

**CONFIDENTIAL - FOR POLICE AGENCY USE ONLY  
DECLINE**

Suspect(s): Aaron Anthony Pelley

Crime: Theft In The First Degree

Case No: 2018-208709

Investigator: Detective Nicolas F Meyst

Agency: Seattle Police Department

We are declining to file this case in Superior Court for the following reasons:

- A. Case is being returned for filing in municipal or city court.
  - B. Case is being sent to our District Court Unit for review.
  - C. Case is being declined for non-evidentiary reasons.
  - D. Case is being returned because it is legally insufficient.
  - E. Case has been used as part of a plea package. (Cause# \_\_\_\_\_)
  - F. Case is being declined at this time because we have not received the materials requested on \_\_\_\_\_. A copy of the PRE-MI that was previously sent to you is attached for your convenience.
- DO NOT DESTROY EVIDENCE**, filing on co-defendant(s).

Facts:

See Certification for Determination of Probable Cause

Discussion:

Thank you for all of SPD's work and effort on this case. Under KCPAO's Filing And Disposition Standards (FADS), we can only file charges in property crimes such as this one if "the admissible evidence is of such convincing force as to make it probable that a reasonable and objective fact-finder would convict after hearing all the admissible evidence and the most plausible defense that could be raised." Unfortunately, the evidence in this case is insufficient to meet that standard.

Here, the suspect (Aaron Pelly) and the complaining witness (Anne van Leynseele) were partners in a law firm. These allegations came to light during what appeared to be a very contentious dissolution of that partnership. Much of the evidence of Pelley's alleged criminal activity is contained in materials gathered

by van Leynseele in preparing for, and conducting, an arbitration of her civil claims against Pelley. Many of these civil claims were essentially identical to the referred criminal allegations. As these materials appeared to potentially contain privileged communications, we had them reviewed by a DPA in our Special Operations Unit serving as a “taint team.” The conclusion of that DPA was that much of these materials appeared to be covered by the attorney-client privilege and that the relevant clients of the firm have not waived confidentiality.

Given all of the above, we do not believe that a jury is likely to convict after hearing the admissible evidence and the most plausible defense that could be raised. As an initial matter, as described above, much of the relevant information in this case is contained in materials that appear to be covered by a privilege that has not been waived by the clients of the firm and cannot be waived by van Leynseele. As a result, these materials will likely be inadmissible at trial. And, without them, the State will not be to prove this case—i.e. the State will not be able to establish what actually happened.

Moreover, even if these materials were admissible, a jury would still be unlikely to convict. In order to convict a defendant of theft or crimes relating to stolen property (e.g. trafficking in stolen property), the State must prove both that the defendant took property belonging to another *and* that the defendant acted with the criminal intent to wrongfully deprive the true owner of that property. A similar analysis applies regarding crimes relating to damaging or destroying property. A defendant who truly believes that property is his and/or that he is legally allowed to take, keep it, or dispose of it has not committed the crime of theft. That is the case even if the defendant’s belief is actually incorrect. As a result, it is usually extremely difficult for the State to prove a crime in situations in which the defendant can portray what occurred as being a dispute between business partners as to who was entitled to what and/or how money should be managed. Similarly, a defendant who mistakenly misdirects or mishandles funds has also not committed the crime of theft. As a result, it is usually extremely difficult for the State to prove a crime in situations in which the defendant can portray himself as a “sloppy” business-person who mismanaged funds due to poor recordkeeping and accounting of financial transactions rather than with criminal intent.

Unfortunately, this case presents both scenarios. Here, Pelley will almost certainly assert at trial that the transactions in question were either things he was entitled to do or were the result of (non-criminal) mistakes on his part. While there does appear to be evidence from which a jury might find that Pelley was not actually entitled to do various things that he did, there does not appear to be sufficient evidence to make it probable that the jury would find beyond a reasonable doubt that he acted with the requisite criminal intent. That is particularly the case given

that the jury would be instructed that a defendant is presumed innocent and that the burden of proof on every issue is on the State.

For all of the above reasons, we must decline to file charges at this time.

Deputy: \_\_\_\_\_ Date: \_\_\_\_\_

Telephone Number: (206) 477-1181

Supervisor: Patrick Hinds Date: 04/02/2021

Detective contacted: No. Detective Meyst has left SPD. Checked earlier this week and confirmed that SPD has not reassigned the case to anyone.

Criminal Division, King County Prosecuting Attorney's Office, (206) 477-3733