

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Post Conviction Relief

Honorable Diane S. Goodstein, Circuit Court Judge

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Case No. 2006-CP-38-00273  
Appellate Case No. 2013-00637

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Levi Bing, Jr.,

Petitioner,

vs.

State of South Carolina,

Respondent.

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SUPPLEMENTAL APPENDIX

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Tricia A. Blanchette  
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Attorney for Petitioner

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FEB - 7 2014

**S.C. Supreme Court**

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**DEFENDER CORPORATION  
OF  
ORANGEBURG COUNTY  
ORANGEBURG, S.C. 29116-1112**

**PUBLIC DEFENDER  
MICHAEL R. CULLER, JR.**

**DEPUTY PUBLIC DEFENDER  
RICHARD H. GUSTAFSON**

**ASSISTANT PUBLIC DEFENDER  
MARGARET E. HINDS  
CRYSTAL L. CHAPMAN  
SAMUEL M. KRAMER  
ANDREW J. BROWN**

**ORANGEBURG COUNTY COURTHOUSE  
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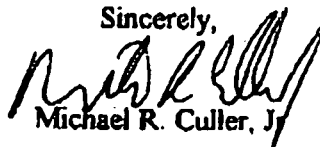
**Tuesday, February 1, 2005**

**Dear Professor Freeman,**

John Delgado and I have been assigned to defend client in a death penalty case. Client, upon arrest, gave 3 conflicting statements: it was self defense; a car cut client and victim's car off, got out and shot victim; someone came to Columbia, took client's gun, went and killed victim. Thus these 3 statements are known to the Solicitor. Client then tells Mr. Delgado a 4<sup>th</sup> version and me a 5<sup>th</sup>. I should also say, client has been polygraphed twice and failed with very low scores.

When confronted with these seemingly mutually exclusive stories, client has responded, " Well, let's go back to story number one." We have explained to client(no mental issues-psychiatrist has seen him) that we cannot believe him and have a duty to the court not to present perjured testimony. Client has tried to tell yet another story. You see where this is going. Client states that he will not plead guilty. We would respectfully ask you to consider these facts and give us your opinion as to where, ethically we are in this thicket of conflicting stories. If these facts are not enough to allow you to give us a formal opinion, please let me know and I will be glad to fill in any holes.

Sincerely,

  
Michael R. Culler, Jr.

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February 21, 2005

Michael R. Culler, Jr., Esquire  
Public Defender  
Orangeburg County Courthouse  
Room 110 PO Box 1112  
Orangeburg, South Carolina 29116-1112

John Delgado, Esquire  
Box 1359  
Columbia, South Carolina 29202

Re: Ethics Issue

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FEB 23 2005

JOHN DELGADO  
ATTORNEY AT LAW

Dear Friends:

This is in response to Michael's letter which is attached.

Here are the steps to take when faced with client perjury. This assumes you know in advance that the client intends to commit perjury:

1. Under Model Rule 1.2, the client in a criminal case has an absolute right to take the stand. You are thus stuck with putting the client on the stand.
2. Try to talk the client out of it. In doing so, explain in writing to the client that you cannot be an accomplice in deception practiced on the Court, and this means that you cannot refer to the client's bogus story in opening statement, closing argument, and you cannot directly elicit the false testimony. Worse, under Rule 3.3(a)(4),<sup>1</sup> you will have to notify the court of the perjury once it occurs.

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<sup>1</sup>(a) A lawyer shall not knowingly . . .  
(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

3. I favor the narrative approach. If your client insists on testifying falsely, let it be in response to a question such as: "Are there additional facts about this case you would like to tell the jury." And then: "Please proceed." Note that the narrative approach has been criticized on the ground that it undercuts the client's ability to sell his story. On the other hand, perjury is a crime and lawyers have better things to do than aid and abet crimes.

With kindest regards,

Sincerely yours,



John P. Freeman

I am Levi Bing and I am charged with murder and have been served a notice by the State to seek the DEATH PENALTY against me. I have two lawyers, John Delgado and Michael Culler. I have met with both of my lawyers many times and we have discussed the case in great detail. I have also met with: investigators Amos Jones and Marion Brothers; Jeff Hollifield, a forensics expert and former SLED expert; Don Girndt, a crime scene expert, also a former SLED expert; Dr. Dafferlin Dupree, a psychiatrist who has met twice with me. In addition, I have taken and failed two polygraph tests administered by Rick Johnson, formerly of SLED.

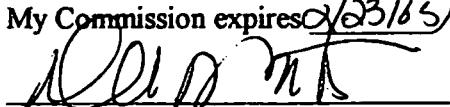
I recognize that upon arrest I made several statements which will be seen as confessions. I also recognize that these statements conflict with each other to the extent that they cannot possibly be true. I understand that the State will impeach me with these inconsistent statements at trial to show that I have not told the truth. I also understand that my gun was determined to be the murder weapon, a weapon which I told police the location of. Further I understand that I was found in possession of the dead man's car, and that I have said I met with the dead man and rode to Boyer Road with the dead man the night he was killed. There is a videotape showing me with the dead man shortly before the murder occurred. I also recognize that there is evidence by my statements and phone records which show that I called the dead man's house after the murder- twice. This will be characterized as my attempt to create an alibi or defense.

I understand that both of my lawyers have reviewed the evidence in this case with me, that they have gone to various locations to talk with witnesses, and have met multiple times with myself and my family. My lawyers have told me that they believe there is a 100% chance that I will be convicted of murder and may

well get the DEATH PENALTY as punishment for the crime. They have recommended that I enter a plea bargain in this case which would allow me to be released from prison at the end of my sentence. I understand my sentence would be substantial, in the 30-40 year range. They have said me that because I have told the police 3 versions which contradict each other, and have told my lawyers many more contradicting statements, that they cannot put me up to testify in the case. My lawyers have explained that because I have told them so many things which, because of the contradictions with other statements I have made, are not possibly true, that they do not know what to believe. This added to my failure of two polygraph examinations, places my lawyers in a situation where they cannot ethically put me up to testify. They have told me that they have a duty to the Court not to put up perjured or untrue testimony. I understand that my lawyers have consulted with the leading ethics expert in the state, Professor John P. Freeman at the University Of South Carolina School Of Law, to get this opinion. Thus, I understand that I have substantially limited my lawyers ability to help with this case because of my many contradicting statements.

I recognize all of this and I reject my lawyers' advice freely and voluntarily. No promises have been made to me or threats made against me to get me to reject my lawyers' advice. When convicted I recognize that this decision has been my decision. I acknowledge that my lawyers have done everything possible to get me to resolve this case short of trial and I have rejected their advice.

SWORN TO BEFORE ME THIS 4 DAY  
OF FEBRUARY, 2005  
My Commission expires 2/23/05



REFUSE TO SIGN

LEVI BING, JR

Witness: Marion Brothman

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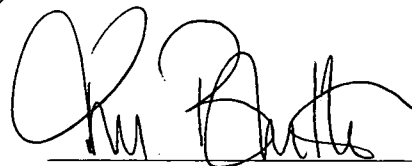
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CERTIFICATE OF SERVICE

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I, Tricia A. Blanchette, Attorney for Petitioner, hereby certify that I placed in the United States Mail this 7<sup>th</sup> day of February 2014, a copy of Supplemental Appendix to Megan Harrigan of the Attorney General's Office, at:

Office of the Attorney General  
Att: Megan Harrigan, Ast. AG  
P.O. Box 11549  
Columbia, SC 29211-1549



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Columbia, SC 29211  
(803) 988-0008  
Attorney for Petitioner

February 7, 2014