

The Guardian



12 years in jail for shoplifting: how Walmart is helping prosecutors hike up sentences

The case of a man facing 12 years in prison for shoplifting shows a growing trend in America: corporations successfully pushing state prosecutors to increase shoplifting charges to felonies

Ica Fishka, for The Appeal
The most stores are busy processing the returns for unwanted gifts - when Curtis Lawson entered a Walmart in Knoxville, Tennessee. He had a receipt for \$39.57 in purchases made earlier that month. He needed cash. He walked through the store, picking up the same items he had purchased previously - dishwasher detergent, Oral-B refills, and a pair of girl's jeggings - and put them in a shopping bag. He brought them to the register, returned the items using his receipt, and received \$39.57 in cash. Lawson had committed what is known as "return fraud" - pretending to return items that you didn't buy.

When Lawson walked into the Walmart empty-handed, Walmart loss prevention officer Robert McAuley decided he looked suspicious and watched him on the security cameras. He watched Lawson pick up the clothes and return them at the customer service desk. McAuley immediately detained Lawson, who admitted right away that he had stolen the items, and Lawson was eventually charged with shoplifting and criminal trespass. What came next was a startling encounter with a local criminal justice system heavily influenced by a big box retailer's desire to reduce shoplifting and a prosecutor's penchant for punishing those who are more unlucky than dangerous.

Lawson had at least three outstanding warrants, most of which were related to traffic violations, including a DUI. Lawson's attorneys admitted that Lawson had a drug addiction and sometimes shoplifted to support his habit, but noted that he had never been accused of being a threat to anyone's safety. Because of the outstanding warrants, his bail was set at \$2,500 total, and he was immediately taken to jail. On 9 January, a warrant was issued for Lawson that escalated his shoplifting charge to a felony because, according to the arrest affidavit, Lawson was not allowed to be inside Walmart at all. Therefore his return fraud was a burglary - a felony punishable by up to 12 years of prison. His bail was jacked up to \$5,000.

In Tennessee, as in many states, shoplifting items under \$1,000 is a misdemeanor. But, in the past few years, the Knox county district attorney's office has been prosecuting people like Lawson under the burglary statute, which under Tennessee law is defined as "unlawfully and knowingly entering a building without the consent of the owner and committing a theft".

It turned out that Lawson had been arrested for shoplifting a bra over four years earlier from another Walmart location. That time, Lawson was issued what's called a "Notification of Restriction from Property" by Walmart loss prevention staff. This piece of paper essentially restricts someone's access to Walmart by officially "evicting" them from the property forever. The notice informs Lawson that he is "no longer allowed on property owned by Walmart Stores Inc or in any area subject to Walmart Stores Inc's control" and it includes "all retail locations or subsidiaries". Such documents, according to the loss prevention officer at Lawson's trial, are regularly issued at Walmarts across the US.

Lawson's attorneys argued that charging their client with felony burglary was not appropriate because the store, rather than being a private residence or a warehouse, was open to the public. Assistant district public defender Jonathan Harwell, who has worked on similar cases and represents Lawson, believes that Walmart's notifications are confusing. They are not consistently enforced: Lawson, for example, had entered Walmart locations countless times since receiving his notification. He had made returns, purchased goods, and even showed his ID to buy food using his EBT card, all without a problem. There aren't any "no trespassing" signs around Walmart and no other indication that potential shoppers are being checked when they enter the store. And, most likely, they aren't. The only people who have access to the notices are loss prevention staff.

The law in Tennessee is confusing when it comes to prosecuting shoplifters on felony charges, so the decision is left to local prosecutors. A case in another county similar to Lawson's, *State v Danielle Chandria Jensen*, was dismissed when the judge decided the felony charge wasn't appropriate. The appellate court that upheld the dismissal wrote scathingly that "the prosecutor had a strong desire to prosecute all individuals for burglary who had been arrested for shoplifting or theft who previously had been banned from the relevant store, a questionable goal when the harshness of a felony conviction and sentence for burglary is compared to the wrong committed, even for a repeat shoplifter." The case was vacated by a higher court on a different issue, so the law remains unsettled.

Charme Allen, the Knox county district attorney, vowed after the Jensen appellate decision to keep up-charging shoplifters anyway. When I asked her office about the policy, deputy district attorney general Kyle Hixson responded via email: "The District Attorney's Office prosecutes all business burglaries, whether the victim is a sole proprietor or a corporation, according to the provisions of the state burglary statute. Business burglary prosecutions of this type are not permitted for first-time offenders, as the defendant must be placed on the business' no-trespass list due to prior criminal

activity occurring on the victim's property. These prosecutions have been a valuable tool to protect businesses from repeat offenders and to ensure that Knox County remains a safe place for businesses to operate.”

