

STATE OF NEW YORK COUNTY OF MONROE  
ROCHESTER CITY COURT  
HON. THOMAS R. MORSE

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THE PEOPLE OF THE STATE OF NEW YORK,

vs.

SISTER GRACE M. MILLER,  
JOHN THOMAS MALTHANER, and  
RYAN DAVID ACUFF,

Defendants.

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STATE OF NEW YORK )  
COUNTY OF MONROE )

RYAN DAVID ACUFF, being duly sworn, deposes and says:

**Personal Background**

1. I am currently a social worker and advocate at the House of Mercy, where I work alongside co-defendant Sister Grace Miller. I currently live among several previously homeless men who have been provided shelter by the House of Mercy. I have worked there for four (4) years. I also volunteer at a number of organizations, including soup kitchens, overnight shelters, and at St. Joseph's House of Hospitality—a Catholic Worker community.

2. I moved to Rochester to attend the University of Rochester, where I graduated with a Masters in Psychology. I have become entrenched in the Rochester community and I have witnessed first-hand the pervasive poverty and plight of the homeless.

3. The House of Mercy was founded with the following goals: (1) to provide a refuge in Rochester for people who are poor, homeless, and have nowhere else to turn, (2) to treat every person with dignity and respect, (3) to advocate for the rights of the homeless, and (4) to never close its doors on people in need.

**AFFIDAVIT OF RYAN  
DAVID ACUFF**

CR No. 14-10751  
CR No. 14-10730  
CR No. 14-10751

STATE OF NEW YORK  
ROCHESTER CITY COURT  
CRIMINAL DIVISION

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4. At the House of Mercy we assist individuals afflicted by poverty and homelessness. We attend to over 4,000 people each month who come to us for help. We help people get into apartments. We help people with emergency utility shut-offs. We help people obtain employment training and employment so they have income and can escape homelessness. We help people obtain public assistance and veterans' benefits. We help people in need of medical care. We serve meals and hand out bags of food every day. We offer religious and counseling services and provide dignified, Christian burials for people who die indigent. Most importantly, we advocate for the poor and homeless, who are often unable to advocate for themselves.

5. We receive no governmental assistance. Everything we do is funded by the charity and generosity of the community. We run on a shoe-string budget and devote all of our financial resources to serve the poor.

6. While other organizations in the community provide services, including shelter, to our area's homeless population, many, if not all, impose restrictions on those who wish to utilize their services. For example, some only allow homeless men or require referrals. Others do not permit entry to those addicted to drugs and alcohol and who are actively using. Sadly, many shelters are not willing or able to take in homeless women and children.

7. The House of Mercy has not and never will turn away any soul seeking help. We do not condone the abuse of drugs and alcohol—indeed, we have rules that are strictly enforced at our shelter prohibiting any use of drugs or alcohol on our premises.

8. The populations we serve—those who suffer from substance abuse, the mentally ill, those who are chronically homeless—often turn to us because they have nowhere else to go. In this regard, we truly are a house of last resort. It is not uncommon for the Rochester Police,

hospitals, and other shelters and agencies to bring people in need to our door because they know that the House of Mercy will always welcome any individual who may have been turned away elsewhere.

9. As the freezing cold days and nights set in, our services are called upon more than ever. We serve a vital role to those most in need in the community.

### **The Homelessness Crisis in the City of Rochester**

10. With respect to homelessness, the City of Rochester is in an ongoing and permanent state of emergency. On any given night, there are over 1,000 homeless men, women, and children in shelters or sleeping on the streets. The shelters are always full. In fact, they are almost always *over* capacity, and there are still a large number of people living on the streets.

11. The situation has been further exacerbated by the closing of the Civic Center Garage. The homeless have been using the Civic Center Garage for shelter since the early 1980s. Until recently, between thirty (30) and fifty (50) homeless people slept there each night. It was one of the only locations with even minimal heat.

