

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

THE PEOPLE OF THE STATE OF NEW YORK,

vs.

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

Defendants.

STATE OF NEW YORK)
COUNTY OF MONROE)

JOHN THOMAS MALTHANER, being duly sworn, deposes and says:

Personal Background

1. I am currently a Catholic Worker at St. Joseph's House of Hospitality ("St. Joe's"), located at 402 South Avenue, Rochester, New York, 14620. I have worked as a full-time Catholic Worker at St. Joe's for seventeen (17) years. For fifteen (15) of those years, I lived in the community at St. Joe's. For the last two (2) years, I have lived at Assisi Institute at 1400 Winton Road, Rochester, New York, a meditation and retreat center.

2. The Catholic Worker movement is grounded in a firm belief in the God-given dignity of every human person, and is committed to nonviolence, voluntary poverty, and the Works of Mercy as a way of life. As part of the movement, "houses of hospitality" are opened where the homeless, the hungry, and the forsaken will always be welcome and treated as "guests."

3. The aim of the Catholic Worker movement is to live in accordance with the justice and charity of Jesus Christ. Our sources are the Hebrew and Greek Scriptures as handed

**AFFIDAVIT OF JOHN
THOMAS MALTHANER**

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

STATE OF NEW YORK
ROCHESTER CITY COURT
CRIMINAL DIVISION

2014 DEC 10 PM 3:25

FILED

MCDA 10 DEC '14 PM 3:42

down in the teachings of the Roman Catholic Church, with our inspiration coming from the lives of the saints.

4. St. Joe's is a Rochester Catholic Worker community which provides food, clothing, shelter, and spiritually-centered care to its guests.

5. On average, we serve 100 people a day, seven (7) days a week, with food and housing and other assistance getting guests what they need to get back on their feet.

6. Before joining the community at St. Joe's, I was an accountant for thirty (30) years. I retired from that career to volunteer with St. Joe's and to make a difference in the community. I am paid a stipend of \$40.00 per week, plus health insurance, for my work at St. Joe's.

7. I have been working with other advocates for the poor, such as Sister Grace Miller, for many years, on various projects, including the "Housing First" project. The Housing First project operates out of a building owned by St. Joe's and is run by the House of Mercy, St. Mary's, and St. Joe's. The goal of the project is to extend the lives of homeless men and women by ten (10) years simply by providing them with no-strings-attached shelter.

The Homelessness Crisis in the City of Rochester

8. 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.

9. 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.

10. 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—including children—are living in tent encampments around the City.

11. The average temperature high in Rochester for the months of November through March is thirty-eight degrees. The average low for these months is twenty-two degrees.¹

12. 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, not to mention temperatures that drop below freezing for months on end. 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 cold.

13. 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.

14. Rochester's ongoing homelessness epidemic is directly related to the City's distressing poverty rates. Unfortunately, Rochester's increasing concentration of poverty is

¹ <http://www.rssweather.com/climate/New%20York/Rochester/>.

pushing it higher in the rankings of poor U.S. cities.² 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.³ Rochester ranks third for the highest concentration of extremely poor neighborhoods among cities in the top 100 metro areas.⁴ The Rochester City School district is the poorest school district in Upstate New York, and the poorest urban district in the entire state.⁵

15. New York ranks second worst in the nation as to the deplorable condition of child homelessness.⁶

16. 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.⁷ Nationwide, there was a 7.2 percent decrease in the number of people experiencing homelessness as part of a family.⁸ However, there was a 17.15% increase in New York.⁹ There was also a 1.79% increase in unsheltered homelessness during that time period in New York.¹⁰ Nationally, there are 184,000 more homeless persons than beds available on any given night.¹¹

17. These statistics stand in stark contrast to the growing income disparity among the haves and the have-nots. Every day, I witness and am alarmed by the continued neglect for the

² 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>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ The National Center on Family Homelessness at American Institutes of Research: America's Youngest Outcasts – A Report Card on Child Homelessness.

