



Organized Retail Crime Task Force Agenda
 Wednesday, November 30, 2022, 9:00 – 12:00

1.	Welcome <ul style="list-style-type: none"> • AG Ferguson’s welcome and opening remarks 	9:00 – 9:07
2.	Updates <ul style="list-style-type: none"> • AG team introductions • Update from AG team <ul style="list-style-type: none"> ○ Task Force Directory ○ Legislative Update ○ 8 Best Practices for Online Marketplaces, see page 2. 	9:07 – 9:30
3.	Resources for Retailers <ul style="list-style-type: none"> • Public Safety and Retail Theft Resources– Mark Johnson, Sr. VP of Policy and Government Affairs, Washington Retail Association • Washington Organized Retail Crime Association, Carl Klienknecht, Kemper Development Company, see page 5. • Best practices in ORC Prosecution, Nicole Lawson, Deputy Prosecuting Attorney, King County Prosecuting Attorney’s Office, see page 16. 	9:30 – 10:00
4.	Employee Safety & Small Business Concerns <ul style="list-style-type: none"> • Opening Remarks: Sarah Cherin, Vice President, UFCW 3000, President • Panel discussion participants: <ul style="list-style-type: none"> ○ Melissa Elkins, Community Food Co-Op ○ Brody Kesler-Mauch, Jackson’s Food Stores ○ Leeching Tran, Viet-Wah Supermarket ○ Rex Hashimoto, Uwajimaya Asian Market 	10:00 – 10:50
5.	Break	10:50 – 11:00
6.	Organized Retail Crime – Case Studies <ul style="list-style-type: none"> • Jerry Lerum, ORC Investigator, Home Depot • Mike Lang, Assistant United States Attorney, see page 29. 	11:00 – 11:45
7.	Next Steps & Closing <ul style="list-style-type: none"> • Topics for future meetings? • Third Meeting- March, 2023 	11:45 – 12:00



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Consumer Protection Division
800 Fifth Avenue • Suite 2000 • MS TB 14 • Seattle WA 98104-3188
(206) 464-7744

November 2, 2022

RE: Combating Organized Retail Crime

To Whom It May Concern,

Earlier this year, I convened the Washington State Organized Retail Crime Task Force. The growth of organized retail crime is causing billions in economic harm to Washington businesses, and frequently includes violence or threats of violence against employees of those businesses. The Task Force is working to combat organized retail crime, improve coordination among law enforcement and interested parties, and identify areas of potential collaboration with stakeholders including online marketplaces.

I appreciate the online marketplaces that are participating in the Task Force. Organized retail crime involves theft of retail products for resale, and one of the Task Force's primary goals is to identify ways to hinder criminal actors' efforts to resell stolen goods through online marketplaces. You are uniquely positioned to assist in this regard.

Since the Task Force's initial public meeting on July 7, 2022, the Attorney General's Office met with dozens of retailers, union representatives, online marketplaces, and law enforcement both in Washington State and beyond. Based on that outreach, the Attorney General's Office developed the following primary recommendations for online marketplaces. We believe these are commonsense steps to combat organized retail crime. We understand through our outreach that some marketplaces have already adopted several of these reforms, earning praise from retailers. We commend those efforts and urge universal adoption of each of these basic and necessary measures:

1. Establish a specialized organized retail crime team dedicated solely to interfacing with victims and law enforcement to investigate trafficking of stolen property through your marketplace. The team should be sufficiently robust to provide requested information and assistance in an expedited manner, and should include a mechanism for victims and law enforcement to contact your team members directly and receive a prompt reply.
2. Establish and make available the team's criteria for assisting victims and law enforcement with such trafficking investigations. These criteria should include guidance regarding what information you require for identifying a suspect seller, suspected stolen property, the victim's basis to believe that stolen property is being or has been trafficked

ATTORNEY GENERAL OF WASHINGTON

November 2, 2022

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through your marketplace, and any other information necessary to trigger the assistance of your team.

