

CLERK,

9-1-15

I HAVE AN APPEAL PENDING,
FROM MY 4-16-87 KIDNAPP-
ING CONVICTION... THE
ENCLOSED INDICTMENT WILL
OVER-TURN THIS CONVICTION...

THE 16-14-910 IS THE
WRONG CODE OF LAW...
SHOULD READ 16-3-910...

RECEIVED

SEP 08 2015

S.C. SUPREME COURT

2.) I DID NOT GIVE THE
STATEMENT ENCLOSED ON
PAGES 4+5... I PLED NOT
GUILTY ON 4-16-87 AND
WAS SENTENCED TO LIFE...

I CAN PASS A POLYGRAPH
TEST...

MY SIGNATURE WILL
NOT MATCH THAT ON THE
ENCLOSED STATEMENT...

Gaul Fannie Cop

The State of South Carolina

INDICTMENT FOR

County of Spartanburg

Kidnapping AND
Assault and Battery High & Aggravated

At a Court of General Sessions, convened on the _____ day of MAR 2 1987

19____, the Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE
Kidnapping

That Paul Leslie Cox

did in Spartanburg County on or about the 13th day of January
1987, wilfully with criminal intent, seize, kidnap, confine one
Lottie Lane without authority of Law, in violation of Section 16-14-910,
Code of Laws of S. C., 1976.

COUNT TWO

Assault and Battery High & Aggravated

That Paul Leslie Cox

did in Spartanburg County or about the 13th day of January
1987, commit an assault and battery upon one Lottie Lane, constituting
an unlawful act of violent to the person of the said Lottie Lane,
accompanied by circumstances of aggravation, to-wit: by forcing her
into a bed room at her residence and bounding and gagging the elderly
woman.

Against the peace and dignity of the State, and contrary to the statute in such cases made and
provided.

1987 FEB 18 PM 4:56
Spartanburg County
CLERK OF COURT
FILED

John B. Boudin
Solicitor

87-GS-42 - JB 643

The State of South Carolina

County of SPARTANBURG

COURT OF GENERAL SESSIONS

MAR 2 1987 Term, 19

THE STATE

VS.

Paul Leslie Cox

Mile per or to Aggravated Assault
16 April 87 John B. Smith

INDICTMENT FOR

Kidnapping and
Assault and Battery
High and Aggravated Nature

Holman C. Gossett, Jr.

Pat Baumgardner
Foreman of Grand Jury

MCARY PRINTERS, LUMBER, S. O. 2926

Free Bid

B 710141
BJ10140

Witnesses

Carl Mabry
Woodruff Police Dept.

- 1. SENTENCE MADE
- 2. REPORT MADE
- 3. CARD FILED
- 4. INDEXED
- 5. CHECKED
- 6. CHECKED
- 7. ARRESTED
- 8. FINE COLLECTED
- 9. TRAFFIC VIOLATIONS COFF

Verdict

Foreman

SENTENCE

The defendant Paul Leslie Cox is committed to the State Dept. of Corrections/County for a term of 12 months/years and/or to pay a fine of \$ unpaid assessment service of unpaid assessment months/years and/or payment of \$ unpaid assessment months/years.

plus pay/waive costs and assessments as applicable, the balance suspended with probation for unpaid assessment months/years. Restitution For physical injury \$ unpaid assessment Yes / No property damage \$ unpaid assessment to be paid

to clerk for unpaid assessment Other conditions unpaid assessment

Date 4-16-87 Substantive Presiding Judge

*Costs and Assessments

Non-waivable \$ unpaid assessment
Not waived \$ unpaid assessment
Total \$ unpaid assessment

K.R. H. Hester
M. M. Smith, Sec. Clerk of Court
**Pay to Victim's Compensation Fund if subrogated.

I PAUL LESLIE COX hereby appear in my own proper person and plead guilty to KIDNAPPING on the within indictment.
Witness Paul Leslie Cox
Clerk of Court K.R. Hester
M. M. Smith, D.C.

