NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2002-KA-1524**
VERSUS	*	**COURT OF APPEAL**
YOLANDA EPPS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 426-540, SECTION "J"
Honorable Leon Cannizzaro, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Dennis R. Bagneris, Sr., Judge David S. Gorbaty)

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CONVICTION AND SENTENCE AFFIRMED

Yolanda Epps was charged by bill of information on December 4, 2001, with solicitation for a crime against nature in violation of La. R.S. 14:89(2). She pleaded not guilty at her arraignment on December 7th; however, after a trial on January 29, 2002, a six-member jury found her guilty as charged. The state filed a multiple bill charging the defendant as a third felony offender, and, after being advised of her rights and admitting to her identity, she was sentenced to serve four years at hard labor under La. R.S. 15:529.1(A)(1)(b)(i). She was also sentenced under La. R.S. 15:574.5, The About Face Program in Orleans Parish Prison.

Detective Ricky Jackson of the NOPD Vice Crimes unit was working undercover on August 29, 2001, when he observed the defendant standing on Prieur Street near the intersection of St. Ann Street; she was knocking on a hotel window. He asked her what she was doing, and she answered, "I could be doing you." He responded, "I might like that." As she walked to the unmarked vehicle he was driving and got in on the passenger side, she asked if he were a police officer, and he answered affirmatively. She

laughed and indicated she did not believe him. She then offered oral sex for twenty dollars. The detective drove down Prieur Street and gave a signal to his backup team. The backup team stopped the detective's vehicle, and the detective and the defendant were ordered to get out. The defendant was arrested.

Dr. Rafael Salcedo, an expert in clinical forensic psychology, testified that in his profession the word "unnatural" is not recognized as a technical term, nor is performing oral sex considered a condition requiring treatment. (The defendant's charge is defined as "unnatural" carnal copulation). Under cross-examination, the doctor admitted he had never spoken to the defendant in this case.In a single assignment of error the defendant contends that the trial court erred in finding her a third offender because the minute entry from a 1998 offense is a boilerplate form that fails to prove that she knowingly and voluntarily waived her rights when she pleaded guilty. Furthermore, she maintains that two of the rights in the 1998 Waiver of Rights/Plea of Guilty Form are not properly expressed.

At the multiple bill hearing, the defendant admitted to identity on the two prior offenses. For the 1998 conviction, the state introduced the docket master, the arrest register, the waiver of rights/guilty plea form and the minute entry to establish the defendant's Boykinization in the prior offense.

The defense attorney objected to the minute entry as a boilerplate form.

In *State v. Alexander*, 1998-1377 (La. App. 4 Cir. 2/16/00), 753 So.2d 933, *writ denied*, 2000-1101 (La. 4/12/01), 790 So.2d 2, this Court, considering the state's burden of proof at a multiple bill hearing, stated:

> LSA-R.S. 15:529.1 D (1)(b) states that the district attorney has the burden of proving beyond a reasonable doubt any issue of fact and that the presumption of regularity of judgment shall be sufficient to meet the original burden of proof. In State v. Shelton, 621 So.2d 769, 779-780 (La.1993), the Supreme Court stated:
>
> > If the defendant denies the allegations of the bill of information, the burden is on the State to prove the existence of the prior guilty pleas and that defendant was represented by counsel when they were taken. