

<b>Jefferson County District Court</b> 100 Jefferson County Pkwy Golden, CO 80401 (720) 772-2500	<p style="text-align: center;">▲ Court Use Only ▲</p>
<b>WILLIAM MONTGOMERY</b> Plaintiff  vs.  <b>BEST BUY STORES, L.P.</b> Defendant	
Party Without Attorney:  <b>William Montgomery</b> 2443 S University Blvd # 129 Denver, CO 80210 (970) 412-5463 zoinbergs@gmail.com	Case Number: <b>2024CV242</b>  Division: <b>11</b> Courtroom: <b>140</b>
<b>PLAINTIFF'S MOTION TO RECONSIDER</b>	

Plaintiff, proceeding *pro se*, respectfully requests that this Court **RECONSIDER** its July 23, 2025 ORDER granting in part Defendant's MTR. In support thereof, he states as follows:

**C.R.C.P. RULE 121 § 1-15(8) CERTIFICATION**

Plaintiff certifies that he has conferred in good faith with Defendant concerning the subject matter of this motion. Defendant states that it *does not take a position* with regard to the motion.

**ARGUMENT**

**I. PTF'S PRIOR CASES WERE NOT A STRATEGIC MISUSE OF LITIGATION**

In this Court's ORDER granting in part Defendant's MTR, it held that “Plaintiff has pursued a 'strategic misuse of litigation in past cases.’” *Order at page 4*. However, **the Court committed clear errors of both fact and law** by not appropriately analyzing Plaintiff's prior cases. Thus, Plaintiff must now “painstakingly discuss” his entire litigation history. *Francis*, 494 P.3d at 600.

**a. The “first” [single] lawsuit, appeal, and petition for writ of certiorari**

On March 31, 2020, in **2020CV76**, Plaintiff filed his first complaint against Walmart, claiming

that on March 31, 2019, a Lakewood store employee false imprisoned and stole three bags of ice from him. In the matter, Plaintiff argued that shopkeeper's privilege didn't exist for his detention, but the District Court dismissed the case on alternative grounds, stating that “Plaintiff knew of a reasonable means to leave the store by showing the receipts, and so, he was not completely confined.”

On June 23, 2021, in **2021CA359**, Plaintiff argued on appeal that **a)** there is a big difference between having one's path partially blocked and having one's only path completely blocked, **b)** the act itself of voluntarily showing a receipt already constitutes consent to a detention, **c)** he should not have been better off throwing away his receipt, and **d)** asking to see a receipt is merely a request for consent to search that a customer always retains the right to refuse.

On May 12, 2022, in response, the Court Of Appeals held that **a)** “Being asked by a retailer to show a receipt as proof that an item was actually purchased which is precisely what a receipt is designed for — is *at most* a 'slight inconvenience,’” **b)** “Montgomery had a reasonable means by which he could exit the store. He simply chose not to avail himself of it,” and **c)** “He remains free to opt not to frequent merchants who engage in this practice and to take his business elsewhere.” However, the Court **did not even remotely address, WITH A SINGLE WORD,** Plaintiff's *numerous*, other, **rational** appeal arguments that he made on the subject in his opening brief.

On May 26, 2022, in **2022SC503**, Plaintiff filed a Petition for Writ of Certiorari to the Colorado Supreme Court, where he raised the same arguments he made at the appellate and trial court levels, as well as several new arguments that **a)** false imprisonment occurs when it is for “any amount of time, no matter how short,” **b)** the phrase “unreasonable risk of harm” was intended to be strictly associated with “physical barriers” only, **c)** there exists a critical window of time in between when a merchant confines a patron and when they decide to release them, **d)** showing a receipt and refusing to show a receipt cannot both be a form of consent, and **e)** if a person is forced to give up one right for another, they are, by definition, “imprisoned.” The Supreme Court declined to grant the Petition.

**b. The “second” [consolidated] lawsuit, appeal, no petition for writ of certiorari**

On September 3, 2020, in **2020CV148**, Plaintiff filed his second complaint against Walmart.

On October 22, 2020, in **2020CV184**, Plaintiff filed his fourth complaint against Walmart.

On November 27, 2020, in **2020CV209**, Plaintiff filed his fifth complaint against Walmart.

On December 10, 2020, in **2020CV217**, Plaintiff filed his sixth complaint against Walmart.

On January 4, 2021, in **2021CV1**, Plaintiff filed his seventh complaint against Walmart.

On September 20, 2021, in **2021CV235**, Plaintiff filed his tenth complaint against Walmart.

All six complaints were consolidated into **2020CV148**. In all six complaints, Plaintiff alleged that store employees false imprisoned and/or defamed and/or maliciously prosecuted him after he refused to show his receipt upon request on his way out of each store.

