

1 SAN BERNARDINO, CALIFORNIA, THURSDAY, JANUARY 11, 2007

2 A.M. SESSION

3 DEPARTMENT NO. S16 HON. BOB N. KRUG, JUDGE

4 APPEARANCES:

5 The Petitioner with his Counsel,
6 MICHAEL MEANEY and PATRICK MORGAN FORD,
7 Attorneys at Law; JOHN GORITZ and MARY L.
8 ANDONOV, Deputy District Attorneys of San
9 Bernardino County, representing the People
10 of the State of California, Respondent.

11 (Kathleen E. Zamores, Official Reporter, CSR No. 10479.)

12 --o0o--

13
14 THE COURT: All right. We are here this morning in
15 the matter of Kenneth Clark who has filed a petition for writ
16 of habeas corpus in this court. I set the matter for hearing
17 after the petition, the return, and the traverse were read and
18 considered by the Court. And the matter is going to be heard
19 this morning.

20 And primarily we are going to be concerned with the
21 testimony of a witness, that of Mr. Monroe Thomas, because the
22 whole purpose of the petition was to have Mr. Clark's
23 conviction set aside based upon the fact that Mr. Thomas
24 stated in a declaration he testified untruthfully in the trial
25 of Mr. Clark, which led to his conviction.

26 As I explained to counsel, our sole purpose to be
27 here this morning is to determine the credibility of this
28 witness, Mr. Thomas Clark -- or Mr. Monroe Thomas, excuse me.

1 And I have appointed counsel for Mr. Thomas.

2 Mr. Ducre, are you here?

3 Is Mr. Thomas here?

4 MR. MEANEY: He is, your Honor. He is in the back.

5 THE COURT: All right. Mr. Ducre is not out there?

6 THE BAILIFF: Not out there, your Honor. I put out a
7 call for him.

8 THE COURT: Mr. Thomas, have you talked to an
9 attorney, Mr. Ducre?

10 MR. THOMAS: No, I haven't.

11 THE COURT: Well, we will have to find Mr. Ducre
12 first and talk to Mr. Thomas because I explained the situation
13 to Mr. Ducre and I explained the jeopardy Mr. Thomas is in
14 this morning, and I want him to discuss with Mr. Thomas the
15 situation before he testifies.

16 So we will have to delay our proceedings until
17 Mr. Ducre arrives. I apologize, but that is the fortune of
18 war. So we will be in recess.

19 THE BAILIFF: Court is in recess.

20 (A recess was taken.)

21 THE BAILIFF: Remain seated, come to order. Court is
22 once again in session.

23 THE COURT: Well, I believe Mr. Ducre arrived and
24 talked to Mr. Monroe.

25 Did you in fact talk to your client, Mr. Ducre?

26 MR. DUCRE: I did, your Honor.

27 THE COURT: Would you please identify yourselves for
28 the record.

1 MR. MEANEY: Good morning. Michael Meaney on behalf
2 of Kenneth Clark who is present in court in custody.

3 MR. FORD: Patrick Ford, also on behalf of Mr. Clark.

4 THE COURT: And I assume that is Mr. Clark?

5 MR. GORITZ: John Goritz for the People.

6 MS. ANDONOV: Mary Andonov also for the People.

7 THE COURT: All right. Mr. Monroe (sic), step
8 forward. Step around here. Have a seat in the chair.

9 Your name is?

10 MR. THOMAS: Monroe Thomas.

11 THE COURT: Mr. Thomas, I appointed you counsel,
12 Mr. Ducre.

13 Did you happen to talk to him this morning?

14 MR. THOMAS: Yes, I had a few minutes with him.

15 THE COURT: Did he explain to you the situation you
16 are in?

17 MR. THOMAS: Sure.

18 THE COURT: Well, I want to tell you again because I
19 want to emphasize.

20 How was your flight out?

21 MR. THOMAS: I was tired. It was long.

22 THE COURT: Okay. Well, you may not be going back
23 for a while depending on what you say this morning because I
24 have received a petition in this matter from Mr. Clark, and in
25 that petition there is a declaration which apparently was
26 signed by you in which you recant the testimony you gave
27 during Mr. Clark's trial which led to his conviction.

28 Now, you are going to be sworn to tell the truth this

1 morning. You are going to take the oath. And if you tell me
2 this morning in your testimony and after cross-examination,
3 and I am convinced that you lied during the trial of
4 Mr. Clark, I am going to direct the district attorney to file
5 a criminal Complaint against you for perjury, a felony. And
6 you will be detained and you will be tried on that charge, as
7 far as I am concerned, eventually.

8 Now, if, of course, you recant your declaration and
9 say, yes, I told the truth at the time of the trial, well then
10 that will have a different outcome. You will still be in
11 trouble because you filed a declaration under penalty of
12 perjury. So you are kind of betwixt and between a rock and
13 hard place this morning. And I wanted you to understand what
14 your position is before you raise your right hand and swear to
15 tell the truth this morning.

16 You think you understand?

17 MR. THOMAS: Yes, I understand.

18 THE COURT: All right. Stand and raise your right
19 hand.

20 THE CLERK: Do you solemnly state that the evidence
21 you shall give in this matter shall be the truth, the whole
22 truth, and nothing but the truth, so help you God?

23 THE WITNESS: Yes.

24 THE CLERK: Thank you. State your full name and
25 spell your last name for the record.

26 THE WITNESS: Monroe Thomas. T-h-o-m-a-s.

27 THE COURT: Who is going to inquire?

28 MR. MEANEY: I am, your Honor, on behalf of

1 Mr. Clark, if I may?

2 THE COURT: All right.

3

4

MONROE THOMAS,

5 called as a witness by and on behalf of the Petitioner, having
6 been first duly sworn, was examined and testified as follows:

7

8

DIRECT EXAMINATION

9

BY MR. MEANEY:

10

Q. Morning, Mr. Thomas.

11

A. Hi.

12

Q. Referring to the questions as posed to you by the
13 Court, you recall having talked to Leslie Clark on March the
14 3rd, 2005, about the incidents that occurred at Muscoy Liquor
15 store on May 9th, 2004; is that correct?

16

A. Yes.

17

Q. And what -- And you made certain statements to her
18 at the time and you and I assume you read the declaration and
19 signed it at that time and intending those statements to be
20 true and correct; is that correct?

21

A. Yes.

22

Q. And you, previous to that, going back in time, after
23 the episode on May 9th, 2004, at the liquor store, you first
24 actually had an opportunity to speak with law enforcement on
25 the following morning; is that correct?

26

A. Right.

27

Q. You made a statement to the police officers that was
28 videotaped; is that correct?

1 A. Yes, it was videotaped.

2 Q. And subsequent to that statement you also had a
3 telephone conversation with some police officers from
4 San Bernardino and that was audio taped; is that correct?

5 A. Yes.

6 Q. And then you made a statement in terms of testimony,
7 actually testified at the trial of Mr. Clark on February 3rd
8 of 2005; is that correct?

9 A. Yes.

10 Q. And so other than those statements -- And then in
11 addition to those statements you also spoke to a person
12 identified to you as Peter Griffin, a licensed private
13 investigator who was working on behalf of Mr. Clark; is that
14 correct?

15 A. If I can remember, in jail, I was locked up then. I
16 see that person is the person I talked to --

17 Q. What I am referring to is more recently here within
18 the last month, you first had a telephone conversation from
19 your home in Dayton, Ohio with a person identified to you on
20 the phone as Peter Griffin?

21 A. Oh, yes.

22 Q. And more recently this morning you spoke with
23 Peter Griffin about the events that led up to the various
24 statements that you made; is that correct?

25 A. Right.

26 Q. Now the Court's inquiry was, the Court's comments,
27 were directed toward your testimony at trial and obviously you
28 are aware that the statements you made to Peter Griffin and to

1 Leslie Clark are different in many respects than the testimony
2 you gave at trial; is that correct?

3 A. Yes.

4 Q. Specifically having to do with observations that you
5 made on the night of May 9th, 2004, at Muscoy Liquor, correct?

6 A. Yes.

7 Q. For example, in your testimony at trial you indicated
8 that you -- that Mr. Clark --

9 MR. GORITZ: Objection, leading, your Honor.

10 THE COURT: Pardon me?

11 MR. GORITZ: Leading.

12 THE COURT: I am going to allow leading in this
13 matter so we can get on with it. Overruled.

14 Q. BY MR. MEANEY: For example, in the statement -- in
15 the testimony at trial, you indicated Mr. Clark had come up to
16 you and hit you three times while you stood outside the
17 passenger door of the Ford Explorer that you had been a
18 passenger in that evening; is that correct?

19 A. Yes.

20 Q. But in fact that statement was not necessarily true,
21 was it?

22 A. No, it wasn't.

23 Q. And you have had time, I assume, to reflect on what
24 happened. It was a statement that you made at the time of
25 trial.

26 Was that a misstatement?

27 A. Yes. I was mistaken about who that person was at the
28 time.

1 Q. Do you know who that person was?

2 A. Well, I don't -- I don't know the person per se, but
3 I had had a confrontation with him earlier before all of what
4 happened happened.

5 Q. Okay. But as you sit here today you see Mr. Clark
6 sitting here in court, correct?

7 A. Right.

8 Q. You know Mr. Clark, correct?

9 A. Yes.

10 Q. He was a person known to you at that time?

11 A. Yeah, I know. I know.

12 Q. He was known to you by the nickname of Scat, correct?

13 A. Yes, uh-huh.

14 Q. You knew him because you'd been to his house at
15 various occasions?

16 A. Yes.

17 Q. As you sit here today, can you -- are you certain
18 that Mr. Clark is not the person who hit you several times as
19 you stood outside of the passenger door of Mr. Rosales' car
20 that evening?

21 A. Yes, I can be certain about that.

22 Q. For example, in other testimony that came up at trial
23 you indicated that there had been a dispute concerning
24 Mr. Clark's car having been run into by Mr. Rosales, correct?

25 A. Yes.

26 Q. And did you explain at the time of trial that in fact
27 there were other people involved in that dispute, for example,
28 two other individuals who you and Mr. Rosales were attempting

1 to sell a buffer to?

2 A. No, I didn't.

3 Q. Why didn't you testify to that?

4 A. Well, at the time I testified I didn't testify to it
5 is because actually at the time I didn't think it was that
6 important because I was using drugs, I was under the influence
7 of alcohol that night.

8 Q. And you are talking about the night of May the 9th,
9 2004?

10 A. Yes.

11 Q. There was a question posed to you about whether you
12 were under the influence.

13 Do you recall that?

14 In other words, in cross-examination by the attorney
15 representing Mr. Clark, you were asked whether or not you were
16 under the influence.

17 Do you recall that?

18 A. Well, when he asked me that, I wasn't.

19 Q. At the time -- In other words, at the time of trial
20 you weren't under the influence?

21 A. At the time of trial I wasn't.

22 Q. But on the night of May the 9th, were you?

23 A. Yes.

24 Q. Is there anything that affected your ability to
25 recall any of these events that we briefly discussed this
26 morning either on the night of May the 9th or during the
27 statements you made to the police or in your trial testimony?

28 A. Well, well, all of what I said I said because I was

1 using drugs. I wasn't getting drugs like I wanted to. I was
2 under the influence of alcohol that night. And by the time
3 the trial came, my mind had cleared.

4 Q. Okay. But still at the time of trial you testified
5 to certain things that you are now testifying to differently,
6 right?

7 A. Yes, yes.

8 Q. Is your mind more clear now than it was at the time
9 of trial?

10 A. Oh, yeah.

11 Q. Let's go back to the trial.

12 Prior to the trial you were arrested at your home in
13 Dayton, Ohio, correct?

14 A. Yes.

15 Q. You spent two weeks in custody and in Ohio waived
16 extradition and came to California?

17 A. Yes.

18 Q. Now at the time you were living in Dayton, Ohio, were
19 you addicted to heroin?

20 A. Yes, I was.

21 Q. How long have you been addicted to heroin?

22 A. I am ashamed to say, but 30 years.

23 Q. You'd been in the U.S. Army from 1976 through 1979,
24 correct?

25 A. Yes.

26 Q. Did you begin using at that time?

27 A. Yes. I started using in the military.

28 Q. And during that, up until you cleaned up, which was

1 when, last year or year before that?

2 A. Yes.

3 Q. Did you have any periods in which you weren't using?

4 A. The only period I had was when I had caught a welfare
5 fraud, I think in either '90, '91. I did a 120 days for that.
6 I wasn't using then. And then I got arrested again and they
7 gave me 300 days. I did 180 days. I wasn't using then. All
8 the other times in my life for the last past 30 years I have
9 used drugs.

10 Q. Was that true on the day of May the 9th?

11 A. Yes.

12 Q. So when you were arrested in Dayton, Ohio were you
13 still using heroin?

14 A. No, I wasn't using heroin. When they came to arrest
15 me, I wasn't using.

16 Q. Were you taking any kind of medication at all?

17 A. Yes, I was on methadone maintenance.

18 Q. How long had you been on methadone maintenance when
19 they arrested you?

20 A. At the time they arrested me, I think I had been on
21 like a year-and-a-half or so.

22 Q. Was that through a program?

23 A. Yes, I am in a drug program.

24 Q. What program is that?

25 A. Called the Substance Abuse/Polysubstance Abuse
26 Program.

27 Q. Is that through the Veteran's Administration?

28 A. Through the VA.

1 Q. You are still in that program?

2 A. Still in the program.

3 Q. In fact, you are employed now by the VA in their
4 facility where you get the methadone?

5 A. Yes, I am.

6 Q. Okay. So going back to the two weeks preceding your
7 trial, during the time you were in custody in Dayton awaiting
8 extradition to California, did you receive any substitute for
9 the methadone that you had been taking?

10 A. No, I didn't.

11 Q. How long were you -- Prior to the time you were
12 arrested in Ohio, how long did you take methadone?

13 A. I need to take methadone every day of my life now.

14 Q. You have been taking it for approximately a year or
15 so before that?

16 A. Yes.

17 Q. What effect, if any, did not taking the methadone for
18 those two weeks have on you?

19 A. Well, going without opiates, and once you have a
20 habit, you don't care nothing about getting some type of drug
21 in you so you can be well.

22 Q. You came to California and spent two weeks in jail
23 here in San Bernardino, correct?

24 A. Yes, I was.

25 Q. Did you receive any kind of medication during the
26 time you were in jail?

27 A. No help at all.

28 Q. Did that period also include the time in which you

1 testified at the trial?

2 A. Yes, it did.

3 Q. Can you -- Did the lack of medication make any
4 difference whatsoever in your ability to recall the events as
5 you testified to them at the time of the trial?

6 A. Yes. The lack of medication has dictated how I
7 run -- how I have been running my life for the last 30 years,
8 and it hasn't been nice.

9 Q. Are you on methadone now?

10 A. I am on methadone now.

11 Q. Have you take methadone today?

12 A. No, I hadn't.

13 Q. Did you take it yesterday?

14 A. Yes.

15 Q. Does that affect your ability today to recall the
16 events?

17 A. No, it don't affect me.

18 Q. How long can you go without methadone before you
19 begin to get sick, is that it?

20 A. Yes, two days at the longest. Two days and I am
21 through, you know?

22 Q. Let's go back to the testimony that you -- what you
23 said at the time of trial of Mr. Clark.

24 Now you realize, of course, there are major
25 discrepancies between your testimony now and the statements
26 made to the police and statements you made more recently to
27 the investigators?

28 A. Yes, I realize that.

1 Q. Were you thinking clearly during the time you
2 testified in the trial?

3 A. No, I was not thinking clearly.

4 Q. For example, one of the things that you testified to
5 was that your reason to go to Muscoy Liquor was to get beer,
6 but that is not a true statement, was it?

7 A. No.

8 Q. The real reason was to do what?

9 A. Sell the buffer so we can get enough money so I can
10 get some heroin and some cocaine to smoke.

11 Q. When you say "we," that is you and Mr. Rosales?

12 A. Yeah, me and Miguel.

13 Q. And, for example, when you testified that the reason
14 for leaving Muscoy Liquor was to go get money to pay for beer,
15 that wasn't correct either?

16 A. No, it wasn't.

17 Q. The real reason was to get out of there because of
18 the trouble you had started, right?

19 A. Right.

20 Q. And, in fact, on that day you had been drinking
21 alcohol, correct?

22 A. Yes.

23 Q. And did you use heroin that day?

24 A. Earlier that morning I had.

25 Q. Did you use cocaine?

26 A. We had smoked before we went to the liquor store that
27 night.

28 Q. One of the things you testified to, as you recall, at

1 trial is that you saw a grip or handle of a pistol sticking
2 out of Mr. Clark's pocket.

3 Q. Do you recall testifying to that?

4 A. Yes, I recall testifying to that.

5 Q. That wasn't true either?

6 A. No.

7 Q. You indicated that at some point there was a
8 confrontation with Mr. Clark and this wasn't true either, was
9 it?

10 A. No.

11 Q. In fact if there was a confrontation, it was between
12 other individuals other than Mr. Clark, correct?

13 A. Yes, it would have been.

14 Q. And that is testimony that didn't come out in either
15 your statement to the police on the morning of May the 10th
16 and your tape recorded -- or videotaped recorded interview and
17 did not come out at trial?

18 A. No, it did not.

19 Q. And why is that?

20 A. Well, at the time -- I was so sick at trial, you
21 know, all I wanted to do was get it over with, you know? I
22 didn't think I was falsely testifying, but I know I didn't
23 tell everything that happened and like it should have happened
24 when I was on trial.

25 Q. Okay. At some point that became clear to you?

26 A. Yes.

27 Q. Is there any reason why -- when that became clear to
28 you?

1 I assume that is because you continued to be involved
2 in methadone maintenance program at the VA?

3 A. Well, what happened, since I have been in the
4 program, I have been able to, you know, think more clearly, do
5 more positive-type things. And the trial had always weighed
6 on my mind because at the time I knew I wasn't thinking
7 clearly and, you know, I really didn't care one way or
8 another. I just wanted to get it over with because I was dope
9 sick and I wanted to get out of there.

10 Q. You realize -- Is it your testimony Mr. Clark did
11 not commit this murder?

12 A. I couldn't hear you.

13 Q. Is it your testimony Mr. Clark did not commit this
14 murder?

15 A. I always stated that I did not see Mr. Clark shoot
16 that man. I have always went with that.

17 Q. When you came back, when you were extradited from
18 Ohio, you had detectives from San Bernardino actually fly out
19 there and pick you up?

20 A. Yeah, they did fly out.

21 Q. Did you ever tell them on the plane?

22 I assume they sat with you on the plane, correct?

23 A. Yes.

24 Q. Did you ever tell them that you were dope sick and
25 you needed methadone?

26 A. No.

27 Q. Why not?

28 A. Wasn't nothing they can do for me and they weren't

1 going to let me go get some drugs.

2 Q. I assume prior to the time you testified at trial you
3 had contact with either representatives from the district
4 attorney's office or detectives; is that correct?

5 A. Right.

6 Q. Did you ever tell anybody that you were dope sick, so
7 to speak?

8 A. No.

9 Q. Why not?

10 A. Wasn't nothing they going to be able to do for me, so
11 I just wanted to hurry up and get it over with so I can get
12 out and get some.

13 Q. You were picked up in Ohio because of an outstanding
14 warrant on an old welfare fraud case, correct?

15 A. Yeah.

16 Q. That is the case you referred to that you did time in
17 County jail on two different occasions, correct?

18 A. Yes.

19 Q. And there was an outstanding warrant and my
20 understanding is that after the trial was over, that case was
21 dismissed, correct?

22 A. Yes.

23 Q. And you went back to Ohio?

24 A. Yes.

25 Q. And been there since then?

26 A. Yes.

27 Q. Now after you got back to Ohio, I assume you are
28 getting counseling in the VA program, correct?

1 A. Yes, I am.

2 Q. You are in group therapy and so forth?

3 A. Yes.

4 Q. And you have been doing that on -- throughout this
5 entire period of time?

6 A. Yes, I have.

7 Q. How long you been clean and sober now?

8 A. It is going on -- I am looking at two years, I think,
9 in May.

10 Q. Okay.

11 A. Two years.

12 Q. Did you ever express to representatives of the
13 district attorney's office or the police that you had concerns
14 about your testimony prior to trial and that because you
15 couldn't remember a lot of details because of the heroin and
16 drug problems you have had?

17 A. No, I never expressed it to them. But I always told
18 them that, you know, I didn't want to do this because I didn't
19 feel right about doing it. And I don't think Kenneth -- I
20 didn't see him shoot the man. I have always maintained that.

21 Q. Now, in cross-examination do you recall Mr. Gass, the
22 attorney for Mr. Clark, asking you do you remember this
23 episode and you saying you remember it well?

24 A. Pardon me?

25 Q. You remember being asked in cross-examination at
26 trial by the attorney for Mr. Clark that you remembered this
27 episode well; you remember making that statement?

28 A. Yes.

1 Q. That wasn't true, was it?

2 A. No, I wanted to get out of there.

3 Q. Okay. Then Mr. Gass proceeded to ask you a lot of
4 questions and at some point you said, I can't remember lots,
5 and lots of detail.

6 You remember something to that effect?

7 A. Yes.

8 Q. Did you ever tell Mr. Gass or any representative of
9 the defendant that part of the problem you were having with
10 this whole ability to recall was due to your lifelong drug
11 addiction?

12 A. No. I never directly said nothing to nobody. I
13 mean, I threw little hints about being sick, but I don't know
14 if they knew what I was saying or not.

15 MR. MEANEY: May I have just a moment, your Honor?

16 No further questions at this time, your Honor.

17 THE COURT: Mr. Goritz.

18 MR. GORITZ: Thank you.

19

20 CROSS-EXAMINATION

21 BY MR. GORITZ:

22 Q. Now, you had very good recall about many of the other
23 events of that night, didn't you?

24 A. Well, what I could remember and what I really -- what
25 I thought was important at the time wasn't so important when I
26 got my head clean and decided to, you know, let somebody know
27 that I had more to say about it.

28 Q. So it is your testimony that you were under the

1 influence of what at the time the shooting occurred?

2 A. Well, I was an alcoholic and cocaine abuser and
3 heroin abuser.

4 Q. And you say you and Miguel smoked something before?

5 A. Miguel, he drank alcohol and he smoked cocaine. And
6 I did all three of them.

7 Q. Okay. So he smoked cocaine and drank alcohol?

8 A. Yes, he did.

9 Q. Are you aware the autopsy showed he had absolutely no
10 drugs in his system?

11 A. Maybe he did. We had smoked. Trust me.

12 Q. You are saying the autopsy then must have been wrong
13 somehow?

14 A. It must not have been because I know we smoked that
15 night.

16 Q. Okay. And you never mentioned anything about bikers
17 to anyone at any time before your declaration?

18 A. Well, yeah. We talked about the bikers at the club
19 and the hecklers that was over there that were bikers.

20 Q. Let me clarify.

21 You were interviewed by Mr. Gass at the jail before
22 trial; is that correct?

23 A. Yes.

24 Q. And he asked you whether there was anyone else that
25 could have shot Miguel?

26 A. See, I don't recall him saying that to me. He might
27 have. I don't recall.

28 Q. You know he asked you that at trial?

1 A. I don't know what was asked word for word, no.

2 Q. In the trial transcript, page 62, line 27, the
3 question was, "Isn't it true that you were driving around
4 trying to hock the stolen buffer?"

5 The answer was, "No."

6 A. Yes, I remember saying that.

7 Q. So you told him no in response to a direct question
8 about that?

9 A. Yes.

10 Q. And why was that?

11 A. Well, like I said, I didn't think that was important,
12 you know?

13 Q. So you lied at trial because you didn't think it was
14 important?

15 A. Well, I don't say I lied. I am just saying I didn't
16 say what we were doing, all of what we were doing.

17 Q. The trial transcript page 65, line 24 -- 25 rather,
18 the question from Mr. Gass:

19 "You weren't going around
20 trying to get drugs, were you?"

21 The answer was, "No."

22 "You weren't trying to hock that
23 buffer for drugs?"

24 "No."

25 Again, you were asked more than once about that.
26 Your are saying you didn't recall that is what you guys were
27 doing at the time?

28 A. That is what we were doing, but I didn't think that

1 was important.

2 Q. You didn't think it was important?

3 A. Yeah, I didn't think it was important.

4 Q. And prior to your declaration, you were contacted by
5 the appellant counsel and his investigator, Mr. Griffin,
6 asking you to write some type of declaration; isn't that
7 correct?

8 That was in August of '05?

9 A. I don't remember being asked to write nothing, a
10 declaration.

11 Q. You don't recall talking to the appellant counsel,
12 Mr. Ford -- well, actually, I believe it was on the telephone,
13 and Mr. Griffin, in August?

14 A. Yeah.

15 Q. 2005?

16 A. August 2005?

17 Q. Yes.

18 A. No, I really don't remember talking to a Mr. Griffin
19 over the phone in 2005.

20 Q. Okay. Or Mr. Ford?

21 A. Who is Mr. Ford?

22 Q. Mr. Ford was the appellant attorney at the time.

23 Let me ask you, in August of '05 did you receive a
24 phone call asking you to make some type of declaration saying
25 that your testimony at trial was untrue?

26 A. No, I don't remember that.

27 MR. GORITZ: Your Honor, I would ask for a
28 stipulation that there was a phone call from Mr. Ford at that

1 time.

2 (An off-the-record conversation between counsel was
3 held.)

4 MR. GORITZ: I ask for a stipulation that he was
5 contacted and that he became evasive and refused to help as
6 declared in the declaration by Mr. Ford.

7 MR. FORD: Correct.

8 MR. MEANEY: So stipulated.

9 THE COURT: All right. Stipulation received.

10 Q. BY MR. GORITZ: So it appears there was a contact and
11 you refused to -- refused to help at that time?

12 A. Okay. Well, if I was contacted, okay, and I refused
13 to help at the time. I had went home and I really had wanted
14 to get away from all of that had happened to me at that time.
15 And then as time went on, I started going to my classes and AA
16 and in drug classes.

17 Q. Hang on one minute. So are you telling me you were
18 contacted and you did not cooperate with Mr. Ford at the time?

19 A. Maybe I was, you know?

20 Q. Okay. Now, it was only after the defendant's wife
21 tracked you down personally in Ohio that you produced this
22 declaration dated March 3rd, '06, correct?

23 A. Well, what had happened was she did track me down.
24 But I had told my niece to get in contact with her and tell
25 her I would like to talk to her.

26 Q. She came out to Ohio --

27 A. Yes, she did.

28 Q. -- is that correct?

1 And who wrote the declaration?

2 Did you write it out yourself?

3 A. I wrote it out myself.

4 Q. On a computer or did you type this up, dictate it?

5 A. I wrote it in pencil.

6 Q. And who typed it?

7 A. She did.

8 Q. Mrs. Clark?

9 A. Yes.

10 Q. Did you read it before you signed it?

11 A. Yes.

12 Q. Are the things you say in there true?

13 A. Yes, it is accurate.

14 Q. Okay. Well, you also made some statements to
15 Mr. Griffin, the investigator, that conflict with some of the
16 statements in the declaration, correct?

17 A. Which ones?

18 Q. Well, in your statement to Peter Griffin dated
19 December 29, 2006, you said in regards to the police
20 questioning that they did not talk about the probation
21 violation. Monroe said that sometime later he asked about it
22 and they just said we are not going to do anything about it
23 then, they would wait and see what happened.

24 Is that true?

25 A. Yes, that is true. That is true.

26 Q. So nobody coerced your statements to the police or at
27 trial by threatening to throw you in jail?

28 A. No.

1 Q. Okay. Now, in your declaration dated March 3rd, '06,
2 it states: I testified falsely testified under oath, falsely,
3 due to pressure and threats of myself and my wife going to
4 jail for five years.

5 A. Well, I testified because I knew that is what could
6 have happened. But not I am not saying I testified falsely.
7 No, I am not. I am telling you I -- I did not testify
8 falsely.

9 Q. You testified, what your declaration says.

10 A. I had to testify because if I didn't, we would have
11 went to jail.

12 Q. Excuse me. So you are telling us nobody made that
13 threat, just --

14 A. Nobody made that threat, but it was understood.

15 Q. It is just something you felt?

16 A. No, it was something that was understood.

17 Q. By who?

18 A. By me and the children that I had with my wife. And
19 he told me to wait until this is all over, then we will take
20 care of it. It was understood that I better testify and get
21 this over with before anything could go down on this, on my
22 felony charge that I was in jail for. It was just
23 understood.

24 Q. Excuse me. Nobody threatened to put you in jail?

25 A. No, he didn't threaten me. No, he did not threaten
26 me.

27 Q. Nobody said you had to testify in a certain way?

28 A. He did not say that, but it was understood.

1 Q. Now your declaration does say, and I quote, "I
2 testified under oath falsely..."?

3 A. Yes, it says that.

4 Q. Okay. Well, are you telling us now it wasn't false,
5 just lack of memory?

6 A. Well, what I am telling you is that I didn't testify
7 falsely. It was a lot in my testimony that I didn't recall at
8 the time.

9 Q. So let me ask you this, the testimony that you gave
10 in court, the things that you did say and the answers that you
11 did give, were those truthful?

12 A. Yes.

13 Q. Okay. The statements that you made to the police in
14 the interview prior to trial on -- specifically talking about
15 around 11 o'clock in the morning, on the morning of the
16 shooting, those statements were true?

17 A. Which statements are you talking about?

18 Q. Did you lie to the police about anything?

19 A. No. I said a lot of things out of anger to the
20 police.

21 Q. Did you lie to them about anything?

22 A. A misunderstanding, but I just didn't straight out
23 lie to the police about anything.

24 Q. Gave no false statements at trial?

25 A. No. No, false statements.

26 Q. And you gave no false statements, outright false
27 statements, to the police?

28 A. No.

1 Q. And there is no pressure for you to testify in any
2 particular way?

3 A. No.

4 Q. One of the other things was in your declaration you
5 stated that the police showed you the store video before the
6 interview; is that correct?

7 A. No, I didn't say that.

8 Q. So that is a misunderstanding as well?

9 A. Well, can I see? Can I see something?

10 Q. Let me ask you this, did anybody show you a store
11 video?

12 A. Yeah, I was shown a store video.

13 Q. Let me -- Just a minute. Let me ask you.

14 Did anybody show you the store surveillance video
15 before you gave your statement to the police the morning of
16 the shooting?

17 A. I don't remember exactly when the video was shown to
18 me. I know we talked. I didn't know I was making a
19 statement. We talked and I can't recall exactly when the
20 store video was shown to me because I asked them that morning
21 don't they have the video.

22 Q. Right.

23 You remember talking, again, to Mr. Griffin, the
24 investigator, on the 29th of December, '06?

25 The most recent?

26 A. Yes. Oh, yes.

27 Q. Okay. And at that time you told him that the police
28 didn't show you the video the first day and showed it to you

1 the second time you went to the station for questioning, maybe
2 one or two weeks later.

3 Is that a true statement?

4 A. Yes.

5 Q. Now, at trial you were very specific in your
6 testimony about Mr. Clark having a gun, a nine millimeter
7 handgun?

8 A. Yes, I remember saying that.

9 Q. And that you saw it in his pocket, you saw him
10 holding it at various times, you saw him handling it just
11 prior to the shooting?

12 A. Yeah, I remember saying that.

13 Q. Okay. That is true?

14 A. No. I was saying Mr. Clark, but it was one of the
15 guys we had been in the incident with earlier. I was saying
16 Mr. Clark, but after I got my head cleared and I started
17 thinking about what was going on, it wasn't Mr. Clark with
18 that nine millimeter weapon.

19 THE COURT: Mr. Thomas, I am going to remind you we
20 have a transcript of what you testified to exactly at the
21 trial. So you cannot --

22 THE WITNESS: I know.

23 THE COURT: Listen to me. Listen to me. You cannot
24 worm out of what you said at the trial. We have the
25 transcript.

26 THE WITNESS: Yes.

27 THE COURT: So we are trying to find out whether you
28 are telling the truth at the trial or were you not.

1 THE WITNESS: Okay.

2 THE COURT: Yes or no?

3 THE WITNESS: Yes. Yes, I was telling the truth.

4 THE COURT: Yes or no?

5 THE WITNESS: But what I am saying --

6 THE COURT: Yes or no, were you telling the truth at
7 the trial?

8 THE WITNESS: Yes, I was telling the truth.

9 THE COURT: Okay. So your testimony was true?

10 THE WITNESS: Yes.

11 THE COURT: And what you said about Mr. Clark was
12 true?

13 THE WITNESS: That is what I am trying to say.

14 THE COURT: Is that yes or no?

15 THE WITNESS: No.

16 THE COURT: It is not true?

17 THE WITNESS: No.

18 THE COURT: But yet you just told me you testified to
19 the truth at the trial.

20 THE WITNESS: Yes.

21 THE COURT: Do you know the truth?

22 Do you know what the truth is?

23 You know what that means?

24 THE WITNESS: Yes.

25 THE COURT: Well, make up your mind.

26 Did you testify to the truth at the trial or not?

27 THE WITNESS: Yes, I testified to the truth, your
28 Honor.

1 THE COURT: Okay. So actually the transcript is
2 correct as to what you testified at that point that you saw
3 Mr. Clark with the gun?

4 That is what the transcript says.

5 THE WITNESS: I know. I know.

6 THE COURT: Is that true?

7 THE WITNESS: I know I testified to that, your Honor.
8 But I was saying Mr. Clark, but I was -- really should have
9 been saying it was one of the guys that I had -- we had had
10 the incident with earlier. That is what I want to say. I was
11 saying Mr. Clark, but really it was one of the guys that we
12 had had the incident with earlier.

13 THE COURT: All right. Go ahead.

14 MR. GORITZ: Thank you.

15 Q. BY MR. GORITZ: Now, again, in your statement to the
16 investigator on December 29th, '06, you said that the
17 motorcycle guy, as you call him, had a .38 or .45 caliber
18 revolver?

19 A. Yes.

20 Q. Is that correct?

21 A. (Nods head).

22 Q. So as you remember now, the weapon that you saw was
23 actually a revolver?

24 A. Yeah, from the guy that we had the incident with.

25 Q. Yes.

26 Okay. It wasn't a semiautomatic nine millimeter?

27 A. Well, I guess it wasn't. No.

28 Q. You expressed earlier you have some familiarity with

1 guns, right?

2 A. Yeah. Well, I have seen them.

3 Q. You know the difference between a semiautomatic and
4 revolver?

5 A. A revolver is a semiautomatic.

6 Q. Let me ask you, a revolver doesn't expend a shell,
7 does it, when it is fired?

8 A. No.

9 Q. And there was a shell, a nine millimeter shell, found
10 at the scene.

11 Doesn't that conflict with what you saw or what you
12 are saying now?

13 A. Well, I didn't know that.

14 Q. Well, it is very inconsistent, isn't it?

15 MR. MEANEY: Objection, argumentative.

16 THE WITNESS: I don't know if there was a shell found
17 at the scene or not.

18 Q. BY MR. GORITZ: Uh-huh. But you are saying now
19 he was shot with a revolver, not a semiautomatic?

20 A. I am saying I don't know what he was shot with
21 period. I never seen him get shot.

22 Q. And that brings us to another point.

23 Now at trial you stated that after Mr. Clark
24 assaulted you, you ran some distance, a few car lengths, from
25 that point and then started walking back towards the liquor
26 store, correct?

27 A. Yes.

28 Q. And you stated that as you approached the liquor

1 store you looked over and saw Mr. Clark and the victim,
2 Mr. Rosales, standing about two to three feet apart from each
3 other, correct?

4 A. Yes, they were still standing over there where I had
5 left.

6 Q. And then you stated that you looked away for two or
7 three seconds, heard a shot and looked back, and Mr. Rosales
8 was no longer visible, correct?

9 A. I heard a shot. I ran in the store. And when I came
10 back out to look, I didn't see Mr. Gonzalez (sic).

11 Q. Your testimony was that you looked back two, three
12 seconds later.

13 A. I remember saying that I heard -- I was walking
14 towards the store and I heard the gunshot. I ran. It shook
15 me and I ran up in the store.

16 Q. Did you or did you not look back over to where
17 Mr. Clark and Mr. Rosales were standing immediately after the
18 gunshot?

19 A. No. Immediately after the gunshot I ran up in the
20 store.

21 Q. So, again, you are saying your trial testimony is
22 wrong?

23 A. Well, maybe I answered it wrong, but I remember -- I
24 recall saying that I was walking back towards the store and I
25 was looking over towards Miguel and where Mr. Clark was and
26 the two or three guys that was doing all the heckling. I
27 looked away, I heard the shot, I ran up in the store. And
28 then I came back down to the door and I didn't see

1 Mr. Gonzalez (sic).

2 That is what I remember testifying at trial to. I
3 don't recall testifying and saying that I heard the shot and I
4 looked immediately over my shoulder or not. I didn't see
5 Mr. Gonzalez (sic) standing there.

6 Q. Now, there was a dispute between Mr. Rosales and
7 Mr. Clark about that minor traffic accident, wasn't there?

8 A. Well, what I remember saying was when we went to the
9 back of the car we really weren't saying anything because we
10 didn't see no dents or nothing.

11 Q. Well, retrieved insurance papers from his car,
12 correct?

13 A. Yeah, you know. So I told him -- I asked him did he
14 have insurance and he went and got his insurance papers.

15 Q. And in your interview with the police, you were quite
16 emphatic that he had these insurance papers in his hand?

17 A. Yes.

18 Q. And he wasn't giving Mr. Clark any real problem?

19 A. We weren't.

20 Q. Correct?

21 A. We weren't.

22 Q. And you couldn't understand why he shot him?

23 A. Well, I might have said that out of anger. But like
24 I said, like I said, I never seen Mr. Clark shoot Mr. --
25 Miguel. I never seen him shoot him.

26 Q. You told the police he shot him though?

27 A. Out of anger, yeah. I might have said that out of
28 anger. But when it came down to it, I always told them I

1 never seen Mr. Clark raise his hand and shoot him. I never
2 said that.