IN THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT
)
 PAUL LESLIE COX, #75206,)
) Civil Action Number: 2007-CP-42-2757
 Applicant,)
)
 v.) **APPLICANT'S THIRD**
) **SUPPLEMENTAL MEMORANDUM**
 STATE OF SOUTH CAROLINA,) **IN SUPPORT**
)
 Respondent.)
)

This matter comes before the Court upon the hearing on the Post Conviction Relief application of Paul Leslie Cox. All filings by Mr. Cox and counsel are expressly incorporated herein. A partial timeline is set forth below:

June 16, 1983: State recommended start date for kidnapping charge (*from transcript of guilty plea*):
THE COURT: How much more time – how long you been in jail now on that first sentence?
DEFENDANT COX: Since June the 16, '83.
SOLICITOR BOWDEN: Your Honor, the State would recommend that this sentence be back dated to that date.¹

June 3, 1986: S.C. Code Ann. § 16-1-60 takes effect (*from statute*):
 “For purposes of definition under South Carolina law a violent crime includes the offenses of...assault and battery with intent to kill, kidnapping....”

June 3, 1986: S.C. Code Ann. § 21-24-640 takes effect (*from statute*):
 “The Board shall not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for or conviction, for violent crimes as defined in Section 16-1-60.”

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 20 MAR 10 AM 9:05
 ROBE BLACKLEY

Applicant's
 1
 3/10/14

¹ Tr. of Record of Guilty Plea at 3, April 16, 1987.

- Jan. 13, 1987:** Kidnapping occurs
- April 16, 1987:** Guilty plea and sentencing for kidnapping (*from transcript of guilty plea*):
 “THE COURT: Kidnapping, come up for parole on ten years of kidnapping.”²
- May 10, 1987:** ABWIK occurs
- August 3-4, 1987:** Trial and sentencing for ABWIK (*from transcript of ABWIK trial*)
 “THE COURT: On the indictment for Assault and Battery with Intent to Kill, Indictment 87-3859, the sentence is the defendant will be confined for a period of twenty years consecutive to all other sentences now existing.”³
- June 5, 1991:** Penalty for kidnapping reduced from life to thirty years.
From 1991 South Carolina Laws Act 117
- Nov. 17, 1995:** Department of Probation, Parole, and Pardon Services denied probation (*from Department correspondence to Mr. Cox*):
 “It is my duty to inform you that South Carolina law prohibits the Board of Probation, Parole, and Pardon Services from granting you parole on the sentence(s) identified below. Section 24-21-640 states: “The Board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for prior conviction, for violent crimes as defined in Section 16-1-60.” Our records indicate that you have been convicted of the following crimes: [Assault (*sic*) & Battery With Intent to Kill and Kidnapping].”

This matter is before the Court on Mr. Cox’s Application for Post-Conviction Relief (the “Application”) filed August 7, 2007 (Exhibit I). By document dated October 3, 2007, the State filed a return to the Application (Exhibit II). By document filed January 18, 2008, counsel for Mr. Cox filed an additional memorandum in support of the Application (Exhibit III). This matter came for a hearing before the Court on January 18, 2008. By document filed June 13, 2008, counsel for Mr. Cox filed additional reasons in support of the

² Tr. at 11, April 16, 1987.

³ ABWIK Trial Tr. at 224, August 3-4, 1987.

