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KENNETH CLARK

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO

11 IN RE
12 KENNETH CLARK
13 ON HABEAS CORPUS
14
15

Case No. SWHSS-8716
Criminal Case No. FSB044171
**DECLARATION OF
MONROE THOMAS**

16 I, MONROE THOMAS, say the following:

17 1. I was a witness at the scene of a murder that took place on May 9, 2004, in front of
18 Muscoy Liquor in San Bernardino, California, at approximately 1:00 a.m. and subsequently gave
19 various statements to the San Bernardino Police;

20 2. I testified at the trial of Kenneth Clark in the above-entitled matter, and later testified in
21 person at a hearing in San Bernardino on January 11, 2007, regarding my earlier statements at the
22 time of trial and to the police;

23 3. On March 3, 2006, I signed a declaration that stated, among other things, that I had
24 testified falsely at trial. That declaration was true then, and it is true now. My testimony at trial
25 was false. Had I not testified falsely, I would have testified as follows;

26 4. I was not working at the time all this happened in May 2004. I had been in California
27 about six months. I was living with my mother in San Bernardino, and I was doing heroin daily.

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1 Miguel Rosales, the victim and a friend of mine, was working at Loma Linda Hospital. He lived
2 across the street from my mother. On May 8, 2004, we had been drinking all day, which included
3 a six-pack of twelve ounce cans of beer and at least three forty-ounce bottles;

4 5. Later in the evening we wanted to continue drinking, but we had no more money. We
5 drove over to the hospital in Miguel's car. Miguel gave me a set of scrubs which I put on.
6 Miguel was wearing scrubs too;

7 6. We went into the hospital. I waited in the hall while Miguel went somewhere. Miguel
8 came back with a floor buffer. Miguel had changed out of his scrubs, but I was still wearing mine;

9 7. I did not know where he got the buffer. We put it in the back of Miguel's car and left.
10 We then tried to figure out where we could sell the buffer;

11 8. We went to a couple of bars, including a Mexican bar "on the high rent side" of San
12 Bernardino, but could not sell it. Then we went to the "Medical Center side" of San Bernardino
13 and to a Mexican bar by the motorcycle club. We both went into the bar, but I thought that
14 Miguel felt that there was a bad vibe toward me because it was all Mexicans, so we left;

15 9. Miguel's car was parked behind the bar. Miguel knew a couple of guys in a car back
16 there and he talked to them about buying the buffer. We thought we had a sale, but it didn't go.
17 We got back in his Ford Explorer and were trying to decide where we could go to sell the buffer,
18 and I said that maybe someone at the motorcycle club might buy it. It was busy and crowded as
19 hell, at both the bar and the motorcycle club;

20 10. We pulled out from the parking lot at the Mexican bar and drove to the front of the
21 liquor store. We tried to find enough change in the seats of the car to buy beer at Muscoy Liquor,
22 but still did not have enough. So, we got out of the car, and tried to sell the buffer;

23 11. There were two guys standing in the parking lot by a truck that had some equipment
24 in it, and we asked them if they were interested in the buffer. One of them was a motorcycle dude
25 and the other was balding, with a pony tail. Both were black males;

26 12. They were taller than me by a little. I thought they were about 5'8" or 5'9"; the
27 balding guy with the pony tail might have been a guy I knew named Bobby Neal, a guy I had
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1 grown up with. I had seen him a few times over the years from time to time around the area.
2 Bobby Neal's truck was parked next to Miguel's car and had cleaning equipment in it, and that is
3 why we thought we might be able to sell the buffer to them;

4 13. The two guys wanted to see the buffer, so Miguel and me got it out of Miguel's car
5 and rolled it over to them. They looked at it and asked how much we wanted for it, and Miguel
6 said \$200.00. The two guys told us that we were crazy, but I didn't think that Miguel understood
7 what they were saying. We began haggling with the two guys. The two guys were "talking shit"
8 to us, telling us that we had stolen the buffer and it hadn't cost us anything, and we were asking
9 for too much money;

10 14. Miguel and me asked them what they wanted to pay, and they said \$50.00. We said
11 no because the machine was almost brand new. The two guys got more irritated and the haggling
12 and hassling continued and became more serious and nasty;

13 15. As we were haggling, one of the guys said something to the effect that they ought to
14 just take "the motherfucker" from the Mexican. Then the motorcycle guy punched Miguel in the
15 ribs. I grabbed the buffer and put it back in the car. While I was backing away from the group
16 with the buffer, one of the guys said, "You ought to just shoot the motherfucker and take it";

17 16. The motorcycle guy had a gun which he pulled out. It was a revolver with a six-inch
18 barrel, maybe a .38 or a .45. I still didn't think that Miguel understood what they were saying;

19 17. Miguel and me got back into the car with the buffer in the back, and the two guys
20 came up to us and told us they would give us \$30.00 for the buffer. They started challenging us
21 again. The situation was getting real bad. We were sitting in the car and other guys who were
22 around were standing outside and pointing at us. I knew they were talking about us, but I don't
23 think Miguel understood what they were saying because his English was not good;

24 18. Miguel started to back out and he backed into a car that had pulled up and parked
25 behind us. Miguel didn't seem to realize that he had hit anything. I told him that he had hit a car,
26 but Miguel kept saying, "no." I told him to park, but he just sat there. I heard some screaming
27 and hollering from a female behind us. The two guys we had been haggling with were behind our
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1 screaming and hollering from a female behind us. The two guys we had be haggling with were
2 behind our car now, calling us out, calling Miguel a "stupid ass," and saying things like now we
3 would have to sell them the buffer, because Miguel was going to have to pay for the damage he
4 caused;

