

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 )

**AFFIDAVIT OF SISTER  
GRACE M. MILLER**

CR No. 14-10731  
CR No. 14-10730  
CR No. 14-10751

2014 DEC 10 PM 3:25

FILED

SISTER GRACE M. MILLER, being duly sworn, deposes and says:

**Personal Background**

1. I am a resident of Rochester, New York, where I have lived for sixty (60) years. I am seventy-nine (79) years old. I am a Catholic nun with the Religious Sisters of Mercy ("Sisters of Mercy"), an international community of Roman Catholic women who vow to serve people who suffer from poverty, sickness, and lack of education, with a special concern for women and children. Members take vows of poverty, chastity, and obedience—the evangelical counsels commonly vowed in religious life—and vows of service. We continue to participate in the life of our communities around the world. In keeping with our mission of serving the poor and needy, many sisters engage in teaching, medical care, and community programs and outreach.

2. With the support of the Sisters of Mercy, I founded the House of Mercy in 1985. The House of Mercy is located at 725 Hudson Avenue, Rochester, New York, 14621, in a very impoverished area of the city. I have served as the executive director of the House of Mercy

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.

6. The House of Mercy has not turned away, 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.

7. The population we serve—those who suffer from substance abuse, the mentally ill, and 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.

8. 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**

9. 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.

10. 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.

11. 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.

12. The reality 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.

13. Statistically, many of the chronically homeless do not live past the age of fifty-five (55), which is 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 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

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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.*



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>

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

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

17. 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.

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.

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<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.

<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.*

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 Tom Malthaner and Ryan Acuff, 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, County officials ignored and dismissed us. They criminalized our advocacy as we attempted 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**

21. For over thirty years (30), the Civic Center Garage 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 City's 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, I set to work, through the House of Mercy, to find an alternate shelter location. Mayor Lovely Warren asked me personally to lead the search for a building. I was happy to help.

23. I asked the County and City to wait and not close the Civic Center Garage until we had found an alternate location so that the homeless who stayed there would not have to sleep outside, exposed to the elements. However, the County moved forward with closing the garage and locking out the homeless before an alternate location to serve the homeless could be established.

24. I protested the closing of the Civic Center Garage, attended and participated in regular public meetings about its planned closing, and advocated for its continued use and availability until a suitable alternative could be arranged. The House of Mercy and St. Joseph's House of Hospitality scheduled a meeting with County Commissioner of Human Services, Kelly Reed, for September 9, 2014 to discuss the situation and devise a solution. However, a few days before the meeting was to take place, the County cancelled the meeting, saying that it was unnecessary.

25. Since the closing of the Civic Center Garage to the homeless, many tents have been acquired, and the overflow 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—although not the 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. I went to the Monroe County Office Building on September 15, 2014, along with other concerned advocates, 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. After it became clear we were never going to hear back, I went with two (2) other advocates to the second floor of the building, where the office for the Department of Human Services is located, 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.

28. I was on the second floor of the building with Tom Malthaner and Ryan Acuff, waiting to speak with staff for the Department of Human Services in order to have our meeting request addressed. A police officer said 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. As previously stated, 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 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 my 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. I have a legitimate explanation for any conduct and a lawful intent and purpose to be at the County Office Building. 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 personal history, character and condition surely mitigate the circumstances. I care deeply for the human condition. I am a Catholic nun and I have devoted my life to charity and to serving the most vulnerable populations in the City of Rochester. The 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 am a seventy-nine (79) year old woman with no history of criminal misconduct. Imposing a sentence for my advocacy efforts would benefit no one.
- g) The impact of a dismissal upon the confidence of the public in the criminal justice system: A finding of guilt would 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 State, County, and the City. 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. The dismissal of the charges poses no threat to the welfare and safety of the community; in fact, the opposite is true. Dismissing the charges will *promote* the well-being and safety of the community, and the welfare of the homeless. It will give the vulnerable hope that somebody is fighting for them and that 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 Tom Malthaner, Ryan Acuff and I, 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.



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.

Sister Grace M. Miller  
Sister Grace M. Miller

Sworn to before me this  
4th day of December, 2014.

Chandra D. Freeman  
Notary Public

CHANDRA D. FREEMAN  
Notary Public, State of New York  
Qual. in Monroe Co. No. 01FR6175101  
My Commission Expires Oct. 1, 2015