12. The current homelessness conditions in Rochester are the *worst* they have been—by far—in the last thirty (30) years. The reasons for this include the closing of the Civic Center Garage, the ongoing economic difficulties suffered by many, growing income disparities, a paucity of services available for the mentally ill, and continued cuts in funding for social services. There are countless homeless who would accept a place to stay and other assistance, but there simply is nothing available. As a result of the homelessness crisis and lack of shelter space, people are living in tent encampments around the City.

13. The result is that homeless people die every winter in Rochester from exposure to the elements and the generally harsh conditions that the homeless are forced to face every day.



This year, with the closing of the Civic Center Garage, dozens of the chronically homeless who do not have any other semi-permanent or permanent shelter will literally be left out in the freezing cold.

14. Statistically, many of the chronically homeless do not live past the age of fifty-five (55)—twenty-four (24) years shorter than the average life expectancy. It is undeniable that the lack of access to shelter, good nutrition, and regular meals are among the leading causes of premature death.

15. Rochester's ongoing homelessness epidemic is directly related to the City's distressing poverty rates. Unfortunately, Rochester's increasing concentration of poverty is pushing it higher in the rankings of poor U.S. cities.<sup>1</sup> Rochester is the fifth poorest city in the country among the top seventy-five (75) largest metropolitan areas, and Rochester is the second poorest city among comparably-sized cities in those metro areas.<sup>2</sup> Rochester ranks third for the highest concentration of extremely poor neighborhoods among cities in the top 100 metro areas.<sup>3</sup> The Rochester City School district is the poorest school district in Upstate New York, and the poorest urban district in the entire state.<sup>4</sup>

16. New York ranks second worst in the nation as to the deplorable condition of child homelessness.<sup>5</sup>

17. Nationally, there was a 3.7% decrease in the number of people who were homelessness from 2012 to 2013. However, in New York, there was an 11.3% increase.<sup>6</sup>

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<sup>1</sup> Rochester Area Community Foundation Special Report: Poverty and the Concentration of Poverty in the Nine-County Greater Rochester Area, *available at* <http://www.racf.org/CommunityImpact/CommunityImpact/tabid/164/smId/605/ArticleID/101/reftab/36/Default.aspx>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> The National Center on Family Homelessness at American Institutes of Research: America's Youngest Outcasts – A Report Card on Child Homelessness.

Nationwide, there was a 7.2 percent decrease in the number of people experiencing homelessness as part of a family.<sup>7</sup> However, there was a 17.15% increase in New York.<sup>8</sup> There was also a 1.79% increase in unsheltered homelessness during that time period in New York.<sup>9</sup> Nationally, there are 184,000 more homeless persons than beds available on any given night.<sup>10</sup>

18. These statistics are in many respects borne out of the growing income disparity among the haves and the have-nots. Every day, I witness and am alarmed by the continued neglect for the well-being of society's neediest, even despite robust economic gains on Wall Street and record stock market returns.

19. Making things worse, the homeless are regarded and treated as a public nuisance. They are constantly threatened with arrest, and such threats chase them from one location to another, with no safe haven. The homeless are harassed, beaten, robbed, and ignored. They do not enjoy the same rights and freedoms in society as do most others.

20. Under Article 17 of the New York State Constitution, the State, through the management and implementation of the County, is responsible for the poor. It has a legal mandate to care for the poor, but the County does not have enough shelters. As a result, many turn to organizations like the House of Mercy. Others find refuge where they can—like the many who were sleeping in the Civic Center Garage—or are forced to sleep outside, even despite bitterly cold temperatures.

21. This mandate places the responsibility on the County to find a workable solution for the hundreds of homeless in Rochester who do not have access to shelters due to lack of

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<sup>6</sup> The National Alliance to End Homelessness: The State of Homelessness in America 2014, *available at* [http://b3cdn.net/naeh/d1b106237807ab260f\\_qam6ydz02.pdf](http://b3cdn.net/naeh/d1b106237807ab260f_qam6ydz02.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

space. People like Tom Malthaner and Sister Grace, my co-defendants, and I have dedicated our lives to help the County fill this void, thereby reducing the burden on the County budget and also the taxpayers. Our work benefits the County and the Rochester community at-large. It is in all of our best interest for the poor and vulnerable to have shelter. But instead of working with us to address the plight of the homeless after the closing of the Civic Center Garage, we were ignored and dismissed by County officials, and criminalized our advocacy in our attempt to meet with County officials in an effort to find shelter for the many homeless who slept in the Civic Center Garage each night and who are now sleeping on the streets during the bitterly cold winter. The County should have been willing to work with us to find a solution to this problem.