3 Q. You referred to him as a cold-blooded killer, didn't
4 you?

5 A. Out of anger.

6 Q. Who were you angry at?

7 A. That what had happened to him and what had happened
8 to us that night. I was very angry.

9 Q. You expressed a lot of fear at the time of the
10 shooting, correct?

11 A. Yes.

12 Q. To the police?

13 A. Uh-huh.

14 Q. And when you were speaking with the police, you were
15 afraid that you would be shot at the scene, right?

16 A. I thought, yeah, it could have happened to me.

17 Q. Specifically you were referring to Mr. Clark when you
18 were talking to the police?

19 A. Yes, out of anger.

20 Q. And you stated that you were fearful Mr. Clark was
21 looking for you?

22 A. Yes.

23 Q. And in fact you told the police you saw Mr. Clark
24 drive by your house the morning of that shooting when you were
25 talking to the police, correct?

26 A. Yes, I seen the green van.

27 Q. And that scared you?

28 A. Yeah, I was fearful about what had happened that

1 night.

2 Q. And were you fearful Mr. Clark was looking for you?

3 A. Yes, because I really didn't know who to really be
4 fear about but him because --

5 Q. Because he shot Mr. Rosales?

6 A. I never said he shot that man. I never said that
7 Mr. Clark shot Miguel. I never said that.

8 Q. You referred to Mr. Clark as a cold-blooded killer?

9 A. Yes, out of anger. I said a lot of things out of
10 anger and fear that night and the next day and doing my
11 interviews and stuff. You know, I was angry, you know, about
12 being in the incident and what had happened.

13 MR. GORITZ: Your Honor, I'd like to play the
14 interview tape at this time with the police department.

15 THE COURT: You'd like to what?

16 MR. GORITZ: I'd like to play the interview tape
17 between Mr. Monroe Thomas and the detective.

18 THE COURT: All right.

19 MR. GORITZ: Thank you.

20 We are waiving the reporter.

21 THE COURT: Are you waiving the reporter?

22 MR. MEANEY: So waived, your Honor.

23 MS. ANDONOV: Your Honor, we have a transcript that
24 we have lodged with the Court. It will be with the return on
25 this. We have some extra copies.

26 THE COURT: You have a transcript of that tape?

27 MR. GORITZ: Yes.

28 THE COURT: Where is it?

1 MR. GORITZ: Right here, your Honor. There is a copy
2 lodged with the Court.

3 MS. ANDONOV: It was filed with the return. Part of
4 the return, Exhibit 6 of the return.

5 Q. BY MR. GORITZ: Just to be clear, you did not lie to
6 the police during this interview as you stated earlier,
7 correct?

8 A. Well, I don't remember lying. I said a lot of things
9 out of anger and fear.

10 Q. That was not my question.

11 You did not lie in any of your statements?

12 MR. MEANEY: Move to strike, argumentative. The
13 witness didn't finish his answer.

14 THE COURT: All right. The Court has a copy of a
15 transcript of an interview with Monroe Thomas, of an interview
16 taken on May 9, 2004, at 10:58 hours.

17 Is that what you are talking about?

18 MR. GORITZ: Yes.

19 MS. ANDONOV: Your Honor, because of some sensitive
20 information like Social Security and so on, we are going to
21 start off after that information has been given.

22 THE COURT: All right.

23 MS. ANDONOV: Be 11:02.

24 (Whereupon the playing of the taped interview
25 commenced, reporter waived.)

26 THE COURT: Let's stop that thing. We are going to
27 take a short recess.

28 MR. GORITZ: Okay.

1 THE COURT: Be in recess until 11 o'clock.

2 THE BAILIFF: Court is in recess.

3 (A recess was taken.)

4 THE BAILIFF: Remain seated, come to order. Court is
5 once again in session.

6 THE COURT: All right, you may continue.

7 MR. GORITZ: Your Honor, I spoke with petitioner's
8 counsel and he agreed that we could skip through this tape to
9 just certain selected sections, if that is okay with the
10 Court?

11 THE COURT: I couldn't hear you because of the --

12 MR. GORITZ: I spoke to petitioner's counsel and he
13 agreed that we could skip through this tape and hit maybe
14 eight specific spots in the interest of time, if that is okay
15 with the Court?

16 THE COURT: Please.

17 (Whereupon playing of the taped interview continued.)

18

19

MONROE THOMAS

20 resumes the stand, having been previously duly sworn, was
21 examined and testified further as follows:

22

23

CROSS-EXAMINATION (RESUMED)

24

BY MR. GORITZ:

25

Q. We agreed Mr. Scat is Mr. Clark, correct?

26

A. Yes.

27

28

Q. Is there any ambiguity in what you are telling the
police to you in that statement?

1 A. What do you mean?

2 Q. You weren't sure about who you were describing as the
3 shooter?

4 A. Yeah. At the time, you know, I was telling this, I
5 was telling the truth as I knew it, believed, how, you know,
6 who was involved and how it happened.

7 Q. Now, you also said that you were under the influence
8 of heroin and cocaine at this time?

9 A. Well, I used drugs every day.

10 Q. You don't appear to be slurring your words in this
11 tape or being incoherent or not being able to follow the line
12 of questioning, do you?

13 A. Just because you use drugs, that doesn't mean that is
14 how you have to be.

15 Q. You can think clearly when you are on drugs?

16 A. You can get some of your facilities come to you
17 better than others. When you don't have the drugs is when you
18 really tore up about it.

19 Q. Now, you were -- expressed a lot of fear concerning
20 Mr. Clark during this interview, didn't you?

21 A. Yes, I did.

22 Q. You were very afraid of him in particular?

23 A. Yes. Plus I believed at the time he was the one that
24 had did this.

25 Q. And that is what you testified to in court?

26 A. And that is why I said what I said because at the
27 time I believed he was the one that had did it.

28 MR. GORITZ: I don't think we need to show any more

1 of this.

2 Your Honor, the People rest at this time.

3 THE COURT: I am sorry?

4 MR. GORITZ: We are finished with this witness, your
5 Honor.

6 THE COURT: All right.

7 MR. MEANEY: Thank you, your Honor.

8

9

REDIRECT EXAMINATION

10 BY MR. MEANEY:

11 Q. Mr. Thomas, let me just focus on one statement that
12 you made at the time of the trial. And I think you have been
13 asked this by both myself and opposing counsel.

14 And, that is, did you notice anything about the
15 gentleman you saw and you answered he had a pistol in his
16 pocket you said when -- and you were asked when he had a
17 pistol in his pocket what exactly could you see, and you said,
18 I could see the stock, I could see the handle.

19 Do you recall talking about that a little earlier?

20 A. Yes.

21 Q. But that, in fact, didn't happen, right?

22 In other words, you did not see the stock or handle
23 in Mr. Clark's pocket on May the 9th, 2004, correct?

24 A. No. It wasn't Mr. Clark who, who -- Like I said, at
25 the time I believed that to be who it was and the way I was
26 thinking, but it was another individual after I became clear
27 of the events and how they happened.

28 Q. Okay. So when you testified to that at trial, that

1 was not -- that in fact was not a correct statement.

2 In other words, that handle that you saw was not in a
3 pocket coming out of Mr. Clark's pocket, correct?

4 A. No.

5 Q. But you said -- but that is what you said at trial?

6 A. Yes, yes.

7 Q. But it wasn't a true statement, was it?

8 A. No.

9 Q. Now when you testified to that in trial, did you ever
10 try to correct that and say, Wait a minute, at some later
11 point, I thought about it and that is not necessarily true?

12 A. No. At the time I believed, you know, this is the
13 individual that was I was thinking about. But after I, you
14 know, really had time to get out of jail and go get my life
15 together, the events started coming to me better than what
16 they were at the time.

17 Q. Another thing you said at trial, you were asked --
18 and this gentleman asked you about whether or not you had
19 stopped at a bar before you had gone to Muscoy Liquor.

20 You remember being asked that question?

21 A. Yes.

22 Q. And your answer to that question was no.

23 Do you recall answering no to that question?

24 Would it refresh your recollection if I showed you a
25 copy of the transcript, referring to page 20?

26 MR. MEANEY: If I may approach?

27 May I approach, your Honor?

28 THE COURT: Yes.

1 Q. BY MR. MEANEY: Read silently to yourself on page 20
2 beginning with line 12 down through about line 22.

3 Do you see that?

4 Right -- In other words, the questions and answer.

5 Can you see it okay?

6 A. I should have brought my glasses.

7 Where are you saying?

8 Q. Starting right here (indicating).

9 A. "Did you stop on several locations that evening?"

10 Q. Right. And your answer was "no."

11 Did you say that?

12 A. Yes.

13 Q. Okay. And that was the question that was asked to
14 you and that is the answer you gave at the time, correct, that
15 you did not stop anywhere?

16 A. Yes.

17 Q. But that wasn't a true answer, was it?

18 A. No.

19 Q. That was a false answer?

20 A. Yes.

21 Q. Because you actually stopped at a couple places,
22 correct?

23 A. Yes, we had stopped at a few bars.

24 Q. And previously told the police that?

25 A. Yes, I remember saying that.

26 Q. But that is not the way you testified at trial.

27 In other words, just focussing on this one issue,
28 we've seen bits of videotape in which you were interviewed by

1 the police and said you did stop at the bars, correct?

2 A. Yes.

3 Q. And the prosecutor was trying to ask you about that
4 and you said no.

5 Any idea why you said no?

6 A. I really -- I was sick at the time and, you know, I
7 was fighting drug addiction, and, you know, I was trying to
8 get it over with. And the way I was thinking was, you know,
9 that is not important, you know?

10 Q. And when -- In response to some of the district
11 attorney's questions this morning, you indicated that to
12 certain things you testified to at the trial which are
13 opposite to what you testified to today, and in other
14 statements you made you said those weren't important.