Walmart's trespass notifications are part of the extension of private influence over parts of the criminal justice system that benefit third parties, like retailers. Walmart, in particular, has come under fire in the past for hiring too few employees (a cost-cutting measure), and then relying heavily on publicly funded local police to handle their shoplifting problem. I have previously written about Walmart's "restorative justice" program, a private anti-shoplifting program in California that a superior court judge found to amount to illegal extortion. Around 2008, according to testimony from Lawson's preliminary hearing, Walmart began implementing the trespass system, which allows them to keep records on who has shoplifted before.

Across the country, more state legislatures are increasing the penalties for multiple shoplifting offenses, a move that has been encouraged by the National Retail Federation, a trade group that lobbies on behalf of retail businesses. The Federation represents the interests of both small businesses - mom-and-pop shops - and big megastores like Walmart and Dollar Store. According to the trade publication Loss Prevention Media, "legislation has become a primary tool used in combating organized retail crime".

Little reliable information is available about "organized retail crime" or about shoplifting in general. The only information out there comes from the National Retail Federation itself. In a 2014 study, the NRF said that shoplifting accounted for 38% of shrinkage (all lost inventory), or about \$44bn in losses. A valuation by Forbes estimated that, by these numbers, Walmart loses under \$2bn in shoplifting. The latest studies by the NRF have focused on what they call "Organized Retail Theft", which an NRF study says affects "9 out of 10 retailers", creates a loss of "\$726,351 per every \$1bn in sales", and involves people "exhibiting much more aggression".

In Tennessee, the push to make penalties for shoplifting harsher came from the Tennessee Retailer Association and the state representative from Knoxville, Jason Zachary, whose profile notes that he is a small business owner. Notes from the legislative sessions indicate that the provision, which would punish retail theft, gift-card fraud, and return fraud more harshly would "increase recurring local revenue by an amount exceeding \$20,000 per year". The retailer's associations argue that shoplifting hurts local government by decreasing the sales taxes collected. The legislation also allows local law enforcement to keep the value of stolen gift cards as forfeiture money.

Other states are considering similar laws under the guise of preventing "organized retail crime". For example, in California, the state retailer's association has banded together with prosecutors and sheriffs to support a bill that would increase the penalties for shoplifting. These lobbyists argue that recent changes to California's laws have made it difficult for law enforcement to detain and prosecute shoplifters, which is hurting their bottom line.

Lawson was convicted of burglary in March. He is still waiting for his sentencing hearing, but because of the burglary charge, his options for parole or alternative sentencing are limited. A representative from the Knox county DA's office pointed to Lawson's long list of felony charges, indicating that he is likely to receive the maximum sentence of 12 years in prison. Lawson's attorneys in the public defender's office have noted that these felony prosecutions have increased since the 2014 election of the current Knoxville district attorney, Charme Allen, who vowed to crack down on crime and has prosecuted a large number of cases under the state's gang statute, which was recently struck down by the Tennessee court of criminal appeals for being too broad. In the meantime, it appears that the new law is being used not to prosecute dangerous retail gangs, but rather to penalize those who can least afford it, like Lawson.

Jessica Pishko is a writer in Dallas, Texas, who frequently covers incarceration and social justice issues. She used to practice corporate law, specializing in securities fraud, and representing death penalty clients and victims of domestic abuse pro bono. For more, click here.

Looking for more great work from The Appeal, the national outlet for criminal justice journalism and commentary? Try these links:

*The Secret Story of Corruption Behind Meek Mill's Incarceration
'We Can Make Him Disappear': The Power of County Sheriffs
The Hidden Police Violence Epidemic Behind a 'Swatting' Death*

Since you're here...

... we have a small favour to ask. More people around the world are reading The Guardian's independent, investigative journalism than ever before. We've now been funded by over one million readers. And unlike many news organisations, we have chosen an approach that allows us to keep our journalism open to all. We believe that each one of us deserves access to accurate information with integrity at its heart.

The Guardian is editorially independent, meaning we set our own agenda. Our journalism is free from commercial bias and not influenced by billionaire owners, politicians or shareholders. No one edits our editor. No one steers our opinion. This is important as it enables us to give a voice to those less heard, challenge the powerful and hold them to account. It's what makes us different to so many others in the media, at a time when factual, honest reporting is critical.

Every contribution we receive from readers like you, big or small, goes directly into funding our journalism. This support enables us to keep working as we do - but we must maintain and build on it for every year to come. **Support The Guardian from as little as \$1 - and it only takes a minute. Thank you.**

Support The Guardian



Topics

- Police
- Guardian Selects
- US crime
- Law (US)
- features