster Dictionary definition of “release” as aptly meaning “to set free from restraint, confinement, or servitude”*). Specifically, the *latter* definition is what Defendant [and prior Courts] are attempting to apply when discussing their term “escape,” *but whereby such is not *actually* an intellectually honest use of the term* [because the *former* definition is].⁴ In other words, “detention for / after failing to provide a receipt” is strictly a **COMPLETED** and **CONTINUING**

3 Specifically, the definition of “escape” naturally and logically hinges on the notion that a person “escaping” is doing so **single-handedly and of their own volition** (i.e. “to [self] issue from confinement,” not “to [be issued] from confinement.”)

4 One Appellate Panel even went so far as to preposterously hold that Plaintiff has some unwritten legal obligation to “**pre-escape**” all detentions (i.e. “prevent” them occurring in the first place) by otherwise requiring him to now **literally** keep *all* receipts on him, at *all* times, on *all* shopping occasions, in order to show them upon leaving “should the need [if ever!?] arise.” See *Def's Exhibit J at page 10* (“Similarly, no reasonable juror could conclude that it was an unreasonable burden to expect Montgomery, under these circumstances, to **retain his receipt** and show it to the Walmart employee as he exited. Simply put, Montgomery had a reasonable means of both **avoiding** confinement and “escaping” confinement by using a receipt.”). **Of course, neither Plaintiff, nor any other person in this country, versed in the law or not, has any legal obligation, whatsoever, to actually keep all possible receipts on them in order “prevent” all possible detentions.** “Entrapment has never meant that the police have a duty to prevent the occurrence of a crime when they have cause to know that a certain crime will be committed.” *Mora v. People*, 172 Colo. 261, 262 (Colo. 1970). This is because **merchants** are the ones who ultimately have the “**last clear chance**” to avoid or prevent false imprisonments from occurring, **not patrons!** **Moreover**, because Defendant's choice to interact with Plaintiff took him by surprise [whereby he didn't start recording until just after the confrontation began], it cannot even be said that Plaintiff had been “acting” in some disingenuous “premeditated” manner, either [not that starting recordings ahead of time is disingenuous behavior in the first place]. Compare *PA at ¶ 8 to Def's Exhibit J at page 10* (“Given Montgomery's repetitive interactions with Walmart, **coupled with his recorded contemplation of his anticipated detention**, the trial court correctly reasoned that no reasonable juror could conclude that Montgomery discarded the receipt without knowing the consequence of that decision.”). **Of critical importance on this subject, however**, is that this whole “pre-escape” argument **IS ACTUALLY AN ENTIRELY MOOT POINT**, as Defendant has failed to show this Court, with **any** tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts*. Specifically, Defendant had no earthly idea, *whatsoever*, the nature or identity of *whatever* Plaintiff had been holding in his hands when it approached him [and whereby Plaintiff could have very easily been holding “non-store merchandise he had erroneously attempted to return to the wrong store”]. See *Plaintiff's Additional Material Fact #29, above*. Under such a circumstance, it would be unreasonable to assume that Plaintiff was ever “provided a receipt” by Defendant, in the first place [for which he might have otherwise been “required to retain” as the Appellate Panel impermissibly argued].

imprisonment [now subject to requiring lawful justification for] coupled with a **CONDITIONAL RELEASE** of the patron that has **YET** to occur **UNTIL AFTER** the merchant's demands (i.e. the receipt has been handed over **AND** it has been cross-referenced with the patron's purchases) are satisfactorily met.⁵ This means that, *even if* satisfactorily “showing a receipt” results in the **RELEASE** [again, not escape] of a patron, doing such **would not nullify** their **prior** confinement **from having occurred in the first place** – any more than satisfactorily blowing into a breathalyzer at a DUI checkpoint would nullify a motorist's prior confinement from having occurred in the first place, satisfactorily posting bail at the local jail would nullify a prisoner's prior confinement from having occurred in the first place, etc. *Most importantly on this topic*, is that Section 36 of the Restatement (Second) Of Torts – on which Colorado Civil Jury Instruction 21:2(1) relies – contains a Comment to the provision that **SPECIFICALLY** and **EXPLICITLY** clarifies the Legislature's plain and unambiguous intent to define “escape” **as applying strictly to PRE-CONFINEMENT situations only** (and not to post-confinement ones, once they have occurred). *See Restatement (Second) Of Torts § 36 Comment A* (“[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.”). *Note the Legislature's specific use of the phrase “intends to imprison.” That's not “has [already] imprisoned,” that's “intends to [but has not actually done so yet] imprison.”* OF COURSE, this is not to say that a person, **POST-confinement**, who **subsequently** discovers a way to escape his **already completed** imprisonment, should not utilize such a means. [It would certainly be incumbent upon him to do so, and he would presumably not be able to recover damages beyond this point in time, either]. However, like previously mentioned, such a **SUBSEQUENTLY discovered** avenue of escape, *even*

