

State of Minnesota
County of Hennepin

District Court
4th Judicial District

Prosecutor File No. 19A06859
Court File No. 27-CR-19-27057

State of Minnesota,

Plaintiff,

vs.

JERRY MICHAEL GOULD DOB: 09/28/1954

23140-129TH AVE NO
ROGERS, MN

Defendant.

COMPLAINT

Summons

The Complainant submits this complaint to the Court and states that there is probable cause to believe Defendant committed the following offense(s):

COUNT I

Charge: Insurance Fraud-Present False Representation/Conceals Facts-Claim for Payment

Minnesota Statute: 609.611.1(a)(2), with reference to: 609.05.1, 609.05.2, 609.52.3(3)(a)

Maximum Sentence: 5 YEARS AND/OR \$10,000

Offense Level: Felony

Offense Date (on or about): 04/01/2018

Control #(ICR#): 18001010

Charge Description: That on or about 4/1/2018, in Hennepin County, Minnesota, JERRY MICHAEL GOULD, acting alone or intentionally aiding, advising, hiring, counseling or conspiring with Lorraine Rose Gould, or otherwise procuring Lorraine Rose Gould to commit the crime, with intent to defraud, presented or caused to be presented, or prepared with knowledge or reason to believe that it would be presented, on behalf of an insured, claimant, or applicant to an insurer, insurance professional, or premium finance company, information that contained a false representation as to a material fact, or concealed a material fact concerning a claim for payment or benefit under an insurance policy for the purpose of depriving another of property or for pecuniary gain that had a value of, or causing a person to suffer aggregate economic loss of, more than One Thousand Dollars (\$1,000.00) but less than Five Thousand Dollars (\$5,000.00).

COUNT II

Charge: Theft-By Swindle

Minnesota Statute: 609.52.2(a)(4), with reference to: 609.17.4(2), 609.05.1, 609.05.2, 609.52.3(3)(d)(iv), 609.52.3(3)(a)

Maximum Sentence: 2.5 YEARS AND/OR \$5,000

Offense Level: Felony

Offense Date (on or about): 11/17/2017

Control #(ICR#): 18001010

Charge Description: That on or about 11/17/2017 through 4/21/2018, in Hennepin County, Minnesota, JERRY MICHAEL GOULD, acting alone or intentionally aiding, advising, hiring, counseling or conspiring with Lorraine Rose Gould or otherwise procuring Lorraine Rose Gould to commit the crime, attempted to obtain property or services from SFM Mutual Insurance n/k/a Superior Point by swindling its representatives using artifice, trick, device or other means, and the property or services, which consists of public funds belonging to the state or to any political subdivision or agency thereof, had a value of more than One Thousand Dollars (\$1,000.00) but less than Five Thousand Dollars (\$5,000.00).

STATEMENT OF PROBABLE CAUSE

Complainant has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

On the morning of March 21, 2018, Defendant JERRY MICHAEL GOULD, date of birth September 28, 1954, and Victim W.J.H. were working together on a tree-trimming job at a residential property in Rogers, Hennepin County, Minnesota. Defendant owned Gould's Tree Service, Inc. ("Gould's"). Victim was a Gould's employee. Defendant, using a remote control, was attempting to maneuver a scissor lift near an icy incline in the backyard of the property. Victim was standing nearby. Defendant lost control of the lift, which caught both men in its path as it slid down the hill toward a partially-frozen pond at the bottom, then flipped over, trapping them in the pond. Defendant was able to free himself after several seconds. Victim, though, was pinned underwater, his right arm completely trapped under the lift.

Emergency personnel, including the chief of Rogers police, responded to the scene, and saw that the water covered Victim up to his lower lip, and, at times, to his nostrils. The police chief, relieved at one point by a firefighter, continuously and forcibly held Victim's head as high up out of the water as possible for more than 30 minutes—hyperextending his neck—just enough to allow him to continue breathing during the rescue. As time went on, responding personnel went as far as to obtain Victim's consent to amputate his right arm if necessary to save his life. Ultimately, through the combined efforts of responders from numerous local and county agencies as well as a private towing company, Victim was extracted from the pond. He was airlifted to North Memorial Medical Center in critical condition.