Now, in this six-complaint consolidated case of **2020CV148**, Plaintiff argued for the first time at the trial court level all the arguments that he had raised in **2021CA359** and **2022SC503**, as well as several new arguments that **a)** showing a receipt after the fact does not retroactively nullify a patron's prior detention from having occurred in the first place, **b)** being merely "posted up" at a store's exit does not establish shopkeeper's privilege, **c)** probable cause cannot be based on "mere conjecture," **d)** merchants are not allowed to "bootstrap" noncompliance into justification for a detention, **e)** refusal to cooperate cannot be the "single additional event" that ripens preexisting concerns into founded suspicion, **f)** not using plastic bags does not establish shopkeeper's privilege, **g)** not using front registers does not establish shopkeeper's privilege, and **h)** lack of intent to conceal negates shopkeeper's privilege. Of course, **all of these arguments fell on deaf ears**, as the District Court tendentiously dismissed the case on the same parroted grounds that "Montgomery knew that he could escape without causing an unreasonable risk of harm to him or herself or to property by merely presenting his receipt to Walmart employees, and, therefore, his freedom of movement was not actually limited." Again, the Court **did not even remotely address, WITH A SINGLE WORD**, Plaintiff's *numerous*, **rational** arguments that he made on the subject. But hey, **at least this is the first time in Plaintiff's litigation history** that a Court has now **addressed if a merchant had "shopkeeper's privilege" to detain him**. Specifically, the District Court held in its order dismissing the case 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. In doing so Montgomery sought to create circumstances which would result in Walmart employees reasonably believing he was

committing a crime in their presence. Not only was Montgomery's conduct sufficient to cause the Walmart employees to believe that his intent was to commit a crime, but he specifically intended that result happen.

The problem with this determination, however, is that it is **A PURE ERROR OF FACT**. That is, *and it absolutely cannot be stressed here enough*, **PLAINTIFF HAS NEVER, NOT ONCE IN THE HISTORY OF HIS EXISTENCE, "CONCEALED" MERCHANDISE** (i.e. "faked a steal" as it is commonly known) in order to *actually* trigger a merchant into [reasonably] believing that he is shoplifting from a store. Sorry, but Plaintiff **is not that absurdly foolish of a person**. Moreover, his long running "sting" operation – of simply *using* whatever registers are available to him, *not* using plastic bags for items that don't need them, *not* answering questions, and *not* consenting to searches – is nothing but **STRICTLY PASSIVE** "right auditing" behavior, **that all customers who know their rights routinely do**, that could never, *in a million years*, be reasonably construable as legitimate **ACTIVE** actions that actually constitute shoplifting, **let alone "entrapment."** Finally, it appears that the District Court has fundamentally misinterpreted Plaintiff's "intentions" such that it somehow believes that he *deliberately* goes to *specific* Walmart stores to *deliberately* "act[]" in a manner intended to provoke Walmart employees . . . which he knew **WOULD** lead to being detained" [**and whereby the Court appears to be extrapolating that the only times he gets detained are the only times that he "acts" a certain way**]. The problem here, is that Plaintiff protects himself with recordings, uses whatever registers are available to him, doesn't use plastic bags, refuses to answer questions, and refuses to consent to searches, **ON LITERALLY \*\*ALL\*\* SHOPPING TRIPS THAT HE GOES ON, AND HAS GONE ON, FOR LITERALLY OVER A DECADE NOW**. That's easily over 1000 shopping trips to over 300 merchants by now. *Yet you don't see 1000 lawsuits filed by Plaintiff, because he wasn't detained 1000 times!* Therefore, contrary to the District Court's assertions, Plaintiff doesn't "know" that he **WILL** be detained, any more than a cop "knows" that his bait car **WILL** get stolen. It's entirely up to chance. Plaintiff just shops, leaves, minds his own business, and *maybe*, on the rare occasion, **MIGHT** get detained for minding his own business. Of course, Plaintiff has developed the **intuition** that on such rare occasions he **MIGHT** get detained [which any good cop in this country would equally formulate], **but that's not what the District**

**Court appears to have held in its order.** Rather, the District Court appears to have held that Plaintiff *specifically* entered *specific* Walmart stores on *specific* occasions with the *specific* intent to “act” a *specific* way, and then *specifically* “acted” in that way to *specifically* “provoke Walmart employees into believing he was *specifically* concealing property of the store” [and that, according to the District Court, he “*specifically* intended that result happen”]. Thus, another **PURE ERROR OF FACT** has occurred, because **LITERALLY NONE OF THAT IS TRUE.** Instead, the District Court made a **supremely incorrect presumptuous judgment based on a complete lack of information about Plaintiff,** which caused it to **IMPERMISSIBLY ASSUME** that *all* lawsuits he filed against Walmart were *the only* times he “acted” a certain way [and to which resulted in *the only* times he was detained]. It did not collect *any* information or evidence **whatsoever** about what Plaintiff has done and what has occurred on the absolute plethora of *other* shopping occasions he has gone on over the years, what the actions and behaviors were of all those *other* merchants who chose *not* to detain him on those mundane shopping occasions, or even the fact that he has even experienced the majority of *other* Walmart stores in the area routinely *not* detain him for simply refusing to show his receipt. **This issue is critical,** because without incorporating such information, Plaintiff’s “actions” are unfairly being made to look like he is *deliberately* “entrapping” *specific* merchants on *specific* occasions, where purportedly **every time** he “goes fishing,” he “gets a bite” [and to which **would** actually be considered entrapment if he indeed had a success rate of 10/10, as the District Court suggests]. **But this is not the case,** because Plaintiff has gone on *at least* 1000 shopping trips since he started exercising his rights about a decade ago, yet only on a **very, very select few** number of occasions have merchants EVER decided to actually detain him, and in turn, has he filed lawsuits regarding.