15 You recall making those statements?

16 A. Yes. At the time I was thinking that because of the
17 way I was feeling.

18 Q. And when you were saying those weren't important,
19 were you really saying those weren't -- what your statements
20 were at trial weren't true and weren't factually correct?

21 A. What I said at the trial I believed to be true at the
22 time. But like I said, I was sick for narcotics and they were
23 asking me some of the questions and I just wanted to give the
24 shortest answer I could. I really wanted this to be over.

25 Q. Okay. So in other words, you felt the pressure from
26 the questions, correct, in trial?

27 A. The pressure from the questions?

28 Q. Yes.

1 When somebody is asking you questions, you feel a
2 certain amount of pressure from that, correct?

3 A. Well, yeah.

4 Q. Is it fair to say some of the answers you gave you
5 didn't care what the answer was, you simply wanted to give
6 that answer and move on and be done?

7 A. Exactly how I was feeling at the time because I could
8 remember I was about to throw up and I was sweatin' profusely
9 and, you know, nobody knew this because don't nobody know --
10 knew that I was like this, but I was so sick I could have went
11 to the hospital. I know my blood pressure was up at the time.
12 I had my blood, and, you know, I was feeling it, but didn't
13 nobody know that. And I just, you know, was giving the
14 shortest answer I could because I wanted it to be over with.

15 Q. When you spoke with the police on the morning after,
16 were you concerned that the police would question you about
17 whether or not you were involved in stealing the buffer?

18 Was that somewhere in the back of your mind?

19 A. Yes. I felt that, yeah, if --

20 Q. Because that buffer didn't belong to you, did it?

21 A. No, it was not mine.

22 Q. It didn't belong to Mr. Rosales, did it?

23 A. No, it didn't.

24 Q. It was a buffer that belonged to a medical facility,
25 correct?

26 A. Yes.

27 Q. And they didn't give you permission to take -- either
28 one of you, permission to take it out to that particular

1 location and attempt to sell it, did they?

2 A. No.

3 Q. In other words, you were trying to, put it another
4 way, fence stolen goods; is that a fair way to state it?

5 A. Yes.

6 Q. And the purpose was to obtain heroin?

7 A. Well, money for drugs.

8 Q. But when you were asked at trial, and I think I asked
9 you that before, that the purpose in going to Muscoy Liquor
10 you said was to get beer.

11 That was not factually correct, was it?

12 A. Yes. We -- Beer was one thing we were going to get.

13 Q. The real reason was to sell the stolen buffer,
14 correct?

15 A. No, to get beer too. I mean, yeah, we were going
16 there to get -- for both reasons. I mean, we were going to
17 sell the buffer, get beer, and buy drugs.

18 Q. Now when the district attorney asked you questions
19 about your testimony at trial, you indicated that you said
20 that your testimony was essentially true.

21 You remember that?

22 A. Yeah. At the time I believed what I was saying was
23 true.

24 Q. The Judge had asked you also and in an exchange that
25 you had earlier this morning about whether or not you lied at
26 trial, correct; you remember that?

27 A. Yes, I remember him saying that.

28 Q. So when you made statements at trial that weren't

1 true, and you knew them not to be true, are those the
2 statements that you characterized as not that important?

3 In other words, what you just told me about, you were
4 trying to just get through it?

5 A. Yes.

6 Q. Okay. And there are a lot of those statements that
7 were not true, correct?

8 A. Yeah. And you guys are asking me a lot of statements
9 that --

10 Q. Right.

11 A. -- and, how am I supposed to remember what happened
12 then like that?

13 I remember what happened better now about what
14 happened on the incident than I did then because at the time
15 all of this was going on I was using and I was out there. I
16 was out there.

17 Q. So, in other words, if you were testifying for the
18 first time today rather than last -- in May -- excuse me -- in
19 February of 2005, your testimony would be substantially
20 different than what you testified to in court about what
21 happened on that particular evening, correct?

22 A. Yes. Because I would understand what I am saying and
23 what I am doing better if the trial was to go down now.

24 Q. In other words, you would probably explain you and
25 Miguel had gone to Muscoy Liquor for the purpose of selling a
26 buffer that had been stolen, correct?

27 THE COURT: Counsel, I am going to allow you to lead
28 but not tell him the answers to the questions before you ask

1 the questions.

2 MR. MEANEY: I apologize.

3 THE WITNESS: We were going to -- Actually, we were
4 going to get beer and then we left and we went and got a
5 buffer. So, yes.

6 Q. BY MR. MEANEY: And the purpose was to go back, you
7 went back there to sell that buffer?

8 A. Yeah, we got the buffer. We went back.

9 Q. And, again, given the opportunity, what would your
10 testimony be as to who confronted you and Miguel; was it
11 Mr. Clark or was it somebody else, some other individual?

12 A. It was -- The incident was with two different guys.

13 Q. And what would your testimony be as to who you saw
14 with some type of handgun that evening?

15 A. Well, long before Mr. Clark even came and parked
16 behind us we had had an incident with two guys we were trying
17 to sell the buffer to.

18 Q. Okay. None of that came out at trial?

19 A. None of it.

20 Q. None of that came out in your statements to the
21 police, correct?

22 A. No.

23 Q. And what you just testified to is the truth, correct?

24 A. Yes.

25 MR. MEANEY: Nothing further. Thank you, your Honor.

26 THE COURT: Anything else?

27 MR. GORITZ: Nothing further, your Honor.

28 ///

EXAMINATION

1
2 BY THE COURT:

3 Q. I am going to ask you some questions. I want yes or
4 no answers. I don't want these long extended excuses of I was
5 under the influence of whatever.

6 Are you under the influence today?

7 A. No.

8 Q. Were you under the influence at the time you
9 testified at trial?

10 A. No.

11 Q. So you knew what you were saying?

12 A. No, because I was -- I needed drugs in my system.

13 Q. But you were not under the influence, were you --

14 A. Well, no --

15 Q. -- at the time of trial?

16 Listen to me. At the time you testified you were not
17 under the influence, were you?

18 A. No.

19 Q. All right. So you knew what you were saying?

20 A. Yes.

21 Q. And when you testified at trial, you testified that
22 that man was the one who shot the gun, fired the gun and shot
23 your friend, didn't you?

24 A. I never said that, your Honor. I never said
25 Mr. Clark was the shooter. I never said that I seen
26 Mr. Clark.

27 Q. Did you tell the detective that?

28 A. Yes. I never told them --

1 Q. You told the detective that your friend here was the
2 shooter of -- this man was the shooter?

3 A. That is what I believed. But I told -- I told those
4 detectives that when I was walking towards that door, I looked
5 away, I heard a gunshot. I never said I seen Mr. Clark raise
6 that gun to that man's head and shoot. I never said that,
7 your Honor.

8 Q. You want me to read something here?

9 A. Yes.

10 Q. Question: Okay. So you are pointing to the
11 passenger side here. So he initially went to them?

12 Answer: Yeah, he, he, he.

13 Question: Went around the corner?

14 Answer: Yeah. He shot Miguel. He came back on the
15 passenger side. Okay. And I thought he was looking for me
16 here.

17 You were talking about Mr. Clark, weren't you?

18 A. Yes, at the time I was.

19 Q. Okay. So why are you saying that it was not true?

20 A. That is what I believed to be what happened, your
21 Honor. But I said all along, your Honor, I said that when I
22 got hit in my face and I ran from the car down the sidewalk, I
23 was walking back towards the store. I was looking over at
24 Miguel, Mr. Clark, and two or three other guys that was
25 hollering and saying a lot of things.

26 Okay. When I got to the store door, I turned my
27 head, I heard the gunshot. I -- It shook me up. I ran in
28 the store. I never said I seen Mr. Clark pull that gun and

1 pull that trigger. I never said that.

2 Q. Look at that document. Do you know what that is?

3 A. Yeah. Uh-huh.

4 Q. Is that your declaration?

5 A. Yes, sir.

6 Q. And you swore to that under oath, didn't you?

7 A. Yes.

8 Q. Now in that document -- Let me have it back.

9 You testified -- or you stated, "I testified under
10 oath falsely due to pressure and threats of myself and my wife
11 going to jail for five years for a crime of welfare fraud that
12 I committed..."

13 Now, did you say that in your declaration?

14 A. Yes, I did. I did.

15 Q. Was that true?

16 A. I said it was true because they came all the way out
17 there to get me. They didn't come out there to get me for
18 welfare fraud case. They came out there to get me to testify
19 for this incident, for this murder, and they knew that by --
20 When I asked them, I asked them --

21 Q. That is enough. You've got a lot of words, but I
22 want a yes or no.

23 Is that true what you said here: "I testified under
24 oath falsely due to pressure and threats of myself and my wife
25 going to jail for five years..."?

26 Is that true?

27 A. Yes.

28 Q. Okay. So when you testified at the trial, you

1 testified falsely?

2 A. I testified --

3 Q. Yes or no?

4 A. No, no, I didn't, your Honor.

5 Q. You testified truthfully?

6 A. I testified what I believed to be right at the time,
7 your Honor.

8 Q. Were you under the influence at the time you
9 testified; yes or no?

10 A. Well -- I --

11 Q. Yes or no?

12 A. No, I wasn't using.

13 Q. Okay. So you were not under the influence when you
14 testified. You state in your affidavit here that you
15 testified falsely. And you also say here this morning you did
16 not testify falsely.

17 I want to know, sir, did you testify falsely at the
18 trial or not; yes or no?

19 A. No.

20 Q. No.

21 You did not testify falsely at the trial, so what you
22 said at the trial was true?

23 A. Yes.

24 Q. And if I read the trial transcript and that testimony
25 is taken down and reported, it will be exactly what you said?