Victim has since undergone multiple surgeries for pelvic, arm, and shoulder injuries, taken prescribed medication, and suffered anxiety and post-traumatic stress. In post-accident interviews with police, Victim provided information concerning Gould's employment and record-keeping practices which raised the possibility of workers' compensation insurance fraud, and the matter was referred to the Minnesota Commerce Fraud Bureau for investigation.

Investigators learned that Gould's is a family business based in Rogers, Hennepin County, Minnesota, engaged primarily in the business of tree trimming and removal. Defendant began operating under "Gould's Tree Service" as an assumed name in 1989, and incorporated Gould's as a separate legal entity in 1995. He is listed as chief executive officer of Gould's and its 100% owner in state records. At all times relevant to this complaint, he also did job-site tree trimming work for the business. Codefendant Lorraine Rose Gould, Defendant's spouse, also works for Gould's (having identified herself at relevant times as its vice president or office clerk) and has authority to sign certain documents, including documents relating to workers' compensation insurance, on its behalf.

Minnesota law requires most employers, including Gould's, to obtain workers' compensation insurance or to self-insure in order to ensure their ability to meet the statutory obligation to "pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment." Minn. Stat. § 176.021, subd. 1. The compensation available to an injured employee under such coverage is calculated by running that employee's average weekly wage through a statutory formula under which higher wages yield higher rates of compensation. Generally, insurers set premiums for a company's workers' compensation policy based upon its payroll (higher payroll means higher premiums) and the risk of employee injury attendant to its operations (greater risk means higher premiums).

At all times relevant to this complaint, Gould's has procured its workers' compensation insurance through the Minnesota Workers' Compensation Assigned Risk Plan ("ARP"), a plan created by state law as a backstop to provide the required coverage to employers who have difficulty obtaining it through the

ordinary market. At all times relevant to this complaint, a company now called Superior Point (formerly SFM Mutual Insurance, but herein referred to as Superior Point for ease of reference) acted as administrator of the ARP. The funds from premium payments generated by the ARP are managed by Aon Risk Services Central, Inc., which deposits funds in a US Bank account. Monthly, commingled funds from that account are forwarded to the Minnesota State Board of Investment (SBI), with about \$2 million kept in the account as a reserve. SBI, a public body established by the Minnesota Constitution to invest state funds, invests the funds forwarded to it, and sends funds back to the US Bank account as needed to pay claims made against ARP plans.

Gould's ARP policies were issued on an annual basis, and automatically renewed contingent upon the timely payment of a renewal premium each year. Each annual policy covered a term from October 25 of a given year to October 25 of the following year. The premium for a given annual term was determined each year through, generally, a three-step process involving an initial estimate; a mid-term review and refinement of that estimate using the prior year's post-term audit; and a post-term audit and finalization of the premium amount:

- First, in or about August of a given year, Superior Point would send Gould's an estimated premium for the upcoming annual term, calculated using an estimate of what Gould's payroll would be for the upcoming term. Gould's would pay that estimated premium, and that payment would renew the policy for the upcoming term. For example, on August 11, 2016, Superior Point sent Gould's an estimated premium of \$789 for the October 2016-October 2017 term, and Gould's renewed the policy for that term by paying that \$789, via check signed by Codefendant, the next day.
- Second, in or about November of the new term, Superior Point would conduct an audit of the preceding annual term (including a payroll audit) and refine the premium estimate for the current term based upon the results of that audit. For example, on November 22, 2016, Superior Point audited the October 2015-October 2016 term. Based on a review of that audit, Superior Point concluded that its August estimate of payroll for the October 2016-October 2017 term had been too high (meaning that the August estimated premium was also too high) and refunded \$116 to Gould's.
- Third, in or about the following November, Superior Point would conduct a post-term audit and use it to finalize the premium for the completed term. For example, on November 17, 2017, Superior Point audited the October 2016-October 2017 term, and determined that no further adjustment to the premium for that term was necessary after the \$116 refund it had already issued. (That audit of the 2016-2017 term would also be used to perform the second step in determining the premium for the 2017-2018 term.)