3. Establish mechanisms by which information and data about the suspect seller and their sales history may be shared with victims and law enforcement on an expedited basis, without disclosing personal information about the seller that is protected by law.
4. Identify the types of items regularly sold through your marketplace that are particularly susceptible to trafficking. Examples of items particularly susceptible to trafficking may include, for example, mobile phones, power tools, over-the-counter pharmaceuticals, and items that are in short supply, e.g., baby food during the 2022 shortage. The Task Force is available to collaborate on the identification of additional such items.
5. Identify purportedly new items being offered at prices substantially below the manufacturer's suggested retail price (MSRP).
6. For the items referenced in recommendations #4 and #5 above, require sellers of such items to provide additional information prior to making their offers viewable to the public. The additional information should include documentation firmly establishing the identity of the seller, verification of the seller's physical address, financial or bank account information for the seller's account, authentic and unedited photographs of the item(s) for sale, and a statement or documentation from the seller about the origin of the item(s). Because criminal actors frequently open new seller accounts with online marketplaces to traffic stolen property, and because once opened such seller accounts may persist in trafficking stolen property even in the face of investigations, these criteria should be applied for all new accounts and for accounts that have previously been the focus of your team's trafficking investigations, law enforcement inquiries, or complaints from victims and retailers.
7. Modify your sales terms to require that, as part of any marketplace sale of a new and unused packaged good, the seller must post authentic and unedited photographs of the item for sale, including depictions of the item's stock keeping unit (SKU) number and bar code.
8. Modify your sales terms to require that, as part of any marketplace sale of used or unpackaged consumer electronics, the seller must post authentic and unedited photographs of the item for sale, including depictions of the item's identifying serial number where one exists.
9. Provide retailers with periodic reports about the types of items identified as susceptible to trafficking through your platform, the geographic areas in which such items are commonly sold, and any other trends that would enable retailers to adjust their sales practices accordingly and protect their inventory.

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The next public meeting of the Task Force is on November 30, 2022. I hope you will attend. Prior to November 30, please let the Attorney General's Office know whether you will implement these recommendations. If you cannot implement them prior to November 30, please let us know your anticipated timeline for implementation. If you are declining to implement these recommendations, please let us know prior to November 30 of your reasons.

Finally, we will also be sending surveys to assess your current practices and capabilities in this regard. Please let us know to whom we should direct the survey.

Should you have any questions relating to this letter, please contact Joe Kanada or Ben Carr at joe.kanada@atg.wa.gov or ben.carr@atg.wa.gov. For questions about the Task Force, please contact the Attorney General's Policy Team at policy_team@atg.wa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Bob Ferguson". The signature is written in a cursive style with a long, sweeping underline.

BOB FERGUSON
Attorney General



Carl Kleinknecht
Director of Security
Kemper Development Company/The Bellevue Collection

Board Directors

President

Robert Nelson
Lowe's

Vice President

Vacant

Secretary

Bryan Wiles
Nordstrom

Treasurer

Leslie Dolan
Walgreens

Director 1

Jerry Lerum
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Hardware Sales

Director 3

Mark Johnson
Washington Retail

Director 4

Matt Guy
Rite Aid

Director 5

Alex Grays
Amazon

Director 6

Joe Laky
Walmart

Director 7

Carl Kleinknecht
Kemper
Development

Director 8

Jeremy Girard
Target

Director 9

Alan Mendoza
Michael Kors

Director 10

Erika Mamon
REI

Director 11

John Charleston
Bartell

Advisor

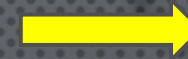
Jon Graham
Lowe's

Coordinating Efforts to Combat Organized Retail Crime

Retail



Law Enforcement



Prosecutors

- Lowe's Home Improvement
- Kemper Development Company
- Nordstroms
- Walgreens
- Home Depot
- Hardware Sales
- Washington Retail
- REI
- Rite Aid
- Amazon
- Walmart
- Target

- Mill Creek
- Lynnwood
- Renton
- Kent
- Kitsap Sheriff
- Longview
- Olympia
- Seattle
- Woodinville
- Bellevue
- Spokane
- Bellingham
- Lakewood
- Homeland Security

- Snohomish County
- King County
- Zachor, Stock, & Krepps
- Lynnwood
- Seattle
- Kitsap County
- Whatcom County
- Bellingham

Local Meetings

- Share Intelligence
- Coordinate Investigations
- Identify subjects
- ID fencing operations
- Training
- Build Relationships/
Network
- WA Sheriffs and Police
Chiefs Association
(WASPC)



