

Justice # CW211075
Data # 0684218

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA

Plaintiff,

vs.

MICHAEL F GUTGSELL,

Defendant.

D.O.B. 10 September 1948.

ADDRESS: 701 N 40 ST

OMAHA, NE 68131

DR. LIC.: G01294865 NE

AR# CW211075

RB#

CMS# CW211075

JG

CR# 21 - 16711

**CRIMINAL COMPLAINT
(FELONY)**

The State of Nebraska hereby complains to the Court that MICHAEL F GUTGSELL is alleged to have violated the following laws of the State of Nebraska:

COUNT 1: ATTEMPTED THEFT BY UNLAWFUL TAKING \$5000 OR MORE CLASS IIIA FELONY

On or about 12 October 2018 through 12 January 2020, in Douglas County, Nebraska, MICHAEL GUTGSELL did then and there attempt to take or exercise control over movable property of THEODORE RICHLING with the intent to deprive THEODORE RICHLING thereof, specifically: \$154,732.00, the said property being valued at five thousand dollars or more, in violation of Neb. Rev. Stat. §28-511 & 28-518(1), & 28-201(4)(c) a Class IV Felony. 20761 28-201(4)(C)

COUNT 2: VULNERABLE ADULT ABUSE Class IIIA Felony

On or about 12 October 2018 through 12 January 2020, in Douglas County, Nebraska, MICHAEL GUTGSELL did then and there knowingly and intentionally cause or permit THEODORE RICHLING, a vulnerable adult, to be: physically injured; or unreasonably confined; or sexually abused; or exploited; or cruelly punished; neglected; or sexually exploited, in violation of Neb. Rev. Stat. §28-386 a Class IIIA Felony.

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I, KATIE L. BENSON, Deputy County Attorney, allege that this Criminal Complaint is true based upon my information and belief.



KATIE L. BENSON, # 22867
Deputy County Attorney

Witnesses for the State:
KELLY A NOWNES #1810
WILLIAM D MULLIGAN DCAI #F025
SCOTT HASTINGS

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IN THE COUNTY OF DOUGLAS COUNTY, NEBRASKA
CRIMINAL BRANCH

THE STATE OF NEBRASKA,
Plaintiff,

vs.

DOC. _____ NO. _____

Michael F. Gutzsell (09/10/1948),
Data number 0684218
1640 Helens Ln
Yutan, NE 68073

Defendant,)

AFFIDAVIT OF COMPLAINING

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STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

I, Officer Kelly Nownes, #1810, being first duly sworn on oath, deposes and says that this affiant is an officer of the Omaha Police Department, City of Omaha, Douglas County, Nebraska. This affiant further states, that, based upon the investigation of Omaha Police Officer Kelly Nownes 1810 and William D. Mulligan F025 investigator of the Douglas County Attorney's Office, Douglas County, Nebraska, there are grounds for issuance of an arrest warrant for the above defendant:

A/O Kelly Nownes was assigned the case and advised by supervisor Sgt John Bahle, who had been contacted by that Douglas County Attorney's Office (DCAO) investigator William Mulligan, that DCAO had initiated an investigation on Archdiocese of Omaha complaint. A/O Nownes then conferred with Mulligan, who advised that he would handle the preliminary investigation as requested by Douglas County Attorney Donald Kleine. DCAO Investigator Mulligan submitted the following narrative detailing his investigation of Exploitation of a Vulnerable Adult and Theft by Deception by Michael F. Gutzsell from Rev Theodore L. Richling Jr. a retired priest from the Archdiocese of Omaha.

On Friday, 3 September 2021 Rev. Scott HASTINGS and Pat FLOOD an attorney for the Omaha Archdiocese of the Catholic Church met with Douglas County Attorney DON KLEINE and Deputy County Attorney BRENDA BEADLE their complaint of theft by former employee Rev Michael F. Gutzsell. Rev Hastings informed Kleine that they had already met with the Sarpy county Sheriff's Office to file a complaint

against Gutsell. FLOOD advised Kleine that during a recent audit of the finances of the St. Joseph's Catholic Church in Springfield Sarpy County, NE auditors found irregularities in the finances of the church. FLOOD further advised that Father Michael GUTGSELL, the parish priest at St. Joseph's, from October 2019 through July 2021 had the bookkeeper at the church write out 76 checks to GUTGSELL totaling approximately \$123,000. FLOOD advised that HASTINGS and the Archbishop brought GUTGSELL in for an interview on 08-02-21. During that interview GUTGSELL admitted to the financial irregularities and stated that he had his bookkeeper at the church Sharon VANTASSELL write the checks out to him. GUTGSELL advised HASTINGS that the money was then given to a homeless man that he had met in May 2013. Gutsell told Hastings that the homeless man was Michael Barrett, whom he first met while he was pastor at Cathedral Church on 40th and Cuming in Omaha.