5 Specifically, Plaintiff has **never** claimed that the **act itself** of him being **ASKED** to show a receipt is what has constituted his confinement. Rather, he has **always** claimed that the **act of physically blocking all available pathways of his through all available exits** is what has actually constituted his confinement. However, this is **precisely the exact opposite** of what one Appellate Panel impermissibly held on the subject. *See Def's Exhibit I at page 8* (“No reasonable juror could conclude that **being asked to show proof of purchase** before leaving a store would constitute confinement for purposes of false imprisonment.”).

if taken, DOES NOT NULLIFY the prior, COMPLETED, initial, OUTRIGHT confinement of him FROM HAVING OCCURRED IN THE FIRST PLACE [and to which, again, now requires some affirmative defense like “shopkeeper's privilege” to lawfully justify it with].

It should also be worth noting, at this point, that such a *double standard* proffered by Defendant [and prior Courts] impermissibly strips patrons of their rights, *regardless of the situation*. Obviously, Courts that have ruled against Plaintiff in the past have all held that by a patron REFUSING to show their receipt, they purportedly “fail to avail themselves” of some “escape” path, thereby “forfeiting their right to sue for false imprisonment.” Yet, other Courts **have already held** that a patron's act of SHOWING a receipt *already* forfeits their right to sue for false imprisonment, as such behavior *already* constitutes “voluntarily giving consent to the detention” in order to “establish their innocence,” as *Broadnax v. Kroger Texas*, No. 05-04-01306-CV (Tex. App. Aug. 24, 2005) puts it, or to “vindicate themselves,” as *Grayson Variety Store Inc. v. Shaffer*, 402 S.W.2d 424, 425 (Ky. 1966) puts it. *See also Anderson v. Wal-Mart*, 675 So. 2d 1184 (La. Ct. App. 1996). So which is it? Does one forfeit their right to sue for false imprisonment by SHOWING a receipt, or by NOT SHOWING it? It can't be both, as such an “unlucky position” would be **manifestly unfair** to the regular customer. Indeed, Plaintiff has gone shopping in the past [at Walmart, for example] WITH such personalized knowledge – after having read *Broadnax*, *Grayson*, and *Anderson* prior to – that if he *voluntarily* showed his receipt he would indeed be “consenting to the detention” [and would thus be forfeiting his right to sue should he be detained in the alternative].⁶ **THAT'S WHY HE ALWAYS REFUSES TO**

⁶ One Appellate Panel *miraculously* [but impermissibly] held **precisely the exact opposite** on this subject, negligently ruling that because Plaintiff “was fully aware of the Walmart **receipt policy**, [and] had been subjected to the **receipt policy** on numerous prior occasions,” his false imprisonment claim purportedly failed. *See Def's Exhibit J at page 10*. However, it has always been Walmart's **very own official receipt checking policy** to only **ASK** patrons to see their receipts, **NEVER to detain them if they choose to refuse to show one**. *See Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000) (“If a customer refused to have his or her bag checked, **the policy allowed the person to pass.**”). *See also Bypassing Walmart's Receipt Checks: Strategies and Controversies Revealed*, TheWrightStuff, <https://tinyurl.com/yc8d59aj> (Jun 2, 2023) (“The instructions explicitly stated that **employees should not force a receipt check on an unwilling customer** but rather express gratitude for their patronage.”). As a result, what the Appellate Panel did was actually **pull a full-on bait and switch on Plaintiff**, whereby he went shopping and followed one store policy [the **official** one] of refusing to show his receipt “in order to pass,” but then was expected to, *after-the-fact*, abide by some new, *retroactively-applied*, **unofficial, rogue-store-employee-proffered** “policy” that purportedly *does* require him to

SHOW HIS RECEIPT! Plaintiff, like any reasonable person, has *already* been made aware that SHOWING a receipt is the act that constitutes “consenting to a detention,” not REFUSING to show it!

Finally, *but of absolute paramount and critical importance on this subject*, is that all this talk about “receipt showing” **IS AN ENTIRELY MOOT POINT**. This is because Plaintiff’s instant case *has nothing to do with receipts*. **Defendant has failed to show this Court that it asked Plaintiff to show a receipt, let alone that he refused to show one upon request, let alone that he had one on him in the first place, let alone that whatever he had been holding in his hands that day was even store merchandise for which one might have been associated.**⁷ Moreover, Plaintiff has never been made aware of any specific or official [let alone general or unofficial] policy employed [let alone enforced] by Best Buy regarding the act [compulsory or not] of “receipt showing.” *See Plaintiff’s Additional Material Fact #43, above.*

b. The amount of time that a person is detained for is not what defines their imprisonment, the raw “outrightness” of their detention is