On-going Local & Regional Meetings

Monthly Meetings

- Whatcom County
 - 2nd Thursday 1 PM Bellis Fair Mall
- Lakewood Public Safety Summit
 - December 9th 10:30 AM Council Chambers
- Thurston County
 - 2nd Wednesday 10 AM Olympia Council Chambers
- Online Meeting
 - 3rd Thursday via Zoom

Quarterly Meetings

- Snohomish County
- Kitsap County
- King County
- Spokane

Retail Theft Emphasis Efforts

- Coordinate between Retailers and Law Enforcement to push back against retail theft.
- Show a united front against crime in your city.
- Offer **immediate consequences** to criminals.
- Arrest ORC active criminals, drug sellers, stolen cars and **illegal weapons** possession.



Training for Small Businesses

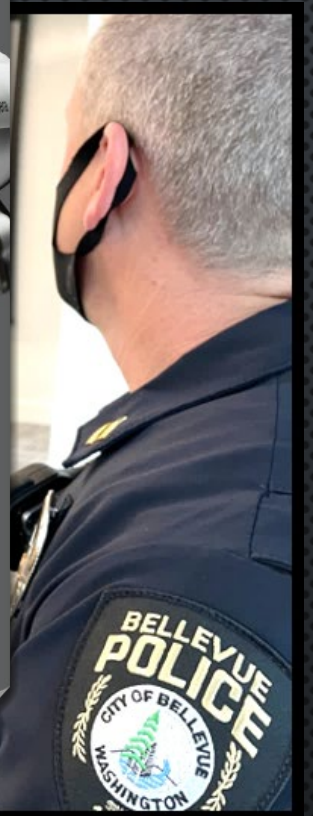
- **Investigation Basics**
 - Case building
 - Filing cases with law enforcement
 - Witness statements
- **Employee Safety**
 - WA Retail Assoc.
 - <https://washingtonretail.org/initiatives/public-safety-resources/>
- **Environmental Site Hardening**
 - Camera selection and placement
 - Product Protection



WR
WASHINGTON RETAIL
ASSOCIATION

Guide to Navigating Public Safety & Retail Crime

A Washington Retail Association Workplace Safety



Annual Virtual Conference



Conference 2022

September 28th & 29th

Day 1: 9 AM to 1 PM & Day 2: 9 AM to 12 PM PST



WAORCA Website (Auror Crime Intelligence Platform)

WAORCA.ORG

- Free to sign up
- Exclusively Law Enforcement and LP / AP
- Get alerts and information from participating states
- Customizable feed and alerts

The screenshot displays the WAORCA website interface. At the top, there is a navigation bar with 'Feed', 'Browse', and 'Dashboards' options, along with a search bar and a '+ Add event' button. The main content area features a bulletin titled 'Bulletin b1101' issued 21 hours ago. The bulletin includes a photo of a man in a light blue shirt and cap, a date of November 10, 2022 at 12:41 PM, and details about identifying individuals responsible for shoplifting cases. The audience list includes various state abbreviations and '3,344 people notified'. A yellow button at the bottom of the bulletin says 'I have information'. To the right of the bulletin is a 'Show me' filter panel with sections for Organizations, Locations or groups (with checkboxes for ORCA: ORCAOR, STATE: WASHINGTON, and STATE: NEW YORK), Events, Non-crime events, People, Vehicles, Photos, Comments, and Bulletins.

SIGN UP AT WAORCA.ORG

POWERED BY AUROR



**THE PROSECUTION OF
RETAIL CRIMES CASES:
KEY POINTS FOR RETAILERS AND
INVESTIGATORS**

Nicole Lawson, Retail Crimes DPA

King County Prosecuting Attorney's Office

WHAT PROSECUTORS MUST PROVE IN RETAIL CRIMES CASES

There are three main topics that must be proven when prosecuting a retail crime:

- 1) The identity of the defendant who committed the crime
- 2) What was stolen
- 3) The value of the stolen items/merchandise