Defendant and Codefendant manipulated this process to drive down their premium by paying Gould's employees partly in cash and intentionally omitting those cash payments from the payroll records that Superior Point would use to estimate and finally establish the amount of the premium.

On or about August 11, 2017, as the initial step in the premium determination process for the October 2017-October 2018 policy term, Superior Point sent Gould's an invoice for the estimated annual premium, which it pegged at \$456 based upon estimated annual payroll of \$840. Codefendant on behalf of Gould's sent Superior Point a check for \$456 on or about August 15, 2017.

Roughly two weeks later, at or around the end of August 2017, Gould's hired two full-time employees, Victim and D.A.A. Each earned a wage of \$17.50 per hour (which is \$700 per 40-hour week, or \$1400 per two-week pay period). Gould's paid Victim and D.A.A. partly via payroll check and partly in cash. Victim and D.A.A. were each paid \$700, less deductions, via payroll check every two weeks. The pay stubs accompanying each check reflected that Victim and D.A.A. worked only 40 hours during the two-week pay period, and the deductions were calculated accordingly, but in fact both were full-time employees and

typically worked 80 hours or more per pay period. To make up the difference, Gould's also paid Victim and D.A.A. \$350 in cash every week. On occasions when Victim or D.A.A. worked more than 80 hours per two-week pay period, Gould's paid for that additional work in cash, as well.

On November 17, 2017, Superior Point conducted the post-term audit of the October 2016-October 2017 Gould's policy. In connection with the audit, Gould's furnished Superior Point with payroll documentation showing that during the audit period—which went through at least the end of September 2017—Victim had earned only \$1400 in gross wages (which would correspond to 80 hours worked at \$17.50 per hour), and D.A.A. had earned only \$700 in gross wages (which would correspond to 40 hours worked at \$17.50 per hour). In fact, Victim and D.A.A. had each earned at least twice the represented amounts during the audit period, but the documentation furnished to Superior Point intentionally did not account for the cash wage payments Gould's made to Victim and D.A.A. But for this misrepresentation, Gould's would have been subject to an additional premium charge for the October 2016-October 2017 term. Because of the misrepresentation, however, Superior Point did not charge any additional premium for that term.

Superior Point also used the November 17, 2017 audit to adjust the estimate of payroll for the October 2017-October 2018 term upward to \$2,100, and accordingly adjusted the estimated premium for that term upward by \$148 at the second step in the premium determination process.

Gould's misrepresentation as to payroll in connection with the November 17, 2017 audit set the stage for the evasion of several thousand dollars' worth of premium in the October 2017-October 2018 term, as the disparity between actual payroll and reported payroll (due to the underreporting by half of Victim's and D.A.A.'s wages) compounded over time. The scheme was thrown off track, however, in the aftermath of the accident and injury to Victim that drew attention to Gould's and its workers' compensation insurance policy.

As described above, that accident took place on March 21, 2018. On or about the next day, March 22, in accordance with the requirements of the Gould's ARP policy and Minnesota law, Codefendant filled out and sent to Superior Point a "First Report of Injury" form regarding the accident and Victim's injuries. The form called for information concerning Victim's "[a]verage weekly wage," which she knowingly misrepresented to be \$308.23; "[h]ours per day," which she knowingly misrepresented to be 6.5; "[d]ays per week," which she knowingly misrepresented to be 3; "[n]ormal [weekly] work schedule," which she knowingly misrepresented to be only Mondays, Tuesdays, and Wednesdays; and "[e]mployment status," which she knowingly misrepresented to be "[p]art time." These misrepresentations were part of, and made for the purpose of furthering, Defendant and Codefendant's scheme to minimize the workers' compensation insurance premium charged to Gould's.