### **The Closing of the Civic Center Garage**

22. When the County wanted to close the Civic Center Garage to the homeless, it had no plan to provide an alternate shelter location.

23. Working with other advocates for the homeless, we asked the County and City to wait to close the Civic Center Garage until an alternate location could be found so that the many homeless who slept there would not have to sleep outside, exposed to the harsh Rochester winters. However, the County moved forward with closing the Civic Center Garage and locking out the homeless before an alternate location to serve the homeless could be established.

24. Upon learning that the City planned to close the garage to the homeless, Sister Grace, Tom Malthaner, and I dissented. The House of Mercy and St. Joseph's House of Hospitality scheduled a meeting with Commissioner of Human Services, Kelly Reed, for September 9, 2014 to discuss the situation. The County cancelled the meeting, however, a few days before it was to take place, saying that the meeting was unnecessary.



25. Since the closing of the Civic Center Garage to the homeless, many tents have been acquired and the over flow of homeless have congregated under the Frederick Douglass-Susan B. Anthony Bridge in what has been named "Sanctuary Village." On average, there are around forty (40) people sleeping in tents each night, which makes Sanctuary Village the biggest—though not only—homeless encampment. There are at least six (6) other smaller encampments of homeless people scattered around the City. Many of these people do not want or choose to sleep outside in a homeless encampment. They are willing to accept services, but none are available to them.

### **The Events Surrounding my Arrest**

26. Along with other concerned advocates, I went to the Monroe County Office Building on September 15, 2014, to request that the September 9 meeting be rescheduled. Upon learning that the Deputy County Executive was in the building, we were told by the head of Public Safety for Monroe County, to wait for a meeting to be scheduled. We waited for over two (2) hours, to no avail.

27. Eventually, Sister Grace and two (2) other advocates went to another floor of the building. They hoped to convince the Deputy County Executive to schedule a meeting in order to find a solution to the problem of the homeless who had been forced out of the Civic Center Garage and who had nowhere to go, despite the impending harsh Rochester winter. Initially, I remained on the first floor.

28. Later, I accompanied Sister Grace and Tom Malthaner to the office for the Department of Human Services on the second floor of the building, where we waited to have our meeting request addressed. I believed that we were allowed to be on the second floor so long as we were there for a legitimate business purpose, which we had: to schedule an appointment with

County officials. I was not aware of any reason why we should not have been allowed to request a meeting with County officials. Moreover, I was never told that I was not permitted to go to the second floor.

29. As we were waiting quietly on the second floor to have a meeting scheduled, a police officer approached us and informed us that we would have to leave the office or be arrested.

30. I complied with the police officer's order and dutifully left the office. I began videotaping the scene with my phone from outside the office, where I believed I could be. No one ever instructed me to leave the second floor.

31. The police officer then instructed me to leave the second floor completely. I complied with this order. As I was walking backward toward the stairs and videotaping the events, I was suddenly charged and tackled by the same police officer.

32. As he tackled me and forced me onto my stomach to be handcuffed, he said: "The game's over." At no point was this ever a game to me.

33. As previously described, the events leading up to my arrest do not satisfy the elements of criminal trespass in the third degree.

34. A person is guilty of criminal trespass in the third degree when he or she knowingly enters or remains unlawfully in a building which is fenced or otherwise enclosed in a manner designed to exclude intruders.

35. I did not knowingly enter or remain unlawfully in the building, the office, or on the second floor. I only entered places that I believed I was entitled to be. I complied with any orders and requests to leave certain areas, contrary to the account in the information and accompanying police report.