Flood stated that they asked to talk with the Kleine because Gutsell had admitted to taking approximately \$180,000.00 from Father Theodore Richling a deceased Archdiocese priest and given the money to Barrett. Flood informed Kleine that the Richling estate was willed to the Archdiocese and they believe the money had been stolen by Gutsell from the estate. Gutsell is the appointed Personal Representative for the Richland estate. Hastings stated that the Archdiocese directed Rev Gutsell resign as pastor of St. Joseph's Catholic Church in Springfield, NE., and placed him on indefinite administrative leave based on the Archdiocese investigation and Gutsell's admission of theft/misappropriation of parish funds.

Don Kleine determined there was enough information provided at the meeting to initiate an investigation. Kleine instructed Mulligan to subpoena bank records all the accounts associated with the information provided by the Archdiocese.

I prepared and served 3 subpoenas and one search warrant to the following financial institutions where either Theodore L. Richling, JR or Michael F. Gutsell, to include POA authority, was thought to have accounts:

American National Bank (2 subpoenas - 5 August 2021/13 August 2021)

Bank of the West (subpoena – 5 August 2021)

Ameriprise Financial Institution (search warrant – 30 August 2021)

I also prepared and served a subpoena to the Immanuel Fontenelle Nursing Home for Theodore L. Richling, JR physical and medical reports on 14 September 2021.

The three financial intuitions all responded by 1 September 2021 and provided the requested financial records. Theodore L. Richling, JR had a personal checking account at American National Bank Account #2794160 which was opened 11 October 2004. Michael F. Gutsell was added to the account with POA signature authority on 27 January 2017. This account was closed on 11 May 2020. Richling also had an estate account #32384506, which listed Michael f. Gutsell as Personal Representative. Bank of the West responded with a personal account #565056835 owned by Michael F. Gutsell. Ameriprise responded with data for 3 brokerage accounts and 1 Retirement account accounts owned by Theodore L. Richling, JR. The brokerage account #

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765619358133; 546897679133; 481668283133; and A retirement Annuity account t#930082249903004 all owned by Theodore L. Richling. Michael F. Gutsell was placed on Brokerage accounts # 546897679133; 481668283133; and Retirement Annuity account t#930082249903004 as POA January 2017. Review of these documents revealed Gutsell had directed transactions for his own personal use.

American National Bank account #2794160 – Richling personal checking account: Gutsell wrote checks to himself or made cash withdrawals:

2018 Checks	27	Total	\$29,408.00
2018 Cash W/D	12	Total	\$10,360.00
2019 Checks	84	Total	\$137,974.00
2019 Cash W/D	4	Total	\$1,300.00

Ameriprise Retirement account # 930082249903004 – Richling's account: Gutsell directed the sale of Richling's annuity 11/22/19 for \$93,373.74 and transferred the proceeds to Richland's brokerage account # 546897679133.

Ameriprise Brokerage account # 546897679133 –Richling's account: Gutsell transferred \$19,800.78 to Richling's American National account # 2794160 on 8/16/19. Gutsell transferred \$40,000.00 Richling's American National account # 2794160 on 11/26/19. Gutsell purchased mutual funds for \$50,306.00 11/26/19.

The review of these records document the theft of \$179, 042.00 from Theodore L. Richling's American National Bank account and also the movement of funds from Richling's Ameriprise accounts totaling \$59,800.79 to Richling's American National Bank account. The movement of funds from Ameriprise was primarily done to maintain a healthy cash balance in Richling's checking account that Gutsell was using to write himself checks.

On 14 September 2021 Mulligan initiated a subpoena to Immanuel Fontenelle for medical and physical information on Theodore L. Richling. Based on the subpoena a meeting was scheduled for 15 September 2021 to meet with Immanuel Fontenelle personnel Cindy Leo-Gofta, Director of Nursing and Adam Kuenning, Corporate Legal counsel. The meeting was held at Immanuel Fontenelle 9 am, 15 September 2021. Mulligan initiated the interview explaining the basis of the interview was to document/assess former resident/patient Theodore L. Richling, Jr's medical and physical status while he was a resident of Immanuel Fontanelle and not to discuss his care or the quality of care provided by the facility or its staff. Cindy Leo-Gofta stated Richling arrived 20 January 2017 and was a resident until his death on 23 December 2019. Cindy said Richling had broken his femur in a fall at his previous residence and was still in recovery when he arrived. He was cognitive dysfunctional; diagnosed with late onset Alzheimer's, dementia, and diabetes. Within three days of arriving at Immanuel Fontenelle Richling suffered a CVA/stroke and was sent to the hospital. The stroke acerbated his cognitive dysfunctions and physical limitations. Cindy described Richling's physical status as ambulatory, Central Division broken femur. She stated he always used a wheel chair. It took 4 individuals and a hoist to get him into bed when

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he arrived. He never was able to walk more than a few steps. When he arrived he could dress his upper body and feed himself. He needed assistance to get from his bed to a wheel chair, go to the bathroom, dress his lower body, taking his medications, and to take a bath or shower.