Next, Defendant attempts to argue that Plaintiff was never confined because of how “being asked to show a receipt” is purportedly, *at most*, “a slight inconvenience.” The problem with this position, however, **is that it is a purely subjective one**, without a single iota of support from the actual law on the subject. The ACTUAL law is already clear that an “imprisonment” **OBJECTIVELY** occurs when a person is detained “for any amount of time, **no matter how short.**” *See Colorado Civil Jury Instruction 21:1(2)*. Therefore, *even if* it only takes “but a fleeting moment” for some patron to merely “show their receipt,” **a full-blown, objectively-held detention of them has**

show his receipt “in order to pass.” **So which is it?** Does a patron have to show their receipt “in order to pass,” **OR NOT!?!?**

⁷ This last point is **especially** important, because *even if* it could be assumed that Plaintiff had entered [then exited] the store at issue, such would *still* not bring Defendant any closer to actually showing that Plaintiff was **a customer** of it. This is because Plaintiff could have just as easily been *a wholly unrelated third or fourth category of person*, i.e. one who might have been holding “previously paid for store merchandise chosen by him not to be returned,” or one holding “non-store merchandise he had erroneously attempted to return to the wrong store.” *See Plaintiff’s Additional Material Fact #29, above.* Under both these circumstances, it would be unreasonable to assume that Plaintiff would have “had a receipt on him” that day, in the first place [for which he might have otherwise been “required to show” as merchants and Courts have impermissibly argued]. In other words, **it can never legally be assumed, IN EITHER DIRECTION** (i.e. that Plaintiff was either a customer, or he was a thief) just because he was merely located “near” [and thus potentially at one point in time “inside”] a store, **because of how such an argument is simply a false dichotomy.**

already, BY LAW, occurred.⁸ Indeed, assuming *arguendo* that Defendant's position were correct, a private investigator would then have the right to lawfully detain unidentified citizens until they “simply tell them their name.” Or, a security would then have the right to lawfully detain unidentified neighborhood residents until they “simply show them their ID.” In both examples, it would surely only take “but a fleeting moment” for the people to comply. BUT SUCH IS NOT THE LAW. The law, as written, is objectively **outright** driven, **not merely time-constraint driven** [nor do merchants enjoy any “extra special privileges” to see receipts, either, *just because they're merchants*].

Moreover, it only takes but one example to show precisely how faulty Defendant's exclusively-subjectively-driven position is on the subject: a mother of seven with a full cart of groceries. It's obviously no longer a mere “slight inconvenience” for the mother to wait 10+ minutes to have *her* entire cart of purchases verified [and who would thus likely enjoy the full protections available against false imprisonments, according to Defendant's position], **yet somehow Plaintiff purportedly does not have that same right against false imprisonments, just because he can only afford to buy one or two items at a time?** Sorry, but again, SUCH IS NOT THE LAW. The law, as written, applies equally to every U.S. citizen, **no matter the size of their shopping cart.**

Once again, though, ***it cannot be stressed enough***, all this talk about “receipt showing” **IS STILL AN ENTIRELY MOOT POINT**, as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts*.

c. A receipt is legally incapable of being the “key” to a patron's release; rather, a merchant's personal decision to release him is the actual “key”

Next, Defendant attempts to argue that because Plaintiff purportedly “had the tools of escape, [] Best Buy cannot be held liable for False Imprisonment.” This is yet another recycled [but failed] argument on the subject. As mentioned earlier, receipts themselves aren't the *a-c-t-u-a-l*

⁸ This is **precisely the opposite** of some “open window” to which prior merchants and Courts have **impermissibly** argued. Specifically, an “open window” is something that **always** exists [such that any attempted imprisonment, *from beginning to end*, **never** occurs because of it]. However, showing a receipt is [a consent to] an *actual detention*, (*followed by a release*). In other words, **fully stopping** to show one's receipt **is not the same as** merely **changing directions** toward an open window.

“tool” or “key” or “cause” of a patron's release, **a merchant's own, personal, INDEPENDENT act of satisfactorily cross-referencing the receipt against the merchandise is** [but to which is obviously **OUTSIDE** the control of the patron]. Assuming *arguendo* that Plaintiff *did* have a receipt on him, and that he *did* show it to Defendant. Does Defendant *ACTUALLY* believe that it *would not* continue to detain Plaintiff, **outright**, *in the mean time*, until *AFTER* it had completed its *OWN* independent verification of his purchases at hand? **HARDLY SO**. Fortunately, Courts have **already explicitly ruled on this exact issue**, so this argument isn't even a novel one. *See Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 57 (D. Mass. 2000) (held that “a reasonable person would have apprehended that he or she was not free to leave until Mr. Harris concluded his inspection of Ms. Ball and permitted her and the others behind her to leave.” Read that again. That's **MR. HARRIS** concluding **HIS** inspection of Ms. Ball, that resulted in her eventually being **PERMITTED, BY HIM**, for her and the others behind her to leave. That's not some lone receipt simply being autonomously flashed in front of a door like some ID to a badge scanner. Or a turnstile at a subway. That's a **person**, who **personally** chose to detain someone, **OUTRIGHT, EVEN AFTER A RECEIPT WAS SHOWN TO THEM**, but who was **STILL** nevertheless appropriately held accountable for their unlawful actions in the matter).