On October 6, 2022, in **2022CA625**, Plaintiff argued at the appellate court level the same arguments that he had raised at the trial court level. He also argued for the first time that merchants are not allowed to detain people “in order to compel payment from them.” *See Lynch v. Metropolitan El. R. Co.*, 90 N.Y. 77 (N.Y. 1882).

On June 1, 2023, in response, the Court Of Appeals simply parroted the District Court's holding that “showing the receipt was a reasonable means of leaving the store, and Montgomery

was aware of that fact.” But hey, **at least this time** the Court Of Appeals **finally began to develop** its “escape” argument (which Plaintiff appreciates) but whereby it **STILL** fundamentally misapprehended the issue. Specifically, the Court elaborated on its prior holding (made in **2021CA359**) regarding section 36(2) of the Restatement (Second) of Torts, by stating:

For example, the first illustration in comment A provides as follows: “A locks B, an athletic young man, in a room with an open window at a height of four feet from the floor and from the ground outside. A has not confined B.”

In particular, just as the “athletic young man” could escape a locked room with a minimum of inconvenience by exiting through the window, Montgomery could have left the store with his purchased goods in hand simply by showing the receipt that he had concealed on his person.

However, this “athletic young man” argument **STILL** directly contradicts [and thus, never actually addresses, let alone refutes] Plaintiff’s **rational** argument he already made in his opening brief that:

There exists a critical window of time in between when a merchant confines a patron and when they decide to release them, *and within which the patron may very well have done literally everything possible that has been asked of them – including showing a receipt*, but who is **still** nevertheless **OUTRIGHT** detained by the merchant pending an independent, conscious decision to be made by them, to finally and eventually be released by them. *See Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 57 (D. Mass. 2000).

Moreover, the Court Of Appeals **never addressed, WITH A SINGLE WORD**, any of Plaintiff’s *numerous*, other, **rational** arguments that he made on the subject. Finally, regarding shopkeeper’s privilege, the Court Of Appeals also parroted the District Court’s conclusion that Walmart possessed it, reiterating that “Montgomery sought to create circumstances which would result in Walmart employees reasonably believing he was committing a crime in their presence.” It further stated that such a conclusion “is confirmed not only by Montgomery’s description of his actions, but also by own statements made to store employees and responding officers — which included his admissions that he was conducting a 'sting,' and that 'he came to the store and planned on suing.’” However, once again, this is nothing but a **PURE ERROR OF FACT**. That is, Plaintiff’s “admissions” that he “stings” **are not ACTUAL bona fide admissions that he actively, consciously, deliberately ENTRAPS specific merchants on specific occasions by specifically acting a specific way.** Rather, they are only *general* “admissions” [if one could even call them that] that he *routinely* **PASSIVELY** exercises **ubiquitous PASSIVE** rights that he has been exercising **ON LITERALLY**

**\*\*ALL\*\* SHOPPING OCCASIONS FOR OVER A DECADE NOW.** Thus, **they are not a valid substitute** for the **more specific** legal requirement that **merchants** have the burden of proving, **with NON-CONCLUSORY evidence of their own**, that **they** possess shopkeeper's privilege.

Unfortunately, due to medical complications, Plaintiff never filed a Petition for Writ of Certiorari to the Colorado Supreme Court challenging the order issued by the Court Of Appeals.

**c. The “third” [single] lawsuit, no appeal, no petition for writ of certiorari**

On September 3, 2020, in **2020CV67**, Plaintiff filed his third complaint against Walmart, claiming that on September 6, 2019, five Westminster store employees false imprisoned, defamed, and false arrested him by lying to Westminster Police that he had shoplifted after he refused to show his receipt upon request on his way out of the store. In the matter, Plaintiff made same arguments he had developed from **2020CV76** through **2022CA625**. However, this time, Plaintiff responded to the Court Of Appeals “athletic young man” argument it introduced in **2022CA625**, by stating:

Think of a captor and a prisoner who are standing in the same room with no windows and a single locked door. The captor gives a key to the prisoner that they tell them, and even show them, is what unlocks the door. However, the captor is standing in between the prisoner and the locked door, also telling the prisoner that the only way to actually secure their release is to hand the key back over, so that the captor can turn around, unlock the door himself, and then step aside to finally let the prisoner on through. Can one truly, intellectually honestly say that such an act – of giving the key to the prisoner and telling them it's what unlocks the door – is a viable means of “escape”? **NOT IN THE LEAST.** Likewise, as mentioned before, it takes time for a customer to locate their receipt, remove it from their pocket/wallet/purse, present it to a store employee, and have that store employee stand there, analyze it, and cross-check it against their recently paid for merchandise. It strains credulity that during this period of time the store employee would permit the customer to leave prior to completing the verification procedure. *See again Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44, 57 (D. Mass. 2000).