On or about April 1, 2018, Gould's sent Superior Point a "Pre-Injury Wage Information" form signed by Defendant. The form called for information concerning Victim's "[n]umber of hours normally worked per week," which Defendant knowingly misrepresented to be 20. The form also called for details of the employee's compensation for the past several pay periods. Defendant knowingly misrepresented that Victim worked only six days and earned \$700 in gross wages during each of the 13 two-week pay periods he listed on the form. These misrepresentations were part of, and made for the purpose of furthering, Defendant and Codefendant's scheme to minimize the workers' compensation insurance premium charged to Gould's.

Superior Point used the fraudulent information Defendant and Codefendant provided after the accident in order to calculate, pursuant to statutory formula, the weekly insurance benefit to which Victim was entitled. Because of Defendant and Codefendant's misrepresentations, for nearly four months following the accident, Victim—who is married, has three children, and was the primary wage earner in his family—received less than half of the benefits he would have received in the absence of those misrepresentations. The shortfall in Victim's benefits caused by defendants' misrepresentations totaled \$4,286.56. Victim was

forced to retain an attorney to prove the amount of the shortfall and obtain full payment.

Beginning on or about April 21, 2018, Gould's amended its books and records to fully account retroactively for Victim's and D.A.A.'s full-time work since the beginning of the year, and paid associated payroll taxes. Gould's also issued Victim a check intended to reflect on-the-books, full-time (40 hours per week) work since the beginning of the year. These amendments were prompted by the accident and resulting scrutiny of Victim's claim for workers' compensation insurance benefits. Superior Point's post-term audit in November 2018 was therefore able to use accurate records of employee payroll to calculate a final premium for the October 2017-October 2018 term. That final premium was \$9,095, an increase of \$8,491 over the mid-term premium estimate. Had Defendant and Codefendant been able to continue with their scheme to report only half of employee payroll, rather than being forced to amend payroll records in the aftermath of the March 21 accident, the premium charged would have been roughly half that, and Defendant and Codefendant would have benefited from a year's worth of insurance services provided by a state-backed agency using state funds for significantly less than their contractually agreed and reasonably expected value.

Defendant and Codefendant gave an interview to investigators. Defendant said it was "probably" his idea to pay Victim and D.A.A. partly via payroll check and partly in cash. Codefendant said paying a set amount in payroll and the balance in cash "was an easier way to calculate." Defendant and Codefendant acknowledged knowing that the way they paid Victim and D.A.A. was atypical. They acknowledged making post-accident amendments to their books and sending Victim the post-accident check. Codefendant acknowledged filling out the "First Report of Injury" form after the accident. Defendant acknowledged filling out the "Wage Information" form. Defendant generally acknowledged "circumventing the system" by paying cash wages, and said, "I understand. I'm the one that's at fault."

In summary, Defendant and Codefendant underreported payroll figures for their company to its workers' compensation insurer in order to improperly reduce the annual premium charged for that insurance. In so doing, Defendant and Codefendant sought to evade roughly \$4,000 in premium for the policy term running from October 25, 2017, through October 25, 2018. Gould's obtained its workers' compensation insurance through the State of Minnesota's Assigned Risk Plan, and its premium payments constitute state public funds. After Victim was seriously injured on the job in March 2018, he was deprived of the full measure of workers' compensation benefits available to him, suffering aggregate economic loss of more than \$4,000 in such benefits, because of Defendant and Codefendant's repeated underreporting of his wages. He was forced to retain a lawyer to prove and recover the shortfall.

Defendant is not in custody.

SIGNATURES AND APPROVALS

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

Complainant declares under penalty of perjury that everything stated in this document is true and correct. Minn. Stat. § 358.116; Minn. R. Crim. P. 2.01, subds. 1, 2.