ONCE AGAIN, though, **it absolutely has to be repeated**, all this talk about “receipt showing” **IS STILL AN ENTIRELY MOOT POINT**, as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts*.

d. Merchants do not enjoy *carte blanche* authority to detain their patrons

Next, **but by far the most disturbing of Defendant's arguments**, is its statement made of “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.”

Let's take a step back and analyze what Defendant is ultimately saying here. Somebody

please correct Plaintiff if he's mistaken, but it looks like Defendant is literally making the argument, “If Plaintiff paid, we're not liable. If he stole, we're also not liable.” **WOW**. It looks like Defendant is simply *unsuable* then! **Completely untouchable**. Completely legally immune, *in literally all capacities, from even being CAPABLE of being held accountable for its actions, regardless of the situation*. It doesn't even need to show up to Court with a single affidavit! Just throw down this legal argument, and BAM, it's not liable. **YEAH, NO**. Not only is this quite possibly the most arrogant statement Plaintiff has ever seen a Defendant make, it's obviously not how the law works.

First, Plaintiff has already discussed that *even if* he was a customer of Defendant's, showing such “proof of purchase” *after the fact* **does not nullify** the prior, **COMPLETED**, initial, **OUTRIGHT** confinement of him **from having occurred in the first place** [and to which, again, requires some affirmative defense like “shopkeeper's privilege” to lawfully justify it with, but to which Defendant has still utterly failed to (read: *even begun to*) provide this Court with].

Next, regarding the second half of Defendant's statement, it appears that Defendant is unaware that **even criminals have rights, too**. That is, for somebody who even *does* steal, a merchant is *still* required to have “shopkeeper's privilege” in order to initially detain them. See *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996) (“The test of liability is not based on the store patron's **actual guilt** or innocence, **but rather on the reasonableness of the store employee's action** under the circumstances.”). Indeed, criminal defendants are routinely granted “motions to suppress” actual contraband found on them when it is unlawfully seized by police officers who lack “probable cause” for their actions in the matter. Perhaps Defendant is thinking of the affirmative defense, “Guilt Of Person Arrested,” Colorado Civil Jury Instruction 21:18? Problem there is that Defendant has failed to show this Court that Plaintiff was ever convicted of any shoplifting offense in this matter, **let alone that it even called the cops that day of November 25, 2022, in the first place!** See *Plaintiff's Additional Material Fact #44, above*.

Last, Defendant's haughty statement made is nothing more than **a false dichotomy**, as

Plaintiff just discussed in a footnote, earlier. That is, *even if* it could be assumed that Plaintiff had entered [then exited] the store at issue, such would *still* not bring Defendant any closer to actually showing that Plaintiff was *either* a customer, *or* a thief, of it. This is because Plaintiff could have just as easily been *a wholly unrelated third or fourth category of person*, i.e. one who might have been holding “previously paid for store merchandise chosen by him not to be returned,” or one holding “non-store merchandise he had erroneously attempted to return to the wrong store.” *See Plaintiff’s Additional Material Fact #29, above.* Under both these circumstances, it would be unreasonable to assume that Plaintiff would have “had a receipt on him” that day, in the first place [for which he might have otherwise been “required to show” as merchants and Courts have impermissibly argued].

e. Merchants, just like police, are not allowed to “bootstrap” their detentions

Finally, *and equally important on this subject*, is that a request to see a receipt is “a request for consent to search, [and] the customer . . . always retain[s] the right to refuse that consent, or refuse to hand over the receipt.” *Victoria S. Salzman, Big-Box Bullies Bust Benign Buyer Behavior: WalMart, Get Your Hands Off My Receipt!*, 4 Fla. A&M U. L. Rev. (2009)). This is because “receipt-checking is not related to any fact of theft other than presence in the store, [therefore] detention for failure to give consent does not create an adequate basis for invoking the privilege.” *Id.* Indeed, “without *particularized* facts to reasonably justify a stop, *systematic* detention *of most or all customers* may implicate false imprisonment.” *Id.*

Law enforcement officers are in no better position, as Courts have repeatedly held that they, too, “may draw no inference justifying a search or seizure from a refusal to cooperate. That is, officers lacking legal justification to detain a person may not bootstrap noncompliance into justification for a detention, because in that event a citizen would in effect have no way of declining to participate in a 'consensual' encounter with the police.”⁹ *Brief of the United States as*