26 A. Yes.

27 Q. And it is the truth; yes or no?

28 A. Yes.

1 Q. Okay. And at the trial you testified that Mr. Clark
2 was the one who shot your friend, didn't you; yes or no?

3 A. No, I didn't testify to it.

4 Q. You got the trial transcript?

5 MR. GORITZ: Yes.

6 THE WITNESS: I did not testify that he shot my
7 friend.

8 MR. GORITZ: On page 39.

9 THE COURT: Of the trial transcript?

10 MR. GORITZ: Of the trial transcript.

11 THE COURT: What does it say?

12 MR. GORITZ: The line 22:

13 "Question: Now, the last time
14 you looked up you and saw
15 Mr. Rosales and Mr. Clark before
16 the shot was fired, about how close
17 were they standing to each other?

18 Answer: Two to three feet
19 max.

20 Question: Two, three feet
21 away?

22 Answer: Two, three feet max.

23 Question: That was the very
24 last time you saw them before you
25 looked away, right?

26 Answer: Right.

27 Question: Is that correct?

28 Answer: Yes.

1 Question: And then you said
2 you had looked away for two to
3 three seconds and heard a shot?

4 Answer: Yes.

5 Question: Were there any
6 other people in the vicinity of
7 Mr. Clark and Mr. Rosales?

8 Answer: Yes. It was -- from
9 what I remember, it was two women
10 and a man standing there talking.

11 Question: Where were they in
12 relation to Mr. Rosales and
13 Mr. Clark?

14 Answer: They were more in
15 front of the Suburban area."

16 And skipping down to line 20: I would say anywhere
17 from five to seven feet, from the victim.

18 So the testimony was that the shooter was two to
19 three feet from the victim. The next closest person was five
20 to seven feet away.

21 Was that your testimony, Mr. Thomas?

22 THE WITNESS: Yes, at the time it was.

23 MR. GORITZ: He also testified he had a nine
24 millimeter pistol in his hand at that time, correct?

25 THE WITNESS: Yes, that is what I believed to be at
26 the time.

27 MR. GORITZ: Thank you.

28 Q. BY THE COURT: Now, I want to get something clear.

1 At the time of your testimony at the trial, you are telling me
2 that you did not testify falsely; is that true?

3 A. That is true your Honor.

4 Q. All right. Then what did you mean in your
5 declaration, I testified under oath falsely?

6 What did you mean by that?

7 A. Well, your Honor, what I said at the time -- I
8 didn't mean it like that, your Honor, that I testified
9 falsely. What I really should have said -- what I should have
10 said in my --

11 Q. Declaration.

12 A. -- declaration was that I testified to a lot of stuff
13 that I think might have made a difference that wasn't said and
14 it was because of the position I was in. That is what I maybe
15 I should have said in my declaration, your Honor. But I just
16 didn't sit up in San Bernardino courts and lie like that. I
17 did not do that.

18 Q. So what you said when you testified was true?

19 A. It was true.

20 Q. Okay.

21 A. And a lot of stuff I didn't say should have been
22 said.

23 Q. When you stated in your oath I testified under oath
24 falsely, that is not true?

25 A. No. I should have worded it another way, your Honor.

26 Q. How should you have worded it?

27 A. Well, what I testified to I should have had -- I
28 could have added more to what I testified to than I did. I

1 just didn't -- You know, I thought about that after I wrote
2 it, but that ain't what I mean because at the time that I
3 testified, I testified to what I was saying was true as I knew
4 it at the time, your Honor. But then a lot of stuff was left
5 out that might have made a difference in the trial.

6 Q. Did you knowingly testify falsely?

7 A. No, I didn't, your Honor. No, sir.

8 Q. Okay. So what you said was the truth as far as you
9 were concerned?

10 A. Yes.

11 THE COURT: Okay. Anything else?

12 MR. MEANEY: Just briefly, your Honor.

13
14 REDIRECT EXAMINATION

15 BY MR. MEANEY:

16 Q. If I understand your response to the Court's
17 questions, what you are saying in essence is that you now know
18 that the testimony that you gave at trial wasn't the truth,
19 although at the time you believed what you said, is that
20 correct, or you thought it was correct?

21 A. No, I testified -- what I testified to at the trial
22 was true, but a lot of things wasn't known and maybe if I was
23 told it, it might have made a difference.

24 Q. In other words, part of the picture, more in the
25 picture should have come out but didn't come out?

26 A. More in the picture should have come out.

27 Q. Is it fair to say your testimony in essence was
28 misleading in the sense it led to a conviction of somebody

1 that you now know --

2 MR. GORITZ: Objection.

3 THE COURT: Sustained.

4 MR. MEANEY: Sorry.

5 THE COURT: Don't answer that.

6 Q. BY MR. MEANEY: Do you have, as you look back in your
7 testimony, based on all these interviews and declarations and
8 so forth, is it your opinion now that your testimony was not
9 factually correct at trial?

10 A. It was factually correct.

11 Q. It was or was not?

12 A. It was.

13 Q. Thank you.

14 A. And if I may say? Like I've always said about what
15 happened is that I did not see Mr. Clark shoot Miguel. I said
16 that from the very beginning, and I am saying it now. And
17 that is what led me to write my declaration because after I
18 got myself together and I started thinking about it, I said I
19 didn't think it was right what had happened. And that is why
20 I was willing to come out here and try to -- what I have to
21 say be heard and maybe it could come out a different way.

22 Q. The other question the Court asked you is whether or
23 not you were under the influence of drugs and your response
24 was you were not at the time you testified at trial, correct?

25 A. No, I wasn't.

26 Q. Were you affected by withdrawal from the methadone
27 that you had been using on a daily basis for approximately --

28 A. 30 years.

1 Q. Well, heroin before that and then methadone.

2 Did that have any affect on your ability to perceive
3 and understand the questions that were posed to you at the
4 time of trial?

5 A. Methadone is a worse addiction than heroin.

6 Q. I understand that. But the other side of the coin is
7 you weren't under the influence of drugs, but were you
8 impacted in any way by withdrawal or whatever it was you were
9 going through?

10 A. Oh, yeah, very much so.

11 MR. MEANEY: Nothing further. Thank you, very much,
12 your Honor.

13 THE COURT: Do you have any questions?

14 MR. GORITZ: No, your Honor.

15 THE COURT: All right. Mr. Thomas, I am going to try
16 to sum up what I understand you have told me.

17 Today you are not under the influence of anything; is
18 that correct?

19 THE WITNESS: No.

20 THE COURT: Is that correct?

21 THE WITNESS: Yes, that is correct.

22 THE COURT: At the time of trial, you were not under
23 the influence of anything; is that correct?

24 THE WITNESS: That's correct.

25 THE COURT: But according to counsel's leading
26 questions, you may have been suffering from some sort of
27 withdrawal; is that correct?

28 THE WITNESS: I was very much so, your Honor.

1 THE COURT: Just yes or no.

2 THE WITNESS: Yes.

3 THE COURT: All right. Did that cause you to lie?

4 THE WITNESS: Well, no, it didn't cause me to lie.

5 THE COURT: All right. You answered the question.

6 At the time of the trial you told me what you said
7 was the truth. You might have said something different -- you
8 might have said something different if you'd known other
9 things. But what you said at the trial as far as you were
10 concerned, it was true?

11 THE WITNESS: Yes.

12 THE COURT: All right. Now, this statement, you made
13 a declaration: "I testified under oath falsely due to
14 pressure and threats to myself and my wife going to jail for
15 five years..."

16 That was not true then; is that right?

17 Because you testified -- you stated in your
18 declaration you testified falsely. You just told me under
19 oath now that you did not testify falsely?

20 THE WITNESS: No, I didn't testify falsely. But,
21 your Honor, now that you are putting it to me the way you are,
22 maybe I could have said it in a different way.

23 THE COURT: I am not worried about what you should
24 have said, I am concerned about what you did say.

25 THE WITNESS: Well, I didn't testify falsely.

26 THE COURT: All right. Then, sir, you have saved
27 yourself from a charge of perjury. Because the issue before
28 the Court this morning is whether you lied at the time you

1 testified at the trial, and you have just told me you did not
2 lie.

3 Is that correct?

4 THE WITNESS: No, I didn't lie.

5 THE COURT: Okay. You may step down.

6 All right. We are going to be in recess until 1:30.
7 I will at that point give you my ruling.

8 MR. MEANEY: Thank you.

9 MR. GORITZ: One thing before we recess, can I just
10 move into evidence the transcript of the police interview?

11 THE COURT: All right. It will be received as
12 Exhibit 1.

13
14 (Whereupon, a recess was taken until 1:30 p.m. of the
15 same day.)
16
17
18
19
20
21
22
23
24
25
26
27
28

1 SAN BERNARDINO, CALIFORNIA, THURSDAY, JANUARY 11, 2007

2 P.M. SESSION

3 DEPARTMENT NO. S16

HON. BOB N. KRUG, JUDGE

4 (Appearances as heretofore noted.)

5 --o0o--

6
7 THE BAILIFF: Remain seated, come to order. Court is
8 in session.

9 THE COURT: Well, I have just been handed something.
10 I guess it was just prepared today by the district attorney's
11 office, although it was dated yesterday, a brief on Scope of
12 Evidentiary Hearing. I know what the scope of the evidentiary
13 hearing is, so please don't give me more papers.

14 Either one of you want to be heard?

15 MR. MEANEY: Your Honor, just briefly, your Honor.

16 Your Honor, going back, I re-looked at the Court of
17 Appeal opinion and when they talked about this case, they also
18 referred to Mr. Thomas, and stated in colloquial terms,
19 Mr. Thomas was a flaky witness when he characterized some of
20 his statement he made at trial in that regard.