Application, including a copy of the transcript of the April 16, 1987 guilty plea and sentencing for kidnapping (Exhibit IV). On June 18, 2008, counsel for Mr. Cox received the Court's Order dismissing the case (Exhibit V). By Order filed August 22, 2008, the Court granted Mr. Cox's timely motion for reconsideration under Rule 59(e) (Exhibit VI). In that Order, the Court permitted very limited investigation into the merits of the case. The State opposed the portion of the Order permitting limited investigation by a timely motion for reconsideration under Rule 59(e). Despite the State's opposition to a limited investigation, counsel for Mr. Cox and counsel for the State cooperated, and counsel for Mr. Cox was able to obtain additional information from the State and other State entities (such as the transcript of the subsequent case). Upon reconsideration of the portion of the August 22, 2008 Order addressing the limited investigation, the Court by Order filed February 20, 2014, (Exhibit VII) denied Mr. Cox's request for discovery, and the case was set for a hearing on March 10, 2014. Additionally, attached hereto for the Court's consideration are correspondence from the South Carolina Department of Probation, Parole, and Pardon Services (Exhibit VIII); a portion of the transcript from the subsequent case (Exhibit IX); and a copy of the entire Act changing the penalty for kidnapping from life to thirty years (Exhibit X).

In addition to the reasons and defenses set forth in the previous filings, Mr. Cox would additionally raise the following arguments.

First, Mr. Cox did not unequivocally plead guilty to kidnapping. At the time, the kidnapping statute was as follows:

Whoever shall unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any other person by any means whatsoever without authority of law, except when a minor is seized or taken by a parent thereof, shall be guilty of a felony and, upon conviction, shall suffer the punishment of life

imprisonment unless sentenced for murder as provided in § 16-3-20.

S.C. Code Ann. § 16-3-910 (subsequently amended).

Mr. Cox stated that the victim, his grandmother, consented to the confinement, could have left any time she wanted, and actually retrieved the scarves used to tie her up. Although not completely clear, it appears the only reason she was tied up was so that she would not get into trouble for assisting Mr. Cox:

DEFENDANT COX: I had been drinking. I parked the van down behind moma's house, and I know the woods all, you know, down in there good. I parked the van. I cut through the woods, went and sat in the woods. Drunk some more liquor. And it got dark.

I seen Northside van go up the street down towards moma's house. When it went out the street towards mama's house, I went up towards granny's house. Got up there and knocked on the door. She opened the door. Unlocked the screen door and let me in. She told me the police was looking for me. I told her I knowed that.

I went over there and sat down in the chair at the far end of the room over by the TV. She sat down near the door where she got a chair at the door. Me and her sit there and talked for about I guess twenty or thirty minutes. She tried to talk me into calling my stepfather cause he's a -- I don't know what you call him, state constable, to get him to let him come you know and take me back.

I went over to to the telephone. And me and her was standing there looking up the number in the phone. And all of sudden it hit me, I didn't want to go back. So, I put my hand on her shoulder and told her to open the door and go in here and sit down. She walks around and sits down.

I told her I need something to tie her up with. So she gets up. I go in the living room, she goes over to the dresser or somewhere. Cause I come back, she had the scarves I reckon you know, and I went in the living room and come back.

And she was sitting on the edge of the bed. Then, I walked in the bathroom, come out of the bathroom. I asked her, I said, where is your pocketbook. How much money you got. She told me she didn't have -- she had twelve dollars. I went in the kitchen looking for the pocketbook where she told me it was at.

She was still sitting on the bed not tied up. I go in there and get the pocket book and bring it in there where she's at and looked in it, and she told me where the money was and I got the money.

Then I got ready to leave and she done got stuff to tie up with. I got a little carried away, and then I tied her up and left. And I told her when I tied her up, I said, when I leave, I'll go to phone and call somebody to come and get you, untie you. So, I went to the phone. When I called, the line was busy.

Then I tried to call again. It was busy. Then I found out the police done ben over there. Cause I guess the lady next door keeps an eye on her real good. When the lady heard me leaving in car, she probably went over there cause she knows my grandmother does not drive at night cause she can't see how to drive at night.

And then next thing I know I got a kidnapping warrant on me for tying her up.

THE COURT: You left her there tied up I guess too?

DEFENDANT COX: Yes.

THE COURT: What did you think gave alarm until you got away?

DEFENDANT COX: Done been there threatening everybody about if they helped me any kind of way. So, I tied her up.⁴

In light of this statement, Mr. Cox did not unequivocally plead guilty to kidnapping.