⁹ Such “bootstrapping” is *precisely* what a District Court Judge *impermissibly* did in *Montgomery v. Walmart, Inc.*, Adams County District Court Case No. 2021CV68 (Consolidated: 2021CV88). *See Def’s Exhibits F / G, Order at page 5* (“No reasonable jury could conclude that a shopkeeper such as Defendant, had no reasonable basis for

Amicus Curiae Supporting Petitioner at 25, Florida v. Bostick, No. 89-1717. This is because “[a]ny other rule would make a mockery of the reasonable suspicion and probable cause requirements, as well as the consent doctrine. These legal principles would be considerably less effective if citizens' insistence that searches and seizures be conducted in conformity with constitutional norms could create the suspicion or cause that renders their consent unnecessary.” *United States v. Hunnicutt*, 135 F.3d 1345 (10th Cir. 1998). *See also U.S. v. Carter*, 985 F.2d 1095, 1097 (D.C. Cir. 1993) (“**The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary.**”).

Therefore, because “shopkeeper's privilege” is the same exact legal standard as “probable cause” (*see Colorado Revised Statutes § 18-4-407*), and “probable cause” is rooted **STRICTLY** in *individualized* and *particularized* suspicions, a merchant can **NEVER, by law and by logic**, achieve lawful justification to detain a patron by simply pointing to their mere “refusal to show a receipt” to them. **This is especially true because of how they are the ones who control who they ask.** Indeed, to argue the opposite would be to allow all merchants to **SYSTEMATICALLY** detain **literally all patrons** whom they ask to see a receipt (which would mean *everybody*), **thus effectively subjecting literally 100% of the population to “compulsory” detentions** [that is, through either voluntary consent, or forced detention otherwise]. THAT'S ILLEGAL, and not what the Legislature would have envisioned *in the least* when drafting the law of the land as it stands. “It is well known to the public that shoplifting is an everyday occurrence which constantly plagues merchants in Oklahoma and elsewhere. Are law enforcement authorities then to be allowed to establish **fixed checkpoints**, permanent or otherwise, outside of every shopping center in the area to question all exiting shoppers as to whether they possess sales receipts? Are law enforcement authorities to be allowed to demand all shoppers to produce such receipts **or be subject to arrest** everytime they go shopping?

preventing a person from leaving their store with goods **for which the person refuses to show a receipt.**”).

The potential for abuse is apparent.” *State v. Smith*, 674 P.2d 562 (Okla. Crim. App. 1984).

ONCE AGAIN, though, ***it forever has to be repeated***, all this talk about “receipt showing” **IS STILL AN ENTIRELY MOOT POINT**, as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff’s case *has anything to do with receipts*.

f. Because “shopkeeper’s privilege” cannot be based on “mere conjecture or suspicion,” Defendant is 100% liable for falsely imprisoning Plaintiff

“A person under the law has a right to protect his own property from injury, but at the same time he must have probable cause to believe that his property is really going to be injured or taken.” *J. C. Penney Co. v. Cox*, 246 Miss. 1, 10 (Miss. 1963). **“Probable cause,” however, “cannot be based on mere belief [] that somebody did or did not do something.”** *Id.* “The investigation should be based on more than mere conjecture or suspicion. It must be grounded on some definite information from some person **that saw enough to justify [their] belief** that a theft had been made, and that a person was guilty of shoplifting.” *Id. See also Mullins by Mullins v. Friend*, 449 S.E.2d 227, 231-32 (N.C. Ct. App. 1994) (upholding trial court’s finding that store manager did not have probable cause to believe Plaintiff committed a crime where store clerk reported hearing rustling of paper coming from Plaintiff’s direction but “admitted to [manager] that she never saw plaintiff conceal anything”). *See also Zenik v. O’Brien*, 137 Conn. 592 (Conn. 1951) (“Mere conjecture or suspicion is insufficient to establish probable cause. Moreover, belief alone, **no matter how sincere it may be**, is not enough, since it must be based on circumstances which make it reasonable.”).

Here, today, in Plaintiff’s instant case, Defendant has failed to provide this Court with **LITERALLY ANY EVIDENCE**, *whatsoever*, to support its affirmative defense of “shopkeeper’s privilege.” Defendant has not shown that it saw Plaintiff *enter its store*. It has not shown that it saw him *anywhere in its store*. It has not shown that it saw him *shop [or not shop]*. It has not shown that it saw him *take anything off a shelf*. It has not shown that it saw him *pay [or not pay]*. It has not shown that it saw him *conceal [or not conceal] anything on his person*. It has not shown that it saw