21 And it is difficult now to go back and figure out, it
22 seems like, several levels of analysis. And what he has told
23 us today, this morning, was reasons why he didn't tell the
24 truth. In other words, he has told us that he was under
25 pressure from various pressures and so forth. He told us he
26 had medical problems associated with either -- with withdrawal
27 of heroin, his use of heroin, use of methadone or something of
28 that nature, and I think he told us in response to counsel's

1 questions, he said a couple of the reasons why I said what I
2 said was I was angry.

3 The sum of what I understood him to be saying was he
4 was giving us reasons why he didn't tell the truth on those
5 particular occasions. In other words, acknowledging I wasn't
6 telling the truth, but it was a but for. And those were the
7 reasons. But he did tell us, give us, sort of a code by which
8 we could go back and look at his statements and figure out
9 which ones were true. And I think the statement he said in
10 response to some of my questions was, I said that, but because
11 it wasn't important. In other words, if he said it wasn't
12 important, that means he wasn't telling the truth about it,
13 but he said as a witness it wasn't important and, therefore,
14 it was okay to not tell the truth.

15 But the problem seemed to be, and almost sounds like
16 a philosophical problem, what he wouldn't tell us today in
17 response to a direct question was, Were you or were you not
18 telling the truth? And go back and forth, back and forth, and
19 financially he would say, No, I did tell the truth and at
20 trial.

21 And what I tried to look at, see if there is an
22 example of this, I went to one simple question, Did they go to
23 other bars? A simple question. And he was asked did you go
24 to another bar by the district attorney at the time of trial.
25 It is in the transcript, and he said no. But he told the
26 police that and it was clear and the district attorney tried
27 to impeach him with that. So didn't you tell the police
28 something different? It is pretty clear he did go to other

1 bars, at least what he told the police and he didn't say that
2 at trial.

3 But now in more recent statements he said, yes, we
4 did go to other bars. But the problem is when he was asked
5 that, he said, no, I didn't say that. Are you talking about
6 you didn't go to the other bars, you didn't say it or what
7 actually happened? It seems like there is substantial
8 evidence in the testimony you have that he was not truthful at
9 the time of trial. There are statements he made to the police
10 which apparently were not truthful, but statements he made
11 under oath at trial were not truthful.

12 But the piece that seems to be missing is him sitting
13 here saying when I did say that at the time of trial, I knew
14 it to be untruthful, it was untruthful, and I recognize that
15 now and I understand that and yes, I did not tell the truth.
16 I think there is substantial evidence he didn't tell the
17 truth. But in terms of getting him to understand that and to
18 say that, that didn't happen.

19 And I submit it on that, your Honor.

20 THE COURT: Thank you.

21 MR. GORITZ: Your Honor, just briefly in response to
22 this business with going to other bars and things of that
23 nature, that was addressed at trial. The jury was fully aware
24 of that inconsistency, took it into consideration, and gave it
25 what weight they felt it deserved.

26 The reasons that Mr. Thomas came to court here giving
27 for any discrepancies in his testimony had nothing to do with
28 the basis of the original petition that we are here today.

1 Originally the claim was that there was police coercion, that
2 he actually lied at trial, and so forth. None of that, none
3 of that was borne out by his testimony here today. He said
4 flatly he was not coerced, that he did not lie, and then
5 proceeded to give us an incredible explanation as to why there
6 were discrepancies or why he came forward in the manner that
7 he did.

8 The actual guilty verdict in this case was based not
9 just on Mr. Thomas' testimony, but the fact that his testimony
10 at trial was corroborated by an overwhelming amount of
11 physical evidence and that is what the jury relied on; that
12 the things that he said, the things that he described, had
13 some corresponding piece of physical evidence that one could
14 point to.

15 Conversely in today's testimony he gave a good number
16 of explanations or observations that were not supported by any
17 physical evidence such as claims that the victim was smoking
18 narcotics with him when the autopsy showed there were no drugs
19 in his system and the victim shot with a revolver when there
20 was a casing ejected from a gun that was consistent with his
21 earlier testimony, leaving us with no other conclusion than he
22 was not being truthful today. And I think that is really the
23 crux of the entire situation that we are at here.

24 He expressed the idea that he made some of these
25 statements out of anger, but the portion of the police
26 interview reviewed clearly showed he was not angry or upset.
27 If anything, he expressed fear of the defendant on several
28 occasions and admitted he was very fearful of the defendant,

1 which also gives rise to some questions as to why he made this
2 declaration after the petitioner's wife went halfway across
3 the country to confront him. And only then did he sign a
4 declaration along those lines which he refuted most of that
5 anyway here.

6 I think it is clear that he lacked credibility today.
7 The physical evidence in the court case in trial supported his
8 earlier statements, and as stated earlier, that any of his
9 claims today were -- went well beyond the scope of the
10 original petition.

11 Thank you.

12 THE COURT: All right. This petition was filed by
13 Mr. Clark -- on behalf of Mr. Clark by counsel and it was
14 received and filed by the court on April the 1st -- or 11,
15 excuse me, 2005. The Court requested a return to be filed by
16 the respondent, the district attorney, and one was filed. A
17 return was filed on September the 25th, 2006. The traverse or
18 reply was filed by the petitioner on October 11, 2006, and the
19 matter was set for hearing.

20 So we have Mr. Thomas here because the basis of the
21 petition, and the sole basis, was Mr. Clark had been convicted
22 on the false testimony of Mr. Thomas. The original petition
23 did not contain a declaration for Mr. Thomas and the Court
24 made a specific record that such a declaration was to be
25 furnished and one in fact was filed. The Court made a
26 specific order. One was filed back on July the 5th, 2006.
27 And I showed that document to Mr. Thomas today and he clearly
28 admitted, yes, it is a declaration he signed and it was sworn

1 to before a notary public as being true.

2 Now I am not going to read the whole declaration, but
3 he says in essence, and I will read this part: "I testified
4 under oath falsely due to pressure and threats of myself and
5 my wife going to jail for five years for a crime of welfare
6 fraud that I committed in February of 1989. This has been a
7 great burden on me and I didn't want to falsely testify for
8 his conviction for the police because it was wrong. I want
9 this to be over and the truth is told in this declaration to
10 the courts."

11 Well, the matter of fact, in fact, the truth wasn't
12 told because it is contrary to his testimony today. I feel
13 sorry for Mr. Thomas. He was on the hot seat and he was in a
14 difficult position to justify his testimony at trial in
15 relationship to his declaration, which he said was a true
16 statement of the fact that he did testify at time of trial
17 falsely, and as a result of false testimony Mr. Clark was
18 convicted.

19 I will assume Mr. Clark's conviction was reviewed on
20 appeal and the Court of Appeal must have upheld it. I don't
21 have any direct knowledge of that, but I assume, based upon
22 the time lapse involved and the circumstances of what happens
23 in these cases under normal sequence of events, that there was
24 in fact an appeal and the appeal -- the conviction was
25 confirmed or affirmed.

26 The sole issue before the Court today was whether
27 Mr. Thomas lied at the time of trial. Because if he lied, I
28 don't care what other evidence was against Mr. Clark, I would

1 not stand by and allow anyone to be convicted of a crime such
2 as Mr. Clark was convicted of with a witness who testified
3 falsely under oath. And had it turned out that I found or
4 would have found that Mr. Thomas did lie at the time of the
5 trial, I certainly would have given Mr. Clark some relief.

6 However, as much questioning as it took, I finally
7 got a direct answer from Mr. Thomas that, No, sir, I did not
8 lie at the trial. I testified truthfully. I might have
9 testified differently under other circumstances or if I had
10 thought about it or something else, but I testified truthfully
11 at the time of the trial.

12 So the Court is given the evidence from Mr. Thomas'
13 mouth that at the time of the trial he did not lie, whatever
14 he testified to, and apparently from the portion of the
15 transcript of the conversation the detective had with
16 Mr. Thomas at the time of the investigation, his testimony or
17 his statement to them was fairly well in accord with his
18 testimony at trial. In any case, there certainly is no
19 evidence before the Court. We can surmise and we can
20 conjecture and we can think of all kinds of reasons why
21 Mr. Thomas might have lied, but he testified to me directly,
22 to a direct question, that, No, I did not testify falsely
23 during the course of trial.

24 And since the whole basis of the petition before the
25 Court was the fact that Mr. Clark alleged he was convicted
26 under the false testimony of Mr. Thomas and the Court could
27 find no false testimony from Mr. Thomas based upon Mr. Thomas'
28 direct testimony this morning under oath, the petition is

1 denied.

2 MR. MEANEY: Might I inquire of the Court? In terms
3 of your ruling, is it your finding then that you found
4 Mr. Thomas was credible in his testimony today, that he did
5 not lie at the time of the trial?

6 THE COURT: Yes, because he told me very frankly he
7 was not under the influence at the time he testified, not
8 under influence at the time he talked to the detectives, and
9 he was not under the influence today. He testified to
10 something to the effect, well, maybe something, withdrawals or
11 something, but I have no basis to believe that would cause a
12 man to testify falsely.

13 So from what I heard today, there is nothing. The
14 only conclusion that I can come to legitimately,
15 notwithstanding my strong opinions for people getting fair
16 trials, and certainly nobody is relying upon them because we
17 rely upon witnesses to tell the truth.

18 I get people in here all time that are lying, but I
19 don't know which side, and I can't determine that. The good
20 Lord didn't give me that kind of wisdom. I don't have the
21 wisdom of Solomon. I can't cut the baby in half. All I have
22 to do is put in my best interest why.

23 What I received in the testimony from Mr. Thomas, the
24 final answer was, No, sir, I did not lie at the time of trial.
25 Maybe a circumstance I would have testified differently, but I
26 testified to what I did and what I did was true. The jury
27 heard that. They found Mr. Clark guilty, and the conviction
28 will stand.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MR. MEANEY: Thank you, your Honor.

(Whereupon, the foregoing proceedings were
concluded.)