5 19. I heard the female screaming for an ambulance and all kinds of things. She was on
6 the passenger side of the vehicle we had hit, and though I did not see her, I assumed that Miguel
7 had somehow hit her. She was maybe 5'1" to 5'2" tall, 130 pounds, dark, and her hair was done
8 up real nice. I don't remember much about her except that she was screaming a lot, and people
9 were asking her if they should call 911. The two guys were telling her that Miguel had insurance
10 and she was going to make a lot of money. The girl was screaming, the guys were harassing us,
11 and one of the guys had a gun. I was scared for me and Miguel, and I did not want to get out of
12 the car;

13 20. I saw Kenny Clark walk past us to the back of our car, and once he got there, the girl
14 stopped screaming and didn't say anything. At that point, Miguel and me got out and went to the
15 back of the car. None of us could see any damage to Kenny Clark's car. No one was saying
16 anything except the two guys, who were still "talking shit", saying that they knew Miguel had
17 money, that it was Saturday, and he must have gotten paid on Friday and stuff like that;

18 21. I was really stressing out and needed a cigarette, and went to the passenger side of the
19 car to get one. I was standing by the passenger side of Miguel's car, lighting a cigarette, when
20 one of the two guys walked up and hit me. As he did so, he said something like "there you go
21 sticking up for the Mexican again." What he said made no sense to me. He was one of the two
22 guys who had been harassing us, and he must have thought I had taken Miguel's side against
23 them;

24 22. I ran away toward the motorcycle club and left Miguel at the back of the car. After a
25 few seconds, I started to walk back so I could hear what was being said. Just as I got to the front
26 door of the liquor store, I heard a shot. I did not see who fired the shot. I ran into the rear of the
27 store, trying to hide. When I didn't hear anything more, I went to the front of the store and saw
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1 the car that Miguel's car had bumped into pulling out of the lot. I never saw Kenny Clark shoot
2 Miguel. Instead, it was one of those two guys who had hit Miguel;

3 23. I was strung out when I spoke to the cops on May 9, 2004. I had bought \$10 worth of
4 heroin, and used just before the cops picked me up. I had been in jail twice on violations on an
5 old case, and both times, it was hell because I went from daily heroin to cold turkey, and both
6 times got real sick. I was also worried I would get charged for stealing the buffer if I told what
7 really happened. So I left out all the stuff about the buffer during the interview, the guy hitting
8 Miguel, the guy pulling out a gun and threatening to take the buffer, all of which occurred before
9 Kenny Clark ever showed up in the area. I never told the cops that Bobby Neal was one of the
10 guys who was hassling us. That is why I wrote the declaration that I wrote on March 3, 2005. I
11 wanted to get it all out because I had screwed up so badly before. I was confused and scared at
12 the time of the trial when I testified. I did not want to testify, but they came and got me for a
13 \$3,000 violation that was 20 years old;

14 24. I was a heroin addict at the time of the incident and doing cocaine, as well as
15 drinking. I had a \$100 plus a day habit. I was arrested in Ohio and brought back to testify. At
16 the time I was arrested, I was on 100 mg of methadone a day in Ohio, and was taking blood
17 pressure medication. I was not given the methadone or the blood pressure medication during the
18 two weeks I was in custody in California, waiting to testify. I was going through withdrawals at
19 the time I testified. When I testified, I should have told exactly what had happened on the night
20 of the incident, but I didn't tell everything. I just lost it. I only wanted to get out of jail and back
21 to Ohio;

22 25. I am now clean and not doing drugs or alcohol;

23 26. Five days after my testimony at trial, I was taken to court for my probation violation,
24 and the case was dismissed. I never did pay any further restitution, and that was the end of it.
25 The homicide detective took me to the airport and gave me a ticket back to Ohio. It was clear to
26 me that my case was dismissed because of the way I testified;

27 27. At court on January 11, 2007, when the judge asked me if I lied at the trial, I should
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1 have said yes;

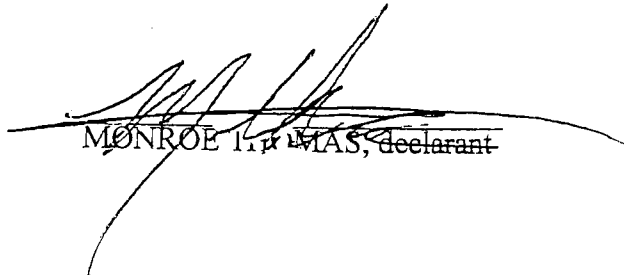
2 28. It all comes down to whether what I said at trial that led to Kenny Clark's conviction
3 was true, and the answer is that it was not. If I had testified to the truth, he would not have been
4 convicted;

5 29. Since I have been back in Ohio, my conscience has bothered me tremendously that,
6 once again, my testimony has resulted in this innocent man being convicted of a crime which I
7 know he did not commit. On January 11, 2007, the judge told me that if I said I lied at the trial, I
8 was going to jail. I couldn't face that. I have a job now, am on methadone every day, and my life
9 is better than it has ever been. I couldn't see that all go away, so I told the judge that I told the
10 truth at trial;

11 30. But, what I said on January 11, 2007, was not true. Every day now, I see Kenny
12 sitting there, doing life in prison for a crime I know he did not commit, all because on three
13 occasions, when I had the chance to tell the truth, I didn't do it.

14 I declare under the penalty of perjury under the laws of California that the foregoing is
15 true and correct and this declaration was executed on February __ 2007, at _____
16 Ohio.

17 DATED: 2-23-07


MONROE THOMAS, declarant

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