him *use [or not use] a plastic bag*. It has not shown that it saw him *leave its store*. It has not shown that it *called the police*. It has not shown that it *even asked Plaintiff to show a receipt* [let alone that he *refused to show one*, let alone that he *had one on him in the first place*, let alone that *whatever he had been holding in his hands that day was even store merchandise for which one might have been associated*]. In the end, it is painfully apparent that Defendant has failed to show this Court, *with literally ANY evidence at all*, that it **ever once** saw – be it by way of personal affidavit or by video surveillance otherwise – Plaintiff **do literally anything** “until the confrontation occurred” outside its particular building. **Absolutely ZERO evidence has been provided by Defendant to substantiate its hasty, sloppy, frantic, careless, rude, inappropriate, post-hoc, bootstrapped detention of Plaintiff for purportedly shoplifting from its store.** Therefore, “When we consider all of the evidence bearing on reasonable belief to detain we are confronted with little more than **unfounded naked suspicion**. There is no reasonable basis to formulate the belief that [Plaintiff] had stolen anything.” *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996). As such, because Defendant completely and wholeheartedly lacked “shopkeeper's privilege” to detain Plaintiff – **by way of failing to satisfy EVEN A SINGLE IOTA of EVEN ONE of its critical elements of its affirmative defense on the subject** – it is indisputably liable for falsely imprisoning him.

II. DEFENDANT IS LIABLE FOR DEFAMING PLAINTIFF, PER SE, AS A THIEF

Defendant claims that because “Plaintiff has produced no evidence supporting any damages, including evidence of harm to his reputation – either economic or noneconomic,” his defamation claim purportedly fails. *However*, Plaintiff didn't lodge a claim of Defamation, he lodged a claim of Defamation Per Se. *See Plaintiff's Complaint*. **This is because accusing someone of being A THIEF, when such accusation is untrue and is overheard and understood by a third person, is defamation “actionable *per se*.”** Restatement (Second) Of Torts § 570; *Denver Publ'g Co. v. Bueno*, 54 P.3d 893, 899 n. 9 (Colo. 2002); *Miles v. Nat'l Enquirer, Inc.*, 38 F.Supp.2d 1226, 1229 (D. Colo. 1999). “Actionable *per se*” means that without adducing any evidence that he has in fact been

harmful by the accusation, the Plaintiff may recover general damages for injury to his reputation. P.H. Winfield, A Text-Book Of The Law Of Tort § 74, at 249 (5th ed. 1950). This distinguishes defamation *per se* from the general case of defamation where the Plaintiff would otherwise be required to allege and prove “special damages” in order to establish a cause of action. **The rationale for this is that some kinds of defamatory statements are so likely to cause damage to reputation that such damage may be presumed.** 2 Harper et al, supra note 2, § 5.11, at 118.

As such, because Defendant made statements that Plaintiff stole “**with knowledge that they were false, or with reckless disregard for whether they were true or false,**” it is indisputably liable for defaming him. This is because Defendant utterly lacked “shopkeeper's privilege” to fairly and reasonably believe that Plaintiff had stolen anything from its store that day. *See Section II (f), above.*

III. DEFENDANT IS LIABLE FOR ASSAULTING PLAINTIFF

Defendant claims that it purportedly [only] told Plaintiff [once] to “walk away; we’ll take this off camera.” *However,* Defendant made numerous implicit threats to “jump” Plaintiff “off camera” should he attempt to leave in that direction. While Defendant never personally used the word “jump” in its correspondence with Plaintiff, every single time that Plaintiff used the word “jump” himself, it actively chose to not correct him. This “choice to not correct” only confirmed to Plaintiff that such threats made toward him were more likely credible, than not. *See PA at ¶¶ 18 through 21. See Def's Exhibit M from timestamps 9:23 to 9:33, 9:48 to 9:52, 10:07 to 10:48, and 11:27 to 11:36.*

Defendant also claims that it “[made] no other action nor [took] any other step to show hostility towards Plaintiff.” *However,* Defendant made numerous PHYSICAL ACTS [**that accompanied its threats**] to *actively* and *repeatedly* step in front of Plaintiff in order to *actually* prevent him from leaving the area. *See Plaintiff's Additional Material Facts #31 and #34, above.*

As such, Defendant is indisputably liable for assaulting Plaintiff.

IV. PLAINTIFF NEVER “ENTRAPPED” DEFENDANT [NOR ANY OTHER MERCHANT FOR THAT MATTER, EITHER]

a. Entrapment requires inducement [and reluctance to that inducement]

Throughout Defendant's MSJ, it attempts to skirt liability for its actions by having the audacity to claim that **it** was actually the *victim* of Plaintiff's "**entrapment**" [so as to not look like the *perpetrator* of his false imprisonment, otherwise]. It uses all the same "hot words" that previous merchants have attempted to use on the subject – that Plaintiff inexorably "targeted," "orchestrated," and "baited" it into detaining him – all in high hopes of obfuscating the facts and the law so as to sway them in its favor. As will be discussed next, however, Defendant's "entrapment" argument **utterly fails to pass constitutional muster** [not to mention that it's a callow form of *victim shaming*].