WHAT PROSECUTORS MUST PROVE IN RETAIL CRIMES CASES

- General Proof Issues:
 - It's not what we know, it's what we can prove
 - We must be able to prove it beyond a reasonable doubt
 - And must take into account the presumption of innocence
 - We must be able to prove it using only evidence that is admissible in court
- General Evidence Issues:
 - If there is a key piece of evidence, we generally must review it BEFORE charges can be filed
 - The more crucial the piece of evidence is to prove an element of the crime, the more important it is that we review it prior to filing

1) PROOF THAT THE DEFENDANT DID IT

- Prosecutors must be able to prove beyond a reasonable doubt—using only evidence admissible in court—that the suspect/defendant is the one who committed the crime
- The evidence needs to do more than establish that the defendant's appearance is consistent with the person who committed the crime
- Evidence that helps to establish the defendant's identity is necessary for successful prosecution
 - Types of evidence? See the checklist

2) PROOF OF WHAT WAS STOLEN

- Prosecutors must be able to prove beyond a reasonable doubt—using only evidence admissible in court—what was actually stolen
 - Or, depending on the circumstances, what the defendant attempted or intended to steal
- The evidence to be more concrete and specific than “the defendant stole various merchandise from the store”
- Evidence that establishes what was stolen is necessary for successful prosecution.
 - Types of evidence? See the checklist

3) PROOF OF VALUE

- Prosecutors must be able to prove beyond a reasonable doubt—using only evidence admissible in court—the actual value of the items stolen
 - Or, depending on the circumstances, the value of the items that the defendant attempted or intended to steal
- The evidence needs to be more concrete and specific than “the defendant stole approximately \$2500 worth of merchandise”
- Evidence that establishes the value of the stolen merchandise is necessary for successful prosecution
 - Types of evidence? See the checklist

HOW CAN RETAILERS AND BUSINESS OWNERS HELP?

- When a theft occurs, report it to the police.
- Document incidents and loss in store logs/reports
- Save surveillance footage
- If available, document other helpful information such as appearance of the suspect, license plate numbers, etc.
- Identify a point of contact
- Put the incident in context
- Have this information available for law enforcement

QUESTIONS?

Nicole Lawson

NLawson@kingcounty.gov

Desk: 206-263-3435

Cell: 206-790-5376

KCPAO EVIDENCE CHECKLIST FOR RETAIL CRIMES

By: Nicole Lawson, Deputy Prosecuting Attorney

November 15, 2022

In order to prosecute retail crime cases, the King County Prosecuting Attorney's Office (KCPAO) must have:

1. Sufficient proof of the defendant's identity;
2. Sufficient proof of what the defendant stole, attempted to steal, or intended to steal;
3. Sufficient proof of the value of the items that the defendant stole, attempted to steal, or intended to steal; and
4. Actual copies of key pieces of evidence.

In addition, there is other information that is extremely helpful for the KCPAO to have. The checklists and comments below are intended to be a guide for law enforcement officers (LEOs) and loss prevention officers (LPO) regarding these topics and common issues with them. However, this document is not exhaustive and is intended to supplement other KCPAO trainings and materials on these topics. Nothing in this document supersedes or takes precedence over the KCPAO's ethical obligations or formal Filing And Disposition Standards (FADS).

PROOF OF IDENTIFICATION:

- In order to prosecute any crime, the KCPAO must be able to prove beyond a reasonable doubt—using only evidence admissible in court—that the defendant is the one who committed the crime.
- Common evidence useful in establishing the defendant's identity in the retail crimes context includes:
 - Surveillance footage of the incident;
 - Known photographs of the defendant;
 - Statements from an LPO or employee identifying the defendant via an appropriate LEO-conducted identification procedure (e.g. photomontage or showup); and/or
 - Statements from an LEO, LPO, or employee directly identifying the defendant.
 - Identification based on such a statement needs to be more than a bare assertion from the LEO, LPO, or employee that they know the individual to be the defendant. The statement needs to also document why and how the LPO/LEO/employee knows this.
 - Keep in mind that, under Washington law and the rules of evidence, a witness will generally not be allowed to testify at trial that they recognize the defendant in a photo or video unless there is also evidence explaining why the witness is better able to make that determination than the members of the jury.

- Information establishing the defendant's identity and how it is known should be included in written reports/statements and referenced in the certification for determination of probable cause.