Of course, **all of Plaintiff's arguments, including this new “key to release” argument, fell on deaf ears**, as the District Court, once again, tendentiously dismissed the case on the same parroted grounds that “all Plaintiff had to do was to show his receipt to go on his way. He held the means to escape, and chose not to use it.” But hey, **at least this time** the District Court **finally began to respond to Plaintiff's detention arguments** (which he appreciates) but whereby it **STILL** fundamentally misapprehended the issue. First, the District Court responded to Plaintiff's *Jacques* argument [in which that Court held that the “situation was in the control of the defendant”] by claiming that [purportedly

unlike Plaintiff] Jacques “did not hold a receipt that would have allowed her to leave.” The problem here is that this conclusion ***STILL*** directly contradicts [and thus, never actually addresses, let alone refutes] Plaintiff’s ***rational*** argument he already made that “there exists a critical window of time in between when a merchant confines a patron and when they decide to release them.” As such, Plaintiff’s “critical window of time” and now “key to release” arguments **remain undisputed**. Next, the District Court claimed that *Sweeney v. F.W. Woolworth Co.*, 142 N.E. 50 (Mass. 1924) supported its position. However, *Sweeney* is **wholly inapposite** because in that case “the manager did not stand between him and the door” [as opposed to the employees in Plaintiff’s case ***who did***]. Next, the District Court **finally and miraculously** addressed Plaintiff’s long running *Ball v. Wal-Mart* argument. *Plaintiff has been waiting years for this moment!* However, the Court ***STILL*** completely, utterly, fundamentally misapprehended the issue. Specifically, the District Court claimed that [purportedly unlike in Ms. Ball’s case] “Plaintiff was given options to depart without interference.” **YYEEAAHH**, except that Ms. Ball ***WAS ALSO*** “given options to depart” in her case, ***AND TOOK THEM!*** As in, SHE ***\*\*DID\*\**** ***HAND OVER HER RECEIPT, just like everybody keeps telling Plaintiff that he must purportedly do***, but whereby the *Ball* Court ***STILL*** held that ***EVEN HER, EVEN AFTER handing over her receipt***, was nevertheless false imprisoned ***because she was unable to “depart without interference.”*** Indeed, the District Court **LITERALLY ADMITTED** this very conclusion **ONE SENTENCE PRIOR!** “The court found there was a genuine issue of material fact as to whether the shopper was under a reasonable apprehension that **she could not leave without interference** if and when she decided to.” Therefore, had Plaintiff **PROVIDED** his receipt as Ms. Ball did, ***just like everybody keeps telling him that he must purportedly do, HE, TOO, would have been unable to “depart without interference”!*** He, too, would have been subject to ***the same exact*** unlawful “inspection” procedure that Ms. Ball had been subjected to. Thus, the fact that he **DIDN’T** provide his receipt, ***is completely moot***. He was ***effectively*** detained ***EITHER WAY*** [i.e. whether he showed his receipt, or not]. As such, Plaintiff’s *Ball v. Wal-Mart* argument **remains undisputed**. Finally, regarding shopkeeper’s privilege, the District Court also parroted previous conclusions that Walmart possessed it, reiterating that “Plaintiff intentionally designed his conduct to inspire such a belief.” However, once again, this is

nothing but a **PURE ERROR OF FACT**, as Plaintiff has previously discussed.

Unfortunately, due to medical complications, Plaintiff never filed an opening brief in the appeal he filed for this matter, **2022CA1711**, and to which meant that he was also unable to file a Petition for Writ of Certiorari to the Colorado Supreme Court regarding it.

**d. The “fourth” [consolidated] lawsuit, appeal, and petition for writ of certiorari**

On August 6, 2021, in **2021CV68**, Plaintiff filed his eighth complaint against Walmart.

On September 3, 2021, in **2021CV88**, Plaintiff filed his ninth complaint against Walmart.

Both complaints were consolidated into **2021CV68**. In both complaints, Plaintiff alleged that store employees false imprisoned and/or defamed him after he refused to show his receipt upon request on his way out of each store.