Second, the kidnapping statute has been amended and now only provides for a thirty-year sentence. The Legislature did not include a savings clause in the enacting statute. In fact, the Act is described as an Act to "decrease the penalty for kidnapping ... to thirty years."

Accordingly, it was the intent of the Legislature that Mr. Cox's maximum sentence be reduced from life to thirty years.

⁴ Tr. at 18-20, April 16, 1987.

Third, as the kidnapping statute currently provides for a thirty-year sentence, Mr. Cox has served a thirty-year statute as of June 16, 2013. Although a life sentence for kidnapping is not *per se* cruel and unusual punishment (State v. Smith, 275 S.C. 164, 268 S.E.2d 276 (S.C. 1980)), given the facts of this case and the Legislature's decision to reduce the crime from life to thirty years, Mr. Cox's sentence is inappropriate under the statute and a violation of due process (since different defendants for the same crime receive different sentences) and is cruel and unusual under the facts of this case.

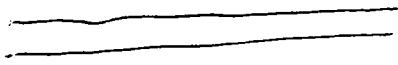
Fourth, Mr. Cox was unrepresented at his kidnapping guilty plea on April 16, 1987. Neither the Court nor any attorney informed him that kidnapping was categorized as a "violent crime" as defined in S.C. Code Ann. § 16-1-60, and therefore could result in a loss of parole eligibility if he committed a subsequent violent crime. This is especially relevant because much of the transcript is devoted to discussing parole.

Fifth, Mr. Cox's sentence should be back dated to June 16, 1983. The Court has stated, "It is not a violation of the *ex post facto* clause for the legislature to enhance punishment for a later offense based on a prior conviction, even though the enhancement provision was not in effect at the time of the prior offense." Phillips v. State, 331 S.C. 482, 504 S.E.2d 111 (S.C. 1998). Nevertheless, in light of the transcript, back-dating Mr. Cox's conviction is appropriate.

This brief will be further supported by counsel's arguments and Mr. Cox's testimony.

[SIGNATURE ON FOLLOWING PAGE]

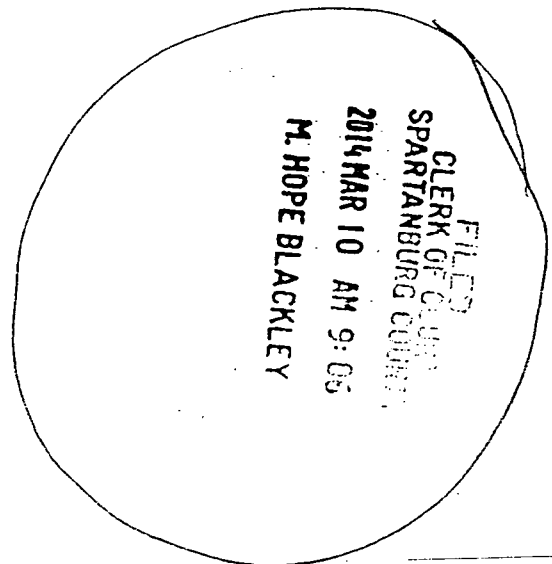
This 7th day of March, 2014.



Respectfully submitted,

William S. F. Freeman
(SC Bar No. 16676)
THOMERSON MACCHIAVERNA
SMITH & FREEMAN P.C.
Post Office Box 473
Greenville, South Carolina 29602
T: (864) 991-8329
F: (864) 991-8330
E: william@tmlawpc.com

Greenville, South Carolina



LESSIE LOK

#15206-IDX-9

430 OAKDAWN DR.

PEZZER, SC 29269

RECEIVED CLERK OF COURT

SEP 02 2015 P.O. BOX 11330

PCI Mailroom

REG MAIL

COLUMBIA, SC

29202

THE DEPARTMENT OF CORRECTIONS HAS
NOT INSPECTED OR OPENED THIS ITEM.
THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS CONTENTS.
PERRY CORRECTIONAL INSTITUTION
SC DEPARTMENT OF CORRECTIONS

AMS