PROOF OF WHAT WAS TAKEN:

- In order to prosecute a retail crime, the KCPAO must be able to prove beyond a reasonable doubt—using only evidence admissible in court—what the defendant took, attempted to take, or intended to take. This does not necessarily mean that every single item must be documented. However, it does generally require something more precise than “various items of merchandise.”
- Common evidence useful in establishing what was taken or what the defendant attempted or intended to take includes:
 - Surveillance footage of the incident;
 - Photographs or other documentation of items recovered (either abandoned or in a search incident to arrest or other lawful search of the defendant); and/or
 - A statement from an LPO or employee describing what items the defendant took or attempted to take.
 - Even if an LPO or employee cannot say exactly what was taken, an estimate—along with an explanation of what the estimate is based on—can be helpful.
 - Keep in mind that, under Washington law and the rules of evidence, a witness is generally not allowed to testify as to what someone else told them (i.e. hearsay), so—for example—an LPO who did not actually witness the events will not be allowed to testify as to what another employee told them was taken. As a result, such statements need to be provided by the person who actually witnessed what happened. If an LEO or LPO provides a summary of what someone else saw, they **MUST** document who the actual observer was and provide information as to how to contact that person in case they are needed as a witness.
- Information establishing both what the defendant took or attempted or intended to take and how that is known should be included in written reports/statements and referenced in the certification for determination of probable cause.

VALUE OF THE MERCHANDISE:

- In order to prosecute many retail crimes, the KCPAO must be able to prove beyond a reasonable doubt—using only evidence admissible in court—the value of what the defendant took, attempted to take, or intended to take.
- Common evidence useful in establishing value includes:
 - Itemized lists generated by the retailer that show the value of the items in question. Examples of such lists include or can be found in:
 - Receipts;

- Inventory logs;
 - Internal retailer investigation reports.
- Photographs or other documentation of the price tags affixed to recovered items of merchandise; and/or
- A statement from an LPO or employee describing the items and their respective values.
 - Even if an LPO or employee cannot say exactly what was taken, an estimate can be helpful.
 - To be useful, an estimate must do more than simply make a conclusory statement. It would generally be insufficient, for example, to simply say “the defendant stole approximately \$2500 worth of merchandise.” Rather, the basis for the estimate must also be explained so that the likely accuracy of the estimate—and the weight the finder of fact will give it—can be assessed.
 - For example, even if the witness cannot say exactly what was taken, something like the following would probably be sufficient:
 - “I could not tell exactly how many pairs of jeans the person took. However, they took every pair of jeans on the display rack and that rack had recently been restocked with 10-15 pairs of jeans. Each pair of jeans on that rack retails for \$129.99, so I can estimate that the person stole around \$1300 - \$1950 worth of merchandise.”
 - Keep in mind that, under Washington law and the rules of evidence, a witness is generally not allowed to testify as to what someone else told them (i.e. hearsay), so—for example—an LPO who did not actually witness the events will not be allowed to testify as to value if that value was actually determined or estimated by another employee. As a result, such statements need to be provided by the person who actually determined or estimated value. If an LEO or LPO provides a summary of this information, they MUST document who the actually provided it and provide information as to how to contact that person in case they are needed as a witness.
 - Depending on the circumstances, it may be possible for different witnesses to provide information on: 1) what was taken; and 2) the value of what was taken.
- Not every retail crime necessarily requires proof of value (e.g. value is not an element of either Burglary in the Second Degree or Robbery in the Second Degree). However, it is still helpful for the KCPAO to have information regarding value even in these cases. For example, how the KCPAO charges or resolves a given retail crimes case under its FADS can be impacted by the value. Similarly, even when value is not an element of the offense, it can be highly relevant to a court imposing sentence following a conviction. As a result, efforts should generally be made to obtain documentation of value even when it is not an element of the crime.

- Information establishing both the value of what the defendant took, attempted to take, or intended to take and how that value was determined should be included in written reports/statements and referenced in the certification for determination of probable cause.