Now, in this two-complaint consolidated case of **2021CV68**, Plaintiff made the same arguments he had developed from **2020CV76** through now **2020CV67**, however this time he also argued that because he threw away his receipts, he had no purported “escape path” that he would have purportedly been required to not “fail to avail” himself of. Of course, **all of Plaintiff’s arguments, including this new “lack of receipt possession” argument, fell on deaf ears**, as the District Court, once again, tendentiously dismissed the case on the same parroted grounds that “Plaintiff knew that all he had to do to prevent detention was to show his receipt.” But hey, **at least** the District Court **was willing to discuss and hold**, regarding Plaintiff’s new “lack of receipt possession” argument, that “if Plaintiff threw away the receipt it would be his actions that prevented his means of escape, not the Defendant’s.” **However, *even this* argument directly contradicts clearly established law.** That is, “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, the District Court **never addressed** any of Plaintiff’s *numerous*, other, **rational** arguments that he made on the subject. Finally, regarding shopkeeper’s privilege, the District Court also parroted previous conclusions that Walmart possessed it, reiterating that “In fact, the facts here, and in prior cases, clearly demonstrate

that Plaintiff's purpose on his recorded trips to Walmart is to get detained." However, once again, this is nothing but a **PURE ERROR OF FACT**, as Plaintiff has previously discussed.

On May 4, 2023, in **2023CA159**, Plaintiff argued at the appellate court level the same arguments that he had raised at the trial court level. He also argued for the first time that:

The Adams County District Court Judge can't now move the goalpost by saying that "given Plaintiff's prior activity and knowledge in these various detention cases, if Plaintiff threw away the receipt it would be his actions that prevented his means of escape," **as holding such would literally create a legal obligation for Plaintiff where there is none** – an obligation to literally keep his receipts on him at *all* times, on *all* shopping occasions, to combat the super rare circumstance where he might be unlawfully detained and coerced into showing one.

On October 26, 2023, in response, the Court Of Appeals ignored Plaintiff's *numerous* **rational** arguments he made on the subject, and instead, once again, tententiously denied the appeal on the same parroted grounds that "Montgomery had a reasonable means of both avoiding confinement and 'escaping' confinement by using a receipt." But hey, **at least this time** the Court Of Appeals **finally responded to** Plaintiff's long running *Ball v. Wal-Mart* argument (which Plaintiff appreciates) but whereby it **STILL** fundamentally misapprehended the issue. Specifically, the Court stated that:

The facts of *Ball* are materially different than those presented here. Most significantly, there is no indication that the customer detained in *Ball* was aware of Walmart's receipt checking policy. Here, in contrast, Montgomery was fully aware of the Walmart receipt policy; had been subjected to the receipt policy on numerous prior occasions; continued to shop at Walmart while expressly contemplating that he would likely be asked for a receipt and briefly confined if he chose not to produce it; and nevertheless chose to either discard or disregard his receipt at the checkout and then refused to produce it as requested. These facts were not present in *Ball*; therefore, we find it unpersuasive.

On November 13, 2023, in response, Plaintiff filed a Petition for Rehearing, arguing that:

The chief problem with this Court's position, however, **is that "detention for failure to provide a receipt" IS NOT WALMART'S POLICY!** *It never was, and it still isn't currently.* Walmart's official "receipt checking policy" is as follows: "Wal-Mart employees stationed near the exits would check the shopping bags against the patrons' receipt as they left the store. The bag check was to take place inside the store and within view of the checkout counters. If the store was busy employees were instructed to check as many bags as they could. If a customer refused to have his or her bag checked, **the policy allowed the person to pass.**" *Ball v. Wal-Mart, Inc.*, 102 F. Supp. 2d 44 (D. Mass. 2000).

By misapprehending the official store policy, this Court is impermissibly holding Plaintiff to a double standard. That is, while Plaintiff was undoubtedly always [and to

which is the very crux of his “sting” operation] “aware that if he chose not to produce a receipt, he might be briefly detained,” **he was also always aware** [from his personal knowledge of the **official** store policy] that if he *did* refuse to show his receipt, **policy-following employees would allow him to leave**. Thus, this Court cannot expect Plaintiff to go shopping at Walmart, follow one store policy [the **official** store policy] of refusing to show his receipt “in order to pass,” **but then pull a full-on bait and switch on him, after-the-fact**, once he does refuse, by otherwise claiming that he *\*must\** now abide by the new, *retroactively-applied*, **rogue-store-employee-proffered** “policy” [if one could even call it that, as such was never sanctioned by Walmart] that otherwise purportedly *\*does\** require him to show his receipt in order to pass.

Moreover, the Court Of Appeals' argument that “there is no indication that the customer detained in *Ball* was aware of Walmart's receipt checking policy” **is contradictory in its own right**. That is, **HAD** Ms. Ball been “aware of Walmart's [official] receipt checking policy” [which is that “if a customer refused to have his or her bag checked, **the policy allowed the person to pass**”] then she would have surely **NOT** shown her receipt, **AND BEEN ALLOWED TO PASS! But isn't that precisely what Plaintiff is complaining about? That he *hasn't* been allowed to pass?** Indeed, it makes no sense that, **according to the Court Of Appeals itself**, *Ms. Ball* **WAS** validly false imprisoned after *SHOWING* her receipt, but evidently *Plaintiff* **WAS NOT** validly false imprisoned after *NOT SHOWING* his receipt! Thus, it appears that the Court Of Appeals **LITERALLY HAS IT BACKWARDS**. And as such, Plaintiff's *Ball v. Wal-Mart* argument **remains undisputed**. Also, in the Petition for Rehearing, Plaintiff argued for the first time that merchants are no different than “private investigators [who] don't have the right to detain unidentified citizens until they simply tell them their name.” Finally, in the Petition for Rehearing, Plaintiff further developed his **rational** “refusal to cooperate cannot be the 'single additional event' that ripens preexisting concerns into founded suspicion” argument, by stating:

