

testimony, and made it unlikely that they would have accepted her testimony generally, and specifically as to the fact that Mr. Carpenter showed her a gun similar to the one used in the charged offenses. It is therefore reasonably probable that but for counsel's ineffectiveness, the results of either or both the guilt and penalty phase would have been more favorable to Mr. Carpenter.

Shane and Karen Williams

185. Shane and Karen Williams testified for the prosecution that Mr. Carpenter loaned them a gun on the evening of May 13, 1981, to help them be more successful in their bank robberies. They testified that on that evening, Mr. Carpenter took them to a warehouse where he worked, retrieved the gun, and went back with them to the Trinity Plaza Apartments in San Francisco where he gave them the gun. Shane also testified about how he hid the gun in a vacant lot, and in June 1981, told Lt. Besse of the Marin County Sheriff's Department where the gun was hidden. Ballistics tests on the gun Besse recovered identified it as the murder weapon in this case, and made the gun and Shane's testimony critical to the prosecution case against Mr. Carpenter.

186. The defense failed to impeach Shane and Karen by examining them on the substantial inducement they received in exchange for their story about the gun allegedly received from Mr. Carpenter and/or for

their testimony recounting that story. During Shane's stay at the Santa Cruz County Jail in September, 1981, he and his wife were allowed one or more conjugal visits. (Appendix 13, Letter of Karen Williams to Federal Court.)

187. The Santa Cruz County Jail at the time in 1981 did not, and has not since, had a policy allowing inmates conjugal visits. (Appendix 111, Declaration of Lawrence Biggam; Appendix 173, Present Santa Cruz County Jail Policies.)

188. As a result of this conjugal visit, Karen Williams became pregnant with Shane's child, and gave birth approximately nine months later. (Appendix 13, Letter of Karen Williams to Federal Court; Appendix 14, Birth Certificate of Dalek Williams.)

189. Shane continued to seek visits with his wife in exchange for information. He tried to bargain with the judge during an in camera proceeding at trial, seeking a gag order on the press to protect his identity so that he would not become known in prison as an informant, and "some favors in the realm of visitation with my wife in this court building . . ." (RT 12485-12490.)

190. The jury did not receive evidence of any substantial benefit received by Shane or Karen Williams in exchange for their story about the gun. In fact, Shane testified falsely that he had hoped to receive some consideration, but received nothing more substantial than the prosecution

acknowledging his cooperation in the Carpenter case to the federal authorities.

(RT 12583, 12589.) To the extent the prosecution was under no duty to inform the defense of this substantial inducement (see Claim 1), counsel was ineffective for failing to discover and present the information through investigation, cross-examination and/or other presentation of this evidence.

191. The defense also failed to present evidence or cross-examine Shane regarding the circumstances under which he made the statements to Lt. Besse that he received the gun from Mr. Carpenter and hid it in a vacant lot. These circumstances would have cast doubt on the credibility of this evidence.

192. Shane testified that when Besse came to interview him in the federal prison at Terminal Island, the federal prosecutor and his federal public defender were present. Shane then agreed that his public defender could leave, and the federal prosecutor also left. According to Shane's testimony, it was then that he revealed to Besse the information about the gun.

193. In fact, Shane's private conversation with Besse had two distinct components: an unrecorded conversation lasting about nearly an hour, and a recorded one lasting 6 minutes and 20 seconds. (Appendix 158, *Testimony of Donald Besse* dated February 5, 1988 pp. 11750-11751.) In the recorded statement, the normally-loquacious Shane spoke in short cohesive sentences that were, or sound to have been, scripted for him by Besse.

(Appendix 159, Reporter's Transcript of Recorded Statement.) The recording itself reveals sounds consistent with the rustling of papers while Shane is making his statement.⁶ Had the jurors known that Besse spent an hour with Shane before turning on the tape recorder for the short recorded statement, they could reasonably have believed that Besse had coached Shane on what to say about the gun, and concluded that the story of the gun was wholly or partially false.

194. Lt. Besse's statements about the circumstances under which he claims to have recovered the gun from a vacant lot in San Francisco are additional reasons to doubt Shane's story about the gun. Besse testified that he recovered the gun by himself without calling his office, the crime lab or an evidence technician. He contended that that he threw away the newspaper the gun was allegedly wrapped in without looking at its date or having it tested for fingerprints, and failed to have the gun tested for fingerprints. He claimed to have had a camera in his car when he recovered the gun, but chose not to take photographs at that time. (Appendix 166, Testimony of Donald Besse dated February 5, 1988 pp. 11763-11773.)

6. The tape itself cannot readily be attached to this petition. Mr. Carpenter requests that that court take judicial notice of Defendant's Exhibit HHH-1 from People v. David Joseph Carpenter (San Diego), No. S006547, the certified record of which is before this Court on automatic appeal. (Evid. Code § 452, subd. (d).)

195. Had the defense presented this evidence, the jury would have concluded that Shane and Karen's testimony connecting Mr. Carpenter to the murder weapon was wholly or partially false.

196. Trial counsel's failure to properly investigate and cross-examine Shane and Karen's testimony was particularly prejudicial because no law enforcement officers saw either of the Williamses in possession of the gun, despite extraordinary opportunities. Seven FBI special agents were surveilling Mr. Carpenter on May 13, 1981, during the trip to and from the warehouse where Mr. Carpenter was supposed to have been retrieved and transferred to Shane and Karen, but none of the agents saw anything in the hands or possession of Mr. Carpenter, Shane or Karen indicating a gun had been picked up, despite unobstructed views and sufficient lighting. (RT 12627-12628, 12646, 12660-12662.) Special Agent Gurinsky and Deputy Desvernine searched the Williams home only days later and failed to find the gun, although according to Karen it was in plain view under a dresser, inside a bright orange plastic bag.

197. Had the defense been able to impeach Shane and Karen, with the information about the illicit benefit they received as a result of cooperating with the prosecution, it is reasonably probable that the jury, either based on that information alone or in combination with the matters alleged in