COPIES OF KEY PIECES OF EVIDENCE:

- If there is a key piece of evidence, the KCPAO must typically review it BEFORE charges can be filed. (This is due to both practical considerations and our ethical obligations as prosecutors.) The more crucial the piece of evidence to proving an element of the crime, the more important it is that we review it prior to filing. KCPAO DPAs often find themselves having to delay filing a case because a certain item or document—that we know exists and that LPOs or LEOs have—wasn't included in the materials initially sent to us.
- Frequent examples of this include:
 - Evidence of what was taken and/or the value of what was taken
 - Except in rare circumstances, the KCPAO must generally have this evidence in its possession before charges can be filed
 - Surveillance footage
 - Except in rare circumstances, the DPA must personally review the footage before making a filing decision
 - Trespass Notices
 - The defendants involved in retail crimes cases have often previously been trespassed from the location they are accused of stealing from. If a defendant was previously trespassed, each subsequent entry to commit a theft would constitute a second-degree burglary.
 - To prosecute a burglary based on this, the KCPAO will need evidence establishing that the defendant was actually previously trespassed. This evidence can and should include, when available:
 - A copy of the written trespass notice from the retailer that includes the date of the trespass, the length of the trespass, the locations the defendant is trespassed from, and information about the person being trespassed including name and date of birth; and/or
 - Body worn video of the defendant being trespassed by an officer.

OTHER HELPFUL INFORMATION:

- It can save a lot of time and effort (for everyone) if the KCPAO has the name and contact information for a point of contact at the store who a DPA can reach out to directly to ask follow-up questions and get outstanding materials.
 - This person does not necessarily have to have witnessed the crime. What is more important is that the person is someone who can obtain and provide surveillance videos

and documentation and who can help the DPA in getting in contact with the actual witnesses.

- For LPOs: Provide this information to law enforcement each time you make a report and/or include it with any documentation you provide.
- For LEOs: Ask for this information each time you respond to a retail crime and include the contact's name and information in your report.
- Information regarding previous contacts with the defendant at a given store or stores can be relevant and extremely helpful for KCPAO to know.
 - Such previous contacts:
 - Often may be aggregated with the current one in order to reach statutory minimums; and/or
 - Can be a basis for KCPAO to make an exception to our FADS in certain circumstances.
 - However, we need information beyond a mere reference. (For example, a cursory statement like "this is the fifth time the defendant stole from this store this week" would be insufficient for either of the above purposes.)
 - Wherever possible, provide the case/incident number and any store materials from prior instances referenced.

Innovation Best/ Thrift Electro Case Investigation

Mike Lang

Assistant United States Attorney

Investigation

- Auburn Police/FBI joint investigation
- July 2018 – July 2019
- Targets: Two pawnshops, Aleksandr Pavlovskiy

Thrift Electro Pawnshop
20 Southwest 7th St, Renton



Warehouse

22710 – 72d Ave. South, Kent



Investigation

- LeadsOnline Data
- Controlled undercover buys
- Interviews of shoplifters
- Police surveillance
- Online sale records
- Bank records
- Email account records
- High volume sales records
- US Postal Records

Federal Search Warrants: July 2019

AO 93 (Rev. 11/13) Search and Seizure Warrant

CERTIFIED TRUE COPY
ATTEST: WILLIAM M. McCOOL
Clerk, U.S. District Court
Western District of Washington

By [Signature]
UNITED STATES DISTRICT COURT

Deputy Clerk

for the
Western District of Washington

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address))
The Business Premises of 25628 and 25630 102nd Pl SE,)
Kent, Washington (Location 1))
)

Case No. MJ19-311 (1)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Western District of Washington
(identify the person or describe the property to be searched and give its location):

The Business Premises of 25628 and 25630 102nd Pl SE, Kent, Washington, more fully described in Attachment A-1

Federal Crimes Under Investigation

- **Transportation of stolen goods in interstate commerce (18 U.S.C. 2314)**
- **Sale of stolen goods in interstate commerce (18 U.S.C. 2315)**
- **Conspiracy (18 U.S.C. 371)**
- **Money Laundering (18 U.S.C. 1956)**















Results:

- **Guilty Plea: Transportation of stolen goods in interstate commerce**
- **Guilty Plea: Possession of child pornography**
- **Forfeiture:**
 - **Mercedes Sprinter Van (et al)**
 - **All “inventory seized from defendant’s pawnshops and warehouses . . . on July 10, 2019 that victim retailers have identified as stolen.”**
- **Sentence: 6 years in prison, 15 years of supervised release (after release from prison)**
- **The judge cited “the stunning amount of stolen material.”**