In Colorado, the entrapment defense is governed by Colorado Revised Statutes § 18-1-709, which states, in part, that "an offense is not criminal if the defendant engaged in the proscribed conduct because he was induced to do so . . . and the methods used to obtain that evidence were such as to create a substantial risk that the acts would be committed by a person who, **but for such inducement**, would not have conceived of or engaged in conduct of the sort induced." *Critically*, the Legislature then completes its definition of entrapment by emphasizing that "**Merely affording a person an opportunity to commit an offense is not entrapment** even though representations or inducements calculated to overcome the offender's fear of detection are used."

Now, under Colorado Revised Statutes § 18-1-710, entrapment is a considered an affirmative defense. "Accordingly, once a defendant has presented some credible evidence on the issue, the prosecution must prove beyond a reasonable doubt that the defendant was not entrapped." *People v. Sprouse*, 983 P.2d 771, 775 (Colo. 1999). "Depending upon the particular circumstances of the case, the prosecution may offer a wide variety of evidence and testimony in an attempt to demonstrate that a defendant was predisposed to commit a particular crime." *Id.* "The most commonly invoked forms of proof include . . . whether [the defendant] evidenced reluctance to commit the offense; the amount of persuasion the government was required to employ in order to overcome any reluctance; [and] the nature of the defendant's ability to

perform the illegal acts.” *Id.* “Courts and commentators have noted that of these types of evidence, the defendant's response to the inducement, that is, whether he or she demonstrates strong reluctance, mild reluctance, indifference, or eagerness, is often the most persuasive evidence of his or her state of mind just prior to the governmental inducement.” *Id.*

Here today, in Plaintiff's instant case, his bodycam footage of the event indisputably shows **that literally no inducement of any kind, at all, took place by him** prior to his detention by Defendant. Specifically, Plaintiff didn't do *anything* – other than say to such strangers he had never met before, “Don't touch me,” and “I'm trying to leave,” neither statement of which could ever reasonably be construed as intending to induce such a detention.¹⁰ It cannot be stressed here enough: **Plaintiff didn't ask Defendant to detain him that day. He did coax it into detaining him. He didn't pressure it into detaining him, in any way, shape, or form.** Moreover, Defendant has failed to provide this Court with any tangible, admissible evidence, *whatsoever*, that Plaintiff *even refused to show it some receipt* [let alone that it *even asked him to show one in the first place*] prior to hastily detaining him that day.¹¹ As such, Defendant has failed to show not only that Plaintiff **ever once** even *intended* to induce it into detaining him, but that it **had any reluctance whatsoever to detain him otherwise** [and in fact, it appears from the video footage that it actually had genuine *indifference* and quite possibly even *eagerness* to otherwise detain him].

Of absolute critical importance on this subject, however, is that “Because entrapment is an affirmative defense, it does not apply where a defendant denies committing the crime.” *People v. Hendrickson*, 45 P.3d 786, 791 (Colo. App. 2002). “Thus, we view the rule in

¹⁰ Alternatively, Defendant offers but a single fleeting sentence on this subject to purportedly justify its actions. *On page 10 of its MSJ*, it states “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.” This statement, however, suffers from the classic “**conclusory statement**” logical fallacy. That is, Defendant is *actually* just saying, “we detained him, because he got us to detain him.” Yet within such a statement there obviously exists no *actual independent evidence* that *even begins to* describe precisely “how” Plaintiff “acted” in order to [lawfully] “cause” Defendant to detain him.

¹¹ Of course, the act of merely refusing to show a receipt is not a valid form of inducement anyways, as discussed *supra*, because of how such “bootstrapping” is **patently illegal**. That is, “The constitutional right to withdraw one's consent to a search would be of little value if the very fact of choosing to exercise that right could serve as any part of the basis for finding the reasonable suspicion that makes consent unnecessary.” *U.S. v. Carter*, 985 F.2d 1095, 1097 (D.C. Cir. 1993).

Colorado to require a defendant to admit committing acts that would otherwise constitute an offense before being entitled to assert an affirmative defense of entrapment.” *Id.*

Here today, Defendant has chosen to **outright deny** that it ever committed the crime of False Imprisonment against Plaintiff [by way of claiming that it either didn't conceptually detain him in the first place, or that it had “shopkeeper's privilege” for its actions in the alternative]. As such, Defendant is, **BY LAW**, not even “entitled to assert an affirmative defense of entrapment” in this matter.

b. Defendant [and prior Courts] are guilty of committing statistics fraud

Finally, on this subject, is that somehow because of Plaintiff's “prior history” of “lodging similar false imprisonment claims,” he **must** be “instigating” and “targeting” Best Buy [his next victim] with yet another “failed sting operation.” The problem with this position, is that it is **profoundly intellectually dishonest** and **completely statistically frauded**.

