STATE OF LOUISIANA	*	**NO. 2002-KA-2014**
VERSUS	*	**COURT OF APPEAL**
DWANA MARTIN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 426-337, SECTION "C"
HONORABLE SHARON K. HUNTER, JUDGE
* * * * * *
JAMES F. MC KAY III
JUDGE
* * * * * *

(Court composed of Judge James F. McKay III, Judge Dennis R. Bagneris, Sr., Judge Terri F. Love)

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CONVICTION AFFIRMED; SENTENCE VACATED AND REMANDED FOR RESENTENCING

On November 25, 2001, Dwana Martin was charged by bill of information with possession of cocaine in violation of La. R.S. 40:967(C). At her arraignment on November 29,2001, she pleaded not guilty. After a hearing on the motions, the trial court found probable cause to bind the defendant over for trial and denied the motions to suppress the evidence, the statement, and the identification. On January 16, 2002, after trial, a six-member jury found Martin guilty of the responsive verdict of attempted possession of cocaine. The state filed a multiple bill charging Martin as a fourth felony offender, and a hearing was held on May 3, 2002, at which a fingerprint expert testified. On May 29,2001, the court sentenced Martin to serve twenty-one years as a fourth felony offender. Her motion to reconsider the sentence was denied, and her motion for an appeal was granted.

At trial Officer Harry O'Neal, an expert in the analysis of controlled dangerous substances, testified that he tested the glass crack pipe taken from the defendant with two conclusive procedures, and both tests indicated cocaine was present in the pipe. The officer stated that a white residue

extended the length of the glass tube, and during his analysis, he scraped out some of the white material.

Officer Shannon Carr answered a call at 5601 Clement Street, Apartment "C" on November 13, 2000. In a search of the defendant incident to her arrest, the officer found a glass crack pipe in her right pants' pocket. When the officer saw the white residue in the glass tube, she charged the defendant with possession of drug paraphernalia.

The defense recalled Officer Harry O'Neal who reiterated his statement that a layperson would not know that a glass tube such as the one taken from the defendant contained cocaine, but a cocaine addict would recognize the substance. The officer explained that persons addicted to cocaine frequently scrape the residue out of such tubes and smoke it on cigarettes.

Before addressing the assignment of error, we note an error patent in the multiple bill. The bill lists four cases, and the third case lacks a district court number. It simply indicates that the case came from Section I, that Dwana Martin was charged with La. R.S. 40:967(C), and that she was convicted of attempted possession of cocaine on September 14, 1993. At the bottom of the multiple bill of information four cases are listed; the bill states that Martin is the same person who was convicted in cases 426-337

"C" (the instant case), 363-366 "C"(a 1993 possession of cocaine case), 346-373 "F" (a 1991 violation of La. R.S. 14:89(2), and 351-858 "C/D". Because case numbers 426-337, 363-366 and 346-373 are listed in the appropriate blanks, it appears that the missing case number is 351-858. However, the crime under that case number is not possession of cocaine but solicitation.

At the multiple bill hearing the prosecutor stated that case number 364-983 was being substituted for case number 351-858. The prosecutor indicated that the multiple bill was going to be amended to charge the defendant with case number 364-983; however, that amendment was never made.

This court has held that a defendant may not be sentenced under an oral multiple bill of information. State v. Sutton, 544 So.2d 1345 (La. App. 4 Cir. 1989); State v. Riggins, 508 So.2d 918 (La. App. 4 Cir. 1987). According to La. C.Cr.P. art. 384, an "information is a **written** accusation of a crime" made by the state; there can be no oral bill of information. State v. Vidrine, 476 So.2d 537 (La. App 1 Cir. 1985). Thus, because the bill of information does not correctly list the four crimes the state accused Martin of committing and for which the trial court sentenced her to twenty-one years, her adjudication and sentence as a fourth felony offender is invalid

and must be vacated.

In a single assignment of error, the defendant maintains that the sentence is excessive. This issue is moot because of the fatal error patent.

Accordingly, we affirm Dwana Martin's conviction and vacate her adjudication and sentence as a fourth felony offender. Because she was properly adjudicated on two of the prior offenses, we affirm her adjudication as a third felony offender and remand the case for resentencing.

CONVICTION AFFIRMED;SENTENCE VACATED AND REMANDED FOR RESENTENCING