

DISTRICT COURT, COUNTY OF JEFFERSON, COLORADO 100 Jefferson County Parkway Golden, CO 80601	<input type="checkbox"/> Court Use Only <input type="checkbox"/>
Plaintiff(s): WILLIAM MONTGOMERY v. Defendant(s): BEST BUY STORES LP; CHRIS WU; TANNER SPEHAR; and IRON SPEAR PROTECTION GROUP LLC,	
Attorneys for Defendant <i>BUSINESS & TECHNOLOGY LEGAL GROUP</i> 2000 S. Colorado Blvd. Tower One, Ste. 2000-1131 Denver, CO 80222 Brian E. Hefner, Esq., #52280 Of-Counsel Telephone: 720-770-8852 brianhefner.legal@gmail.com	Case Number: 2024CV241 Div.: 9 Courtroom:
MOTION TO DISMISS PURSUANT TO C.R.C.P. 12(b)(5)	

COMES NOW, Defendant Iron Spear Protection Group, LLC, by and through its attorney, Brian E. Hefner, Esq. of counsel for Business & Technology Legal Group, and respectfully submits their Motion to Dismiss Pursuant to C.R.C.P. 12(b)(5), and avers as follows:

CERTIFICATION OF CONFERRAL

Pursuant to C.R.C.P. 121 § 1-15(8), the undersigned conferred with Plaintiff, Plaintiff opposes the relief requested herein. Best Buy Stores L.P. does not oppose the relief requested herein.

BACKGROUND

1. On November 24, 2023, Plaintiff was shopping at a Best Buy store and was accused of stealing an item from the store by an unknown Best Buy employee. Complaint at ¶ 3. Exhibit 1.

2. Plaintiff states that Knowle Ogle and Jacob (Doe), Iron Spear Protection Group, LLC (hereinafter “Iron Spear”) employees detained Plaintiff and summoned the Westminster police. Complaint at ¶ 3.

3. Plaintiff brings three claims against Iron Spear:

- a. False Imprisonment;
- b. Defamation *per se*; and
- c. False Arrest.

Complaint at ¶ 3.

4. Plaintiff claims the Westminster city police officers handcuffed him and searched him, then let him go once they determined he had paid for the item. Complaint at ¶ 3.

5. Plaintiff never voluntarily produced evidence that he had paid for the item, prior to the police searching him. Complaint at ¶ 3.

ARGUMENT

I. Standard of Review

An order of dismissal by a trial court under a C.R.C.P. 12(b)(5) motion is reviewed *de novo*. *Yadon v. Lowry*, 126 P.3d 332, 335 (Colo. App. 2005). In analyzing a Rule 12(b)(5) motion, the trial court should only consider those matters stated in the complaint, accepting them as true and in a light most favorable to the plaintiff. *Id.* Motions to dismiss are disfavored unless it appears beyond doubt that the plaintiff could prove no set of facts that would entitle them to relief. *Sweeney v. United Artists Theater Circuit, Inc.*, 119 P.3d 538, 539 (Colo. App. 2005).

II. The Colorado Shopkeeper's Privilege confers protection for Iron Spear, which requires dismissal of all claims.

a. Plaintiff's false imprisonment and false arrest claims must fail.

To prevail on a false imprisonment claim, the plaintiff must establish the following elements: (1) the defendant intended to restrict the plaintiff's freedom of movement; (2) the plaintiff's movement was restricted for a period of time; and (3) the plaintiff was aware that his freedom of movement has been restricted. *Goodboe v. Gabriella*, 633 P.2d 1051, 1055-56 (Colo. App. 1983). The Colorado Civil Jury Instruction 21:2 states:

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.

Exhibit 2.