Mulligan asked if Richling was capable to paying his bills/ keeping a check book/ purchasing items/ moving around the facility. Cindy responded Richling was not able to handle any of his financial or medical decisions. His POA handled all of his financial decisions and tasks. Richland would become very agitated if he was faced with more than one decision. He did not possess the ability to make decisions and would become angry and yell if a situation arose that required a decision. He could not physically perform mass or attempt too.

Mulligan asked if any of these factors above change over the time he was a resident. Cindy confirmed that Richling's health never improved, but steadily declined. His diabetes got worse and had to be monitored daily with insulin administered as needed. Richling's ability to eat/swallow and drink became difficult and required staff to monitor and assist him. His medical condition further declined and Richling was given a colostomy bag. He became incontinent and needed diapers. He could not move himself in his bed and had to be manually rolled over in bed to prevent bed sores. During his last six months (June – December 2019) of life he required constant care. He became very sick, losing weight, his appetite and ability to eat or drink. His diabetes and dementia continued to ravage his memory and ability to function. Cindy stated that he had few regular visitors. Only his POA –Father Michael Gutsell and one of his brothers who lived in Omaha. Another individual named Steve, who was a lay person from the archdiocese would visit occasionally, but this person caused problems and would agitate Richling. Steve was banned from the facility.

Mulligan asked about his condition the last six months (Jul-Dec 2019) of his life. Cindy said that his last six months were not good. Richling's health was deteriorating fast and his quality of life was very poor. Richling began to have health problems that required frequent trips to the hospital. He was struggling to survive. His temperature would rise and fall uncontrollably and doctors could not find a reason or medication to help him. The staff held a meeting with Richling's POA Gutsell and Richling's brother to discuss a possible change in his care. The staff felt Richling was in his final phase of life and should be placed in hospice or final care. Gutsell and the brother were both opposed changing Richling's care. They insisted that the staff take all and any measures to keep Richling alive, even if this meant putting him on a feeding tube. Gutsell finally agreed to place Richling in hospice during his final days.

Mulligan's assessment from this interview is that Richling was a vulnerable adult, both physically and medically from the day he entered Immanuel Fontenelle and became increasingly vulnerable until his death on 23 December 2019.

On 2 September 2021 at approximately 1125 hours, ^{FILED} ~~Sandy~~ Douglas County Sheriff Investigator Paschall/1057 and Bill Mulligan from the Douglas County Attorney's Office interviewed ~~CRIM/TRAFF DIVISION~~

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the suspect in this case GUTGSELL, Michael (09-10-48) in interview room 3 at the Sarpy County Sheriff's Office. GUTGSELL's Attorney Joseph Naatz was also present. GUTGSELL advised that he was currently staying with his sister in Saunders County. Shortly thereafter Paschall read GUTGSELL his Miranda warnings from the Sarpy County Sheriff's Office Rights Advisory form and GUTGSELL answered yes to all the questions. After Paschall concluded reading the Rights form to him, gave GUTGSELL the form and he checked yes and signed the form indicating his willingness to speak with us. Gutgsell was being investigated by both Douglas and Sarpy Counties since he was accused of stealing funds from St Joseph's Catholic Church in Springfield, NE and from a retired priest residing in Omaha, NE. GUTGSELL advised in May 2013 he had been at the St. Cecelia Cathedral in Omaha for approximately eight years. As part of his duties he dealt with a lot of walk-in traffic of people with various needs. During that time he met a homeless man named Michael BARRETT and began assisting him by giving him something to carry his stuff and other needs. GUTGSELL advised that he dealt with BARRETT for approximately three months and then BARRETT disappeared for approximately three months.

GUTGSELL advised when BARRETT reappeared he began asking him for money. GUTGSELL advised that he told BARRETT if he helped him by giving him money that BARRETT would pay him back to which BARRETT agreed. GUTGSELL advised that he started out by giving BARRETT his own personal money which he meticulously documented. GUTGSELL advised that he reminded BARRETT on many occasions that he was to pay him back. GUTGSELL advised that in July 2014 BARRETT told him that there was a Social Security disability account that was being withheld from him and that if GUTGSELL would pay certain bills for him he would get that payout and then be able to pay GUTGSELL back. GUTGSELL advised me that for each bill that BARRETT asked money for it began to be "the next thing is the last thing." GUTGSELL advised me that BARRETT promised him that when he got the payout of his Social Security disability he would repay GUTGSELL. GUTGSELL was shown a NE OLN photo of BARRETT, Michael (06 -01-73) without any identifying information and GUTGSELL advised me that that was the party he knew as Michael BARRETT.