⁷ The National Alliance to End Homelessness: The State of Homelessness in America 2014, *available at* http://b3cdn.net/naeh/d1b106237807ab260f_qam6ydz02.pdf.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

well-being of society's neediest, even despite robust economic gains on Wall Street and record stock market returns.

18. 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.

19. 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.

20. 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 space. People like Sister Grace and Ryan Acuff, my co-defendants, and I have dedicated our lives to helping 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 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 then criminalized for our attempt to meet with County officials in an effort to find an alternative 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

21. For over thirty years (30), the Civic Center Garage has provided a heated source of shelter for the homeless, especially during Rochester's freezing winter nights. Sadly, it was the best alternative for the overflow homeless population that cannot fit into the shelters. I have spent the night at the Civic Center Garage in solidarity with the homeless. The reality is that the Civic Center Garage is a cold, dank, dirty, extremely noisy, and highly unpleasant place to rest one's head. There was not even a bathroom. However, it was the only alternative for so many who had nowhere else to go.

22. When the County wanted to close the Civic Center Garage to the homeless, there were no plans to provide an alternate shelter location.

23. We asked the County and City to wait and not close the garage until we had found an alternate location so that the many homeless who took refuge there would not have to sleep outside, exposed to the harsh Rochester winters. However, the County moved forward with closing the Civic Center Garage before an alternate location to serve the homeless could be established.

24. I protested the closing of the garage, hoping it could remain open until alternate shelter was in place. The House of Mercy and St. Joe's scheduled a meeting with Commissioner of Human Services, Kelly Reed, for September 9, 2014 to discuss the situation and hopefully devise a solution. 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, David Moore, to wait for our meeting to be scheduled. We waited for over two (2) hours, but Mr. Moore never got back to us.

27. We were eventually told that no meeting would be scheduled. We began to chant in protest in hopes of convincing the Deputy County Executive to arrange a meeting with us. Our sole concern was to find a solution for the problem facing the homeless who were forced out of the Civic Center Garage and who had nowhere to go, especially considering the coming winter. Initially, I remained on the first floor of the building.

28. Then I accompanied Sister Grace 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. A police officer said that we would have to leave the office or be arrested. I did not leave, and I was subsequently arrested.

29. I went to the Monroe County Office Building on September 15, 2014 to advocate for the poor and homeless, who are the neediest and most forgotten in our City and who have no

voice of their own. Our sole concern was to arrange a meeting with County officials in order to find alternate shelter space for those forced out of the Civic Center Garage.

Dismissal Serves the Interest of Justice

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

31. 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 have an equal standing in God's eyes. They are citizens of our community, and they deserve a voice like anyone else.

32. 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. We did not disrupt or interfere with the operation of business in the Monroe County Office Building and we entered the office with a legitimate business purpose.

33. 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.


34. 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

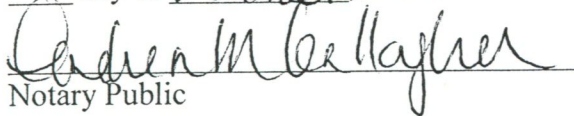
trying to schedule a meeting to advocate for the homeless and remained in an office where our presence was not welcome.

- 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: Where there may be evidence of guilt, I have explanations and a lawful intent and purpose. We were justified in entering 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 history, character and condition surely mitigate the circumstances. I left a lucrative profession as an accountant and have devoted my life to charity and to serving the most vulnerable populations in the City of Rochester. The Catholic Worker movement, as well as St. Joe's, 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. By all accounts, and humbly, I strive to be an exemplary member of this community.
- 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.

WHEREFORE, your deponent respectfully requests an Order dismissing the Information charging criminal trespass in the third degree based upon, and in consideration of, the interests of justice.


JOHN THOMAS MALTHANER

Sworn to before me this
4 day of November, 2014.


Notary Public

ANDREA M. GALLAGHER
Notary Public, State of New York
Registration #: 01GA6296202
Qualified in Monroe County
Certificate Filed in Monroe County
My Commission Expires: Jan. 27, 2018