The Restatement (Second) of Torts § 36(2) is instructive and cited in the jury instruction, states that the confinement is complete, although there is a reasonable means of escape, unless the confined knows of the means of escape. Restatement (Second) of Torts § 36 (Am. L. Inst. 1965). Courts have interpreted this to mean that when there is a reasonable means of escape, false imprisonment does not occur. Here, Plaintiff had a reasonable means of escape by providing proof that he had purchased the items. He did not. If the Court was curious about the strangely similar names and fact pattern in *Montgomery v. Walmart, Inc.*, 2023 WL 1208352 at 4-5 (Colo. App. 2023), Exhibit 3, yes, that is the identical Plaintiff in that case. Should Plaintiff argue that he was unaware of Best Buy's policies of showing a receipt after purchase when asked, Plaintiff was already involved in litigation with Best Buy for a nearly identical pattern at the time this case was commenced from facts beginning on November 25, 2022. *Montgomery v. Best Buy, L.P.*, 2026 WL 469591 (Colo. App. Feb. 19, 2026) (appealing 2023CV226).

Under Colorado law, false arrest and false imprisonment are essentially the same claims with the same defenses. *Ungerer v. Moody*, 859 P.2d 251, 257 (Colo. App. 1993) (overruled on other grounds, *Moody v. Ungerer*, 885 P.2d 200 (Colo. 1994); Colorado Civil Jury Instruction 21:1 (False Imprisonment or Arrest). False imprisonment and false arrest are both subject to dismissal under a bona fide privilege, such as the shopkeeper's privilege, where Iron Spear acted in good faith in Plaintiff's detention, whether under a false arrest or false imprisonment claim. *Id.* Colorado law allows a private person to arrest a person if a crime has been committed or is being committed in the presence of the person making the arrest. C.R.S. § 16-3-201; *People v. Olguin*, 528 P.2d 234, 236 (Colo. 1974).

Under the Shopkeeper's Privilege, questioning of a person reasonably suspected of theft is shielded from liability for slander, false arrest, false imprisonment, malicious prosecution, or unlawful detention." C.R.S. § 18-4-407. The shopkeeper's privilege requires three essential elements. *J.S. Dillon & Sons Stores Co. v. Carrington*, 455 P.2d 201, 203 (Colo. 1969). First, the shopkeeper must act in good faith. *Id.* Second, there must be probable cause based upon reasonable grounds. *Id.* Third, the detention must be conducted in a reasonable manner. *Id.* In *Carrington*, 455 P.2d 201, 203 (Colo. 1969), the Colorado Supreme Court held that the "intent of the statute" is "to afford under certain circumstances a degree of protection to the person who stops and questions another for the purpose of ascertaining whether such other person is guilty of shoplifting but who it later develops is actually not guilty of any shoplifting." Cited by *Montgomery v. Walmart, Inc.*, 2023 WL 1208352 at 4-5 (Colo. App. 2023). Exhibit 3.

The *Carrington* Court reasoned that the main issues here are whether the store or its employees are justified in questioning a suspected shoplifter. *Carrington*, 455 P.2d at 203-4. If there are no disputed factual issues, the question of whether the store or its agents acted in good

faith poses only a question of statutory interpretation. *Gonzales v. Harris*, 528 P.2d 259, 286 (Colo. App. 1974) (overruled on other grounds). Here, Iron Spear's employees were acting on the reasonable belief that Plaintiff had stolen items and refused to show proof of his purchase.

Taking Plaintiff's facts in his complaint as filed as true, Plaintiff was detained on suspicion of shoplifting. Complaint ¶ 3. The suspicion of shoplifting was reasonable when Plaintiff refused to provide proof of purchase. Complaint ¶ 3. Best Buy's employees had reasonable suspicion, which was transmitted to Iron Spear, and its employees were justified in relying on Best Buy's employee's suspicion to detain Plaintiff on suspicion of shoplifting. Iron Spear's detention of Plaintiff was reasonable and conducted under a good faith belief that he had stolen items belonging to Best Buy. Plaintiff fails to plead that the detention was not reasonable. Complaint ¶ 3. Plaintiff had a viable means of escape by simply showing his proof of purchase. He made himself his own captor.

b. Plaintiff's defamation *per se* claim fails under Colorado law.

Defamation claims include both libel and slander. *Denver Publ'g Co. v. Bueno*, 54 P.3d 893, 898 (Colo. 2002). A statement may be considered defamatory *per se* if it is specifically directed at the person claiming injury, and without extrinsic proof, it is unmistakably recognized as injurious. *Linninger v. Knight*, 226 P.2d 809 (Colo. 1951). A person proceeding under the theory of defamation *per se* need not plead or prove special damages. *Inter-State Detective Bureau, Inc. v. Denver Post, Inc.*, 484 P.2d 131, 133 (Colo. App. 1971). Whether a statement is to be considered slander *per se* is a question of law. *Keohane v. Wilkerson*, 859 P.2d 291, 302 (Colo. App. 1993).

