

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA \* NO. 2000-KA-2701  
VERSUS \* COURT OF APPEAL  
SANDRA M. GIBSON \* FOURTH CIRCUIT  
\* STATE OF LOUISIANA  
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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 410-925, SECTION "H"  
Honorable Camille Buras, Judge

\* \* \* \* \*  
**Chief Judge William H. Byrnes, III**  
\* \* \* \* \*

(Court composed of Chief Judge William H. Byrnes, III,  
Judge James F. McKay, III, and Judge Dennis R. Bagneris Sr.)

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**AFFIRMED**

In this *Crosby* appeal, Sandra M. Gibson requests a review of her convictions and sentences of solicitation of a crime against nature in violation of La. R.S. 14:89(A)(2) and as a second offender. On July 19, 2000, she entered a plea of *nolo contendere* to the solicitation charge under *State v. Crosby*, 338 So.2d 584 (La. 1976), and entered a plea of guilty as a second offender on the multiple bill. The trial court sentenced Ms. Gibson to thirty (30) months at hard labor under La. R.S. 15:529.1. Her *Crosby* appeal was granted.

The trial court found probable cause at the hearing on January 19, 2000. Officer Timmy Bayard testified that he was working undercover on September 25, 1999, near Oretha Castle Halley Street and Martin Luther King Boulevard when he noticed Ms. Gibson walking slowly down the street. They made eye contact, and when he slowed down, she got into the front passenger seat of the car. She offered to perform a “blowjob” for

fifteen dollars, and the officer arrested her.

On appeal counsel filed a brief requesting a review for errors patent. Counsel complied with the procedures outlined by *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 1377 (1967), as interpreted by this Court in *State v. Benjamin*, 573 So.2d 528 (La. App. 4 Cir. 1990). Counsel filed a brief complying with *State v. Jyles*, 96-2669 (La. 12/12/97), 704 So.2d 241. Counsel moved to withdraw after his review of the record indicated no issue for appeal. A copy of the brief was forwarded to Ms. Gibson, and this Court informed her that she had the right to file a brief in her own behalf. She has not done so.

Pursuant to *State v. Benjamin*, this Court performed an independent, thorough review of the pleadings, minute entries, and transcripts in the appeal record. Through our perusal of the record, we found an error patent in that the bill of information is missing from the record; moreover, the minute entries from November 24, 1999, the date of the filing of the bill, and from December 7, 1999, the date of her arraignment, are not in the record. All of the evidence in the record suggests that the bill of information was filed but not made part of the record on appeal. No objection was made to

the lack of a bill of information, and the charge against the defendant is clearly evident in the minutes in the record. The multiple bill of information shows that Ms. Gibson was charged on November 19, 1999, with a violation of La. R.S. 14:89. Furthermore, at the probable cause hearing, the trial judge stated that there was probable cause for the charge of crime against nature, and when Ms. Gibson pleaded guilty, the charge was read to her. The plea of guilty form states that the defendant pleads guilty to “soliciting for crime against nature.” It is signed by Sandra Gibson and initialed by her in eleven places; her attorney and the judge also signed the document.

Under La. C.Cr.P. art. 384 a bill of information, is “a written accusation of crime made by the district attorney . . . and signed by him. It must be filed in open court . . . or in the office of the clerk thereof.” In *State v. Buttner*, 411 So.2d 35 (La. 1982), the Louisiana Supreme Court held that when there was no written accusation of a crime, there could be no valid arraignment, trial or conviction, even if no objection were lodged.

However, in cases where a bill of information is missing from the appellate record but a transcript indicates that the charge was read to the defendant, courts have upheld convictions. In *State v. Grey*, 522 So.2d 1216

(La. App. 4 Cir. 1988), the bill of information charging Grey with manslaughter was not filed or signed by the district attorney in accordance with La. C.Cr.P. art. 384. However, a minute entry revealed that an amended bill of information was read aloud in open court. This court found that any error did not prevent the defendant from presenting a defense and, when the bill was read in court, the defendant was properly notified of the charge against him. Any error was harmless and did not render the conviction and sentence to be reversible.

In the present case, as in *Grey*, the charge was read in open court. On the day set for trial when Ms. Gibson pleaded guilty, the trial court stated:

Ms Gibson, you're charged with crime against nature in Louisiana which is a felony. And you're facing a sentence of anywhere from zero to five years in the Department of Corrections if you were convicted of that charge; do you understand that?

Ms. Gibson answered affirmatively. She was then apprised of her *Boykin* rights before she pleaded guilty. Because it is apparent that Ms. Gibson was properly notified of the charges against her, we find no reversible error in the absence of the bill of information.

Ms. Gibson was present and represented by counsel at the probable

cause hearing and sentencing. The sentence is legal in all respects. Our independent review reveals no non-frivolous issue and no trial court ruling which arguably supports the appeal.

Accordingly, the defendant's conviction and sentence are affirmed. Appellate counsel's motion to withdraw is granted.

**AFFIRMED**