Complainant

Steven J Kritzeck
Special Agent
85 7th Place East
Suite 100
St. Paul, MN 55101
Badge: 108

Electronically Signed:
10/31/2019 11:57 AM
Stearns County, Minnesota

Being authorized to prosecute the offenses charged, I approve this complaint.

Prosecuting Attorney

Zachary Brennan DesAutels
300 S 6th St
Minneapolis, MN 55487
(612) 348-5550

Electronically Signed:
10/25/2019 02:25 PM

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

SUMMONS

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear on _____, _____ at _____ AM/PM before the above-named court at the address listed on the attached court summons to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

Execute in MN Only

Execute Nationwide

Execute in Border States

ORDER OF DETENTION

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: \$5,000.00

Conditions of Release:

This complaint, duly subscribed and sworn to or signed under penalty of perjury, is issued by the undersigned Judicial Officer as of the following date: October 31, 2019.

Judicial Officer

Susan Burke
District Court Judge

Electronically Signed: 10/31/2019 12:13 PM

Sworn testimony has been given before the Judicial Officer by the following witnesses:

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

State of Minnesota

Plaintiff

vs.

JERRY MICHAEL GOULD

Defendant

LAW ENFORCEMENT OFFICER RETURN OF SERVICE
*I hereby Certify and Return that I have served a copy of this
Summons upon the Defendant herein named.*

Signature of Authorized Service Agent:

DEFENDANT FACT SHEET

Name: JERRY MICHAEL GOULD
DOB: 09/28/1954
Address: 23140-129TH AVE NO
ROGERS, MN

Alias Names/DOB:
SID:
Height:
Weight:
Eye Color:
Hair Color:
Gender: MALE
Race: Unknown
Fingerprints Required per Statute: Yes
Fingerprint match to Criminal History Record: No
Driver's License #:
SILS Person ID #: 159328
SILS Tracking No. 3106493
Case Scheduling Information: This is a complex crime team case.
Alcohol Concentration:

STATUTE AND OFFENSE GRID

Cnt Nbr	Statute Type	Offense Date(s)	Statute Nbrs and Descriptions	Offense Level	MOC	GOC	Controlling Agencies	Case Numbers
1	Charge	4/1/2018	609.611.1(a)(2) Insurance Fraud-Present False Representation/Conceals Facts-Claim for Payment	Felony	U111H	X	MN062095Y	18001010
	Penalty	4/1/2018	609.52.3(3)(a) Theft-Value of Property or Services \$1001-\$5,000	Felony	U111H	X	MN062095Y	18001010
	Modifier	4/1/2018	609.05.2 Liability for Crimes of Another-Reasonably Forseeable	No-Level	U111H	X	MN062095Y	18001010
	Modifier	4/1/2018	609.05.1 Liability for Crimes of Another-Intentional	No-Level	U111H	X	MN062095Y	18001010
2	Charge	11/17/2017	609.52.2(a)(4) Theft-By Swindle	Felony	U106H	A	MN062095Y	18001010
	Penalty	11/17/2017	609.52.3(3)(d)(iv) Theft-Value \$1000 or Less-Public Funds	Felony	U106H	A	MN062095Y	18001010
	Penalty	11/17/2017	609.52.3(3)(a) Theft-Value of Property or Services \$1001-\$5,000	Felony	U106H	A	MN062095Y	18001010
	Modifier	11/17/2017	609.05.2 Liability for Crimes of Another-Reasonably Forseeable	No-Level	U106H	A	MN062095Y	18001010
	Penalty	11/17/2017	609.17.4(2) Anticipatory Crimes-Attempts-Penalty-1/2 Of Intended	Felony	U106H	A	MN062095Y	18001010
	Modifier	11/17/2017	609.05.1 Liability for Crimes of Another-Intentional	No-Level	U106H	A	MN062095Y	18001010