The first part of this statistics fraud has to with the *pool* from which such statistics are being gathered. Sadly, in today's day and age, more and more **mindless lemmings** are choosing to voluntarily answer whatever questions are put to them and/or show whatever proofs of purchase are asked of them, by whomever may be “posted up” at a store's exit, in order to “assuage the perceived evil” of shoplifting. **But that doesn't mean Plaintiff has to now give up his right to not be accosted when he exits those same stores after shopping.** “Moved by whatever momentary evil has aroused their fears, officials — perhaps even supported by a majority of citizens — may be tempted to conduct searches that sacrifice the liberty of each citizen to assuage the perceived evil. But the Fourth Amendment rests on the principle that a true balance between the individual and society depends on the recognition of 'the right to be let alone — the most comprehensive of rights and the right most valued by civilized men.’” *New Jersey v. T. L. O.*, 469 U.S. 325, 361-62 (1985) (*citing Olmstead v. United States*, 277 U.S. 438, 478 (1928)). **In other words, Plaintiff merely exercising his constitutional right “to be let alone” when shopping is only beginning to look like he is “targeting” stores because of how *everybody else has chosen to NOT exercise that same***

right of theirs. If everybody else began refusing to be accosted when exiting stores after shopping, this Court [and many others] would likely get INUNDATED with [equally as valid as Plaintiff's] False Imprisonment claims stemming directly from such accostings. Fortunately, correcting for such statistics fraud is not beyond reach, as it takes but a few moments to look online to see just how rampant unlawful “receipt checkpoints” are becoming in today's society. *See PRTDMSJ Exhibit #14.*

The second part of this statistics fraud has to do with Plaintiff's *intuition*. Over the years, Plaintiff [like anybody] has become keenly aware that torts may be committed against him when leaving certain business establishments. As a result, he has resorted to using audio (and now video) recording devices to protect himself / ensure that his rights remain intact. Over time, with increasingly violative merchants [Walmart for example] he has learned to begin recordings *before he even enters the store*, in order adequately to protect himself. This is not to say that he is now *intentionally* “acting” a certain way when he shops at these stores – because such would be as preposterous as saying that “all drivers who start their dashcams upon leaving each morning are *intentionally* seeking to be hit on the road.” Other times [this instant case for example] Plaintiff was not expecting to be tortured, and thus, did not think to start his recording device ahead of time. *See Plaintiff's Additional Material Fact #28, above.* Nevertheless, absent from all prior Court analyses on this subject is the fact that **Plaintiff has gone shopping thousands of times, at hundreds of merchants, nearly all without issue**, and whereby whatever recordings he may have started prior to were simply deleted after each mundane encounter (much like how police delete whatever bodycam footage they may have started prior to after each uneventful shift). Therefore, to label Plaintiff as some *intentional* “targeter” / “baiter” / “lawsuit scammer” / [insert all other synonyms here] for simply a) shopping, b) knowing his rights, and c) protecting himself with recording devices, would be an irrational, paranoid, delusional, arrogant, disingenuous, cognitively dissonant, intellectually dishonest, and statistically frauded position to take in the matter. Technically every car parked on the side of the road for which an owner has placed a GPS tracker and camera system inside is a “bait”

car, but it would be preposterous to call such owners *intentional* “targeters” of car thieves. Same goes with people who go shopping who want to also protect themselves from being potentially falsely imprisoned. Case in point: a police officer of 20 years merely refusing to show his receipt on his way out of a Walmart, only to be detained for nearly half an hour before he was finally let go. *See Cop Records Himself Detained At Walmart Receipt Check*, The Consumerist, <https://tinyurl.com/4npw8cba> (Dec 23, 2010). Seriously, one cannot reasonably refer to such benign buyer behavior as anything resembling “entrapment.” **Rather, that's just good police work**, and whereby, “*Merely affording a person an opportunity to commit an offense is not entrapment.*”

Therefore, what has happened in Plaintiff's instant case is nothing more than a common situation where some merchant got “fat and happy” accosting its droves of lemmings at its doors – by way of them all choosing to “assuaging the perceived evil” – but whereby Plaintiff simply came along and promptly exposed said merchant for candidly committing *routine* violations of the law. **In other words, Defendant forgot that it needs to perform actual investigatory homework before detaining its patrons, and is simply butthurt that it got “secret shopped” [but failed the audit miserably].** *Meanwhile, countless other stores that Plaintiff has visited over the years have all had no trouble, whatsoever, with following the law, otherwise.*

ONCE AGAIN, though, ***it must be repeated one last time***, any talk about “receipt showing” **IS STILL AN ENTIRELY MOOT POINT**, as Defendant has failed to show this Court, with any tangible, admissible evidence, *whatsoever*, that Plaintiff's case *has anything to do with receipts*.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Plaintiff respectfully requests that this Court **DENY** Defendant's MOTION FOR SUMMARY JUDGMENT.

Respectfully submitted on this, the 19th day of September, 2024.


William Montgomery

CERTIFICATE OF SERVICE

I hereby certify that on this, the 19th day of September, 2024, the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MSJ** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

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