Specifically, if a merchant asks *anybody*, coming from *any* register, *with or without* a bag, to see their receipt, the merchant either a) gets to detain that person through their own voluntary consent to that detention [by way of their own voluntary showing of their own receipt], or b) gets to detain them anyways if they happen to refuse to show the receipt [by using the very refusal as the very justification to detain them with directly thereafter.] As such, the *act itself* of “asking to see the receipt” is actually an **entirely moot point**. The customer – again, coming from *any* register, *with or without* a bag – is detained **either way**. The request itself is **irrelevant**. Therefore, it **LITERALLY** cannot be part of a shopkeeper's privilege analysis, **nor be used to “bootstrap” other factors with**.

For example, in Plaintiff's case number 2021CV68, the only two factors purportedly capable of being used for the Defendant's shopkeeper's privilege analysis are that Plaintiff a) didn't use a plastic bag, and b) refused to show his receipt when asked. But because, like previously discussed, the *act itself* of asking is rendered entirely *moot* (as the merchant gets to have their detention either way), the analysis is mathematically reduced by that invalid factor. Meaning, if all non-plastic-bag users are effectively detainable, *either way*, when asked to show their receipt, the only factor that can legitimately remain is that they didn't use a plastic bag. And of course, as just discussed, merely not using a plastic bag is not an individualizable enough way to fairly separate the “wheat from the chaff” to begin to lawfully detain a patron over.

On January 25, 2024, in **2023SC931**, Plaintiff filed a Petition for Writ of Certiorari to the Colorado Supreme Court, where he raised the same arguments he made at the appellate and trial court levels. The Supreme Court declined to grant the Petition.

**e. The insights that can be gleamed from the aforementioned timeline of events**

So, what does all this mean? In a nutshell, it means that Plaintiff's litigation history against Walmart, *from beginning to end*, was not frivolous, vexatious, or done in bad faith.

Plaintiff filed a grand total of **four** consolidated “cases” against Walmart, then **three** appeals.<sup>1</sup>

All ten individual Walmart “incidents” **occurred** long before the **first** motion for summary judgment was ever **issued** in a “case” (on February 25, 2022, in **2020CV148**). Meaning, Plaintiff didn't *continue filing* [what might be argued as bad faith] cases *after* a Court finally ruled against him. Rather, he only *continued* to reasonably argue *within* the four cases that he had *already* filed.<sup>2</sup>

No Court has **fairly, reasonably, logically, and rationally** addressed whether Walmart had “shopkeeper's privilege” to detain Plaintiff. The Court in **2020CV76** never reached the issue in the first place, and the Courts in **2020CV148**, **2020CV67**, and **2021CV68** all *inextricably intertwined* Plaintiff's “use of back registers” and “lack of plastic bag use” with his “refusal to show a receipt upon request.” Such *inextricable intertwining* resulted in those Courts **impermissibly** using his “refusal to show a receipt” as the “single additional event” that “ripened” [**read: bootstrapped**] the other two factors “into founded suspicion,” **but to which is strictly prohibited**. See *U.S. v. Sterling*, 909 F.2d 1078, 1082 (7th

---

1 Such is positively **nowhere near** the staggering TWENTY-SEVEN “same successive and stale claims” filed by the Plaintiff in *Francis v. Wegener* 494 P.3d 598, 600 (Sep 13, 2021), all of which were “carbon copy” “duplicative filings” stemming from the same incident that were barred by “collateral attack” and “claim preclusion,” but to which were still filed by him after he “stubbornly disregarded warnings, reprimands, orders, and sanctions from courts” to stop filing them.

2 See *Spring Creek Ranchers Ass'n v. McNichols*, 165 P.3d 244 (Colo. 2007) (held that only after a party consistently ignored the court's admonition to not relitigate settled matters was the court then justified in finding that the party's attorney was being stubbornly litigious and the action thus lacked substantial justification).