36. At no point was I a part of any group that was disruptive on the second floor. I was not aware that I was not allowed to be in the office or on the second floor. Regardless, I obeyed the police officer's order to leave the office. The criminal information is legally infirm, flawed, and objectionable on many grounds. Without formally moving the Court on those grounds, I now move this Court for a dismissal of the accusatory instrument in the interests of justice pursuant to CPL 170.30(1)(g) and 170.40.

#### **Dismissal Serves the Interest of Justice**

37. I do not believe it serves the interests of justice to maintain a charge of criminal trespass against me in this matter.

38. I went to the Monroe County Office Building on September 15, 2014 to advocate for the poor and homeless, who are often unable to stand up for their own rights. The poor and homeless should have an equal standing in society and under the law. They are citizens of our community, and they deserve a voice like anyone else.

39. My sole desire was for the County to show some cooperation and meet with us to assist in our efforts to locate an alternate shelter for the homeless. We were not making the progress we had hoped to and needed the County's involvement to find a solution for the unsheltered homeless.

40. I considered this an issue of life and death for these people. That is what I truly feel is on the line, and we were trying to exercise our rights, while remaining within the law, to help the homeless on the street survive.

41. When considered individually and collectively, the factors set forth in CPL 170.40 demonstrate that a conviction would result in great injustice.

- a) The seriousness and circumstances of the offense: The offense was not serious in nature. There is no allegation that any individual was harmed or any property damaged by my actions or the actions of my fellow advocates. We were simply trying to schedule a meeting to advocate for the homeless and remained in an office where our presence was not welcome.
- b) The extent of harm caused by the offense: There was no physical harm or property damage as a result of the charged offense.
- c) The evidence of guilt, whether admissible or inadmissible at trial: There is no evidence of guilt of the crime I have been charged with. I left when I was asked to leave, and did not knowingly enter or remain anywhere unlawfully. I was in the public Monroe County Office Building for legitimate business purposes and we were justified in entering the office to reschedule an appointment.
- d) The history, character and condition of the defendant: My personal history, character and condition surely mitigate the circumstances. I care deeply for the human condition. I have devoted my life to charity and to serving the most vulnerable populations in the City of Rochester. House of Mercy works tirelessly to find solutions to the problems faced by those trapped in dire poverty. I advocate for those who cannot advocate for themselves, and I attempt to work with government officials to create plans that will alleviate the suffering of the underserved. I humbly strive to be an exemplary member of this community. I try to help all in need—I want to make this community, and the world, a better place.

- e) Any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest or prosecution of the defendant: There is no exceptionally serious misconduct of law enforcement personnel in the investigation, arrest or prosecution of the charges against me.
- f) The purpose and effect of imposing upon the defendant a sentence authorized for the offense: I have no history of criminal misconduct. Imposing a sentence on me for my community-based efforts would serve no beneficial purpose.
- g) The impact of a dismissal upon the confidence of the public in the criminal justice system: A finding of guilt will not instill a sense of accomplishment or justice in the community. It will instill a sense of hopelessness and helplessness among those trying to make a difference. Justice cannot be served if the homelessness crisis is not addressed by the County. We were simply trying to work together with the County Executives to find a place for the homeless to sleep. A finding of guilty would not advance justice.
- h) The impact of a dismissal on the safety or welfare of the community: I am an integral part of the running of House of Mercy, and I am constantly organizing and spearheading efforts to serve the needy in the City of Rochester. I have devoted my life to charity and to promoting the welfare of the Rochester community. I hope I am perceived as an asset to the community, not a liability. Dismissing the charges will promote the well-being and safety of the community, and the welfare of the homeless. It will give the downtrodden and vulnerable some hope and the impression that somebody is fighting for them and their needs are being addressed.



i) Where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion: There is no victim behind this charge, other than the ignored and abandoned homeless.

j) Any other relevant fact indicating that a judgment of conviction would serve no useful purpose. Again, people like Sister Grace, Tom Malthaner, and myself, and the works we do at the House of Mercy, are filling a void left by the private sector, and the State, County and City.

42. Therefore, I do not believe it serves the interests of justice to maintain a charge of criminal trespass against me in this matter.