The shopkeeper's privilege applies to Plaintiff's slander *per se* claim. C.R.S. § 18-4-407.

The privilege states:

Such questioning of a person by a merchant, merchant's employee, or 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.

Here, as stated above, Iron Spear had good faith probable cause to suspect that Plaintiff was stealing property owned by Best Buy. Plaintiff's Complaint demonstrates that he had proof of purchase and did not show that proof to any person involved in this case. It was not until the police officers searched him that they found the proof of purchase, and he was let go. Iron Spear's detention of Plaintiff and statements that he was suspected of stealing ended with the transfer of Plaintiff's custody to the police officers. Iron Spear's description that Plaintiff had "stolen an item from the store" is privileged under C.R.S. § 18-4-407 and must be dismissed.

III. Iron Spear is entitled to attorney fees and costs.

Under C.R.S. § 13-17-201(1), the award of reasonable attorney fees and costs is mandatory, unless the Court treats the C.R.C.P. 12 motion as a motion for summary judgment under C.R.C.P. 56. This request goes much deeper than a simple statutory award. Plaintiff has been targeting businesses by refusing to turn over proof of purchase for items, then suing the businesses for his detention that was of his own making. It is not known how many times Plaintiff has been successful in his scam, but we know of several where he has lost doing this exact same thing. In Exhibit 3, *Montgomery v. Walmart, Inc.*, 2023 WL 1208352 (Colo. App. June 1, 2023), the Court of Appeals consolidated six cases from Arapahoe County District Courts into a single appeal. Each of these cases had circumstances exactly similar to those in the present case. Plaintiff lost on all claims when the Court of Appeals upheld the motions for

summary judgment. The Court also listed six other cases in the federal circuit where Plaintiff filed and lost in similar circumstances.

In 2022, the Court of Appeals upheld the summary judgment granted for Walmart on the same circumstances, where Plaintiff purchased ice and refused to show his receipt. When the Walmart manager refused to let Plaintiff leave with ice, he attempted to file criminal charges against Walmart then filed suit. The Jefferson County trial court granted Walmart's summary judgment. Exhibit 4. In 2026, the Court of Appeals handed Plaintiff two more losses for his frivolous lawsuits involving the same *modus operandi*, this time against the Defendant in the case at bar, Best Buy, L.P. Exhibit 5. In Exhibit 6, Plaintiff suffered another loss at the Court of Appeals, this time in two Adams County cases involving the same basic facts. This does not include the losses Plaintiff suffered in the Colorado District Court. There is no question that Plaintiff knows his claims are frivolous.

Under C.R.S. § 13-17-102(6), this Court can award attorney fees and costs for frivolous litigation. "A claim or defense is frivolous if the proponent can present no rational argument based on the evidence or law in support of that claim." *M Life Ins. Co. v. Sapers & Wallack Ins. Agency, Inc.*, 962 P.2d 335, 338 (Colo. App. 1998). The determination of whether an award of attorney fees should be awarded under § 13-17-102 is within the discretion of the trial court. *Id.* at 339. The facts of this case warrant the award of attorney fees. Plaintiff goes into businesses, such as Best Buy, with the express intent of setting up a situation where he will be detained for failing to show his receipt. Plaintiff has repeatedly lost in the trial courts, the Courts of Appeals, and the Colorado Supreme Court has refused to take up any of his claims. Plaintiff's claims are textbook frivolous and mandates that this Court award Iron Spear attorney fees and costs.

Respectfully submitted this 12th day of May 2026.

/s/Brian E. Hefner, Esq.

*Original Signature on file at Business & Technology Legal Group
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CERTIFICATE OF SERVICE

I hereby certify that, on May 12, 2026, a true and correct copy of the foregoing document was prepared for service to the following in the manner indicated below:

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Dated this 12th day of May, 2026

/s/ Brian E. Hefner