GUTGSELL was asked on several occasions if he was being extorted, manipulated or threatened by BARRETT and he denied it on each occasion. GUTGSELL advised that BARRETT was more persistent than any other person that he had assisted in the past. GUTGSELL advised that BARRETT was not Catholic or a parishioner of St. Cecelia Cathedral. GUTGSELL advised that he believed BARRETT was truly a very sick homeless individual that was in need of his assistance. GUTGSELL advised that BARRETT always wore a suit and also wore sunglasses because of his diabetes which made him a very noticeable person on the streets of Omaha. GUTGSELL advised that BARRETT took pride in his appearance and BARRETT had told GUTGSELL that he had assisted the police on several occasions by breaking up fights and stopping shoplifters. GUTGSELL advised me that he had given BARRETT approximately \$700,000 during the period of May 2013 to July 2021. GUTGSELL advised that he had given BARRETT approximately \$250,000 of his own personal monies by draining his personal accounts, his life savings, insurance and his

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retirement account. GUTGSELL advised when he emptied out his retirement account he incurred a steep tax bill and took out a loan to pay those taxes and is still paying on that loan at the present. GUTGSELL advised there was always a complication that came up and complicated BARRETT's ability to get his disability payout. GUTGSELL advised that BARRETT told him on many occasions "I won't let anything happen to you" and "I will pay you back".

GUTGSELL advised me that in December 2020 he filed a report with the Omaha Police because BARRETT had disappeared for approximately a month and he had no way of contacting him. GUTGSELL advised that BARRETT had disappeared several times over the time that he knew him but it was usually for a week to 10 days. Gutgsell stated he always gave Barrett cash, never checks. GUTGSELL advised that he always met with BARRETT in the front seat of his vehicle and it was normally in the Salvation Army parking lot in the vicinity of 25th and Cumming St. in Omaha Douglas County, NE. GUTGSELL advised me in early 2017 and also in October 2019 he ran out of personal monies and that is when he began taking money from other accounts he had access to. In early 2017 he began taking money out of Father Theodore Richling's personal accounts that he had power of attorney of. GUTGSELL advised that he believed he had taken approximately \$180,000.00 out of Richling's accounts. GUTGSELL advised that he had made some payments back to Father Richling's estate but not enough to cover the debt he accrued.

GUTGSELL was asked by Mulligan how much money he thought he had taken from St. Joseph's and he advised he thought the spreadsheet prepared by the archdiocese reflected approximately \$96,000 but his personal records reflected \$106,000. GUTGSELL also advised that he believed he had paid back approximately \$19,000.

Mulligan then asked Gutgsell if he understood him correctly, that he was admitting to stealing money from St. Joseph's Church and from Father Theodore Richling. Gutgsell responded "That is correct, I took \$106,000.00 from St. Joseph's Church and I also took \$180,000.00 from Father Richling's bank account" He stated that he considered them loans which he intended to repay. Mulligan asked if the loans were documented or there were any signed agreements, and Gutgsell stated no.

Based on the documentation received from the subpoenas and search warrant, the review of those document, the interview with staff at Immanuel Fontenelle, and the interview and admission of suspect Michael F. Gutgsell is sufficient evidence that Michael F. Gutgsell did commit abuse of a vulnerable adult and theft by deception from Theodore L. Richling, JR in the amount of \$179,042.00.

Affiant Officer Kelly Nownes #1810 and Investigator William Mulligan F025 state there is reasonable cause to believe the crime of Nebraska State Statute 28-512 Theft by Deception, > \$5,000 and Nebraska State Statute 28-386 Abuse of a Vulnerable Adult

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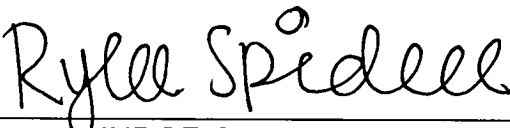
was committed and said defendant committed the said crime. Affiant therefore prays that a warrant be issued for the arrest of said crimes.

DATED this 13 day of October, 2021.

 1810

OMAHA NEBRASKA POLICE OFFICER

SUBSCRIBED AND SWORN to before me this 13 day of October, 2021.



JUDGE OF THE COUNTY COURT
OF DOUGLAS COUNTY, NEBRASKA
Deputy Clerk

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