Cir. 1990). In other words, no Court has EVER squarely addressed the **TRUE** issue at hand, which is: whether shopkeeper's privilege exists to detain a patron for **merely** “using back registers” and/or “not using plastic bags” [and whereby such a privilege, based on only those factors, **does not exist**]. Moreover, based on the terminology used by the Court in **2020CV148**, that Court [and all subsequent Courts that relied on it, which is all of them] committed **A PURE ERROR OF FACT**, either by concluding that Plaintiff “intentionally **concealed** merchandise” [which he has never done], or that merchants **inherently** [i.e. without independent evidence] had shopkeeper's privilege to detain him **simply because** he purportedly “**sought** to create circumstances which would result in Walmart employees reasonably believing he was committing a crime in their presence” and “**specifically** intended that result happen.” Such loaded statements, however, are **vague** and **conclusory**, and are impermissibly based on Plaintiff's **general (i.e. not specific to any occasion)** “admissions” that he “stings” merchants [but whereby he has actually been routinely exercising the same **passive** rights on over 1000 shopping trips for over a decade now, but to which has obviously not resulted in 1000 detentions and lawsuits being filed by him regarding]. Finally, **NOT A SINGLE COURT has ever, even once, WITH A SINGLE WORD**, addressed Plaintiff's **numerous**, other, **absolutely unquestionably rational** arguments that he has made on the subject over the years, namely that **a)** merchants are not allowed to “bootstrap” noncompliance into justification for a detention, **b)** refusal to cooperate cannot be the “single additional event” that ripens preexisting concerns into founded suspicion, **c)** not using plastic bags does not establish shopkeeper's privilege [due to “the absence of any indication that the merchandise is unpurchased”], **d)** not using front registers does not establish shopkeeper's privilege [because such invariably creates suspicion that is nothing more than a “self-fulfilling prophecy”], **e)** being merely “posted up” at a store's exit doesn't establish shopkeeper's privilege [as unambiguously held in *Wal-Mart Stores, Inc. v. Odem*, 929 S.W.2d 513, 520 (Tex. App. 1996)], **f)** probable cause cannot be based on “mere conjecture,” and **g)** lack of intent to conceal negates shopkeeper's privilege. As such, it wasn't frivolous, vexatious, or bad faith for Plaintiff to repeatedly bring such **rational** arguments up [and further develop them, as he did, when they continued to go unaddressed].<sup>3</sup>

<sup>3</sup> See *Hamon Contractors, Inc. v. Carter & Burgess, Inc.*, 229 P.3d 282 (Colo. App. 2009) (held that trial court abused discretion in finding plaintiff's claims frivolous where plaintiff was not successful on claims but claims were based on

No Court has **fairly, reasonably, logically, and rationally** argued that “showing a receipt” is a **legally cognizable** “escape path” that a patron must not “fail to avail” themselves of using. While Plaintiff certainly appreciates the Court's willingness to develop its argument with him, it **STILL**, to this day, *even after being provided with multiple reasonable opportunities to get it right*, fundamentally misapprehended the issue. First, in **2022CA625**, the Court Of Appeals introduced for the first time its “athletic young man” argument. However, this argument was futile, as it did not address [let alone refute] Plaintiff's **rational** argument he already presented that “there exists a critical window of time in between when a merchant confines a patron and when they decide to release them.” Next, in **2020CV67**, Plaintiff further developed his “critical window of time” argument, by now presenting his “key to release” argument. The District Court then responded by claiming that *Jacques* is inapposite to Plaintiff's case [which it isn't], and that [purportedly unlike in Ms. Ball's case] “Plaintiff was given options to depart without interference” [which is also untrue, because **HAD** Plaintiff provided his receipt as Ms. Ball did, he, too, would have been subject to **the same exact** unlawful “inspection” procedure that she had been subjected to]. Finally, in **2023CA159**, the Court Of Appeals responded to Plaintiff's *Ball v. Wal-Mart* argument, arguing that “there is no indication that the customer detained in *Ball* was aware of Walmart's receipt checking policy.” However, **even this** argument was futile, as Plaintiff pointed out in his Petition for Rehearing that “**detention for failure to provide a receipt is not walmart's policy!**” He also pointed out that if the Court Of Appeals' *Ball* argument were valid, such would create an unfair “bait and switch” for him, as he had *already* been following the store's official receipt policy which he was *already* under the reasonable belief would “allow him to pass.” Most importantly, he pointed out that the Court Of Appeals' *Ball* argument **is contradictory in its own right**. That is, **HAD** Ms. Ball been “aware of Walmart's [official] receipt checking policy,” she would have surely NOT shown her receipt **and been allowed to pass** [but whereby such is precisely what Plaintiff is complaining about, that he **hasn't** been allowed to pass].

---

**rational** arguments). Indeed, **just like Plaintiff in his Walmart cases**, the *Hamon* court held that “Hamon cannot be faulted for attempting to convince the court to reconsider its view of the applicable law.” *See also Eurpac Serv., Inc. v. Republic Acceptance Corp.*, 37 P.3d 447 (Colo. App. 2000) (held where defendant made **rational** arguments on the law in support of its position, trial court noted that legal issue was one of first impression in Colorado, and defendant was able to cite legal authority from other jurisdictions in support of its position, award of attorney fees was improper).

Finally, **NOT A SINGLE COURT** has ever, *even once*, **WITH A SINGLE WORD**, addressed Plaintiff's *numerous*, other, **absolutely unquestionably rational** arguments that he has made on the subject over the years, namely that **a)** false imprisonment occurs when it is for “any amount of time, no matter how short,” **b)** the phrase “unreasonable risk of harm” was intended to be strictly associated with “physical barriers” only, **c)** showing a receipt only results in the conditional “release” of a person; it is not an autonomous avenue of “escape” for them, **d)** showing a receipt after the fact does not retroactively nullify a patron's prior detention from having occurred in the first place, **e)** showing a receipt and refusing to show a receipt cannot both be a form of consent, **f)** if a person is forced to give up one right for another, they are, by definition, “imprisoned,” **g)** merchants are not allowed to detain people “in order to compel payment from them,” and **h)** merchants are no different than private investigators who don't have the right to detain unidentified citizens until they simply tell them their name. As such, it wasn't frivolous, vexatious, or bad faith for Plaintiff to repeatedly bring such **rational** arguments up [and further develop them, as he did, when they continued to go unaddressed].

## **II. PTF'S BEST BUY CASES ARE DISTINGUISHABLE FROM WALMART'S**

In **2023CV226**, Plaintiff ***was not*** a customer of the store, the chain ***does not*** utilize uniquely “back” registers, it ***does not*** utilize plastic bags, and printed receipts ***are not*** given to its account holders. This is about as distinguishable as it gets when compared to Plaintiff's Walmart cases.

In the instant case of **2024CV242**, while Plaintiff ***was*** a customer of the store, the three other factors ***have not changed***, namely that the chain ***does not*** utilize uniquely “back” registers, it ***does not*** utilize plastic bags, and printed receipts ***are not*** given to its account holders.<sup>4</sup> These aren't “minor fact differences” as this Court claims, **they are LITERALLY the exact opposite of *\*\*THE ONLY\*\** facts ever argued in Plaintiff's Walmart cases.** As such, no previous Court has EVER, **EVEN REMOTELY** addressed Plaintiff's **NEW** issue, which is: whether a merchant has shopkeeper's privilege to detain a

<sup>4</sup> These appear to be facts that Plaintiff did not specifically plead in his initial complaint, and therefore, were not able to be utilized by this Court when deciding its July 23rd order. Thus, at bare minimum, Plaintiff respectfully requests that this Court **grant him leave to file an amended complaint**, in order to add these dispositively distinguishing facts (and any additional causes of action that he may find to be applicable to the matter), so that a fairer determination can be made on whether or not his complaint [on its face] is indeed frivolous (and to which would also naturally allow for its frivolity to be more befittingly challenged by Defendant via a C.R.C.P. Rule 12(b)(5) motion, for instance, rather than a motion to reconsider a fee order). *See Rubins v. Plummer*, 813 P.2d 778 (1990) (held that trial court erred in sua sponte dismissing a purportedly frivolous lawsuit before providing plaintiff with a meaningful opportunity to amend his complaint). *Moreover, Plaintiff would undoubtedly be sure to include a C.R.C.P. Rule 11(a) certification in his amended complaint.*

patron for the **SOLE** reason of not showing a printed receipt *for which he was not given*, and for which the store *itself* knows it *routinely* doesn't issue to its account holders. This is **absolutely and unquestionably** a **NEW and NOVEL legal argument** that Plaintiff is presenting, *for the very first time*, “in a **good faith** attempt to establish a new theory of law in Colorado.” *C.R.S. § 13-17-102 (7)*.

### **III. PENDING MOTIONS WARRANT AN ABANDONMENT OF THE ORDER**

Defendant just filed a MSJ in this matter. Soon, Plaintiff will be filing a RESPONSE and C-MSJ. As such, this Court should abandon its July 23 order so that it can adjudicate Plaintiff's case on its merits.

### **CONCLUSION**

WHEREFORE, Plaintiff respectfully requests that this Court **GRANT** this MOTION TO RECONSIDER,<sup>5</sup> so that it may **REVERSE** its July 23rd ORDER granting Defendant's MTR, or in the alternative, at bare minimum, **GRANT** Plaintiff leave to file an Amended Complaint.

Respectfully submitted on this, the 20th day of August, 2025.

  
**William Montgomery**

### **CERTIFICATE OF SERVICE**

I hereby certify that on this, the 20th day of August, 2025, the foregoing **PLAINTIFF'S MOTION TO RECONSIDER** was filed with the Court, and a true and correct copy of it was electronically sent to the following people:

**Lori K. Bell**  
**Sarah K. Vogel**  
Montgomery | Amatuzio  
720 S Colorado Blvd, Suite 1200-N  
Denver, CO 80246  
T: (303) 592-6600  
F: (303) 592-6666  
*lbell@mac-legal.com*  
*svogel@mac-legal.com*

*Attorneys for Defendant*

  
**William Montgomery**

---

<sup>5</sup> At first glance, this MOTION TO RECONSIDER appears to be sixteen (16) pages in length. However, according to C.R.C.P. Rule 121 § 1-15(1)(a), the case caption, signature block, and certificate of service do not count toward page limits. Thus, when factoring said exceptions in, this MOTION TO RECONSIDER is **exactly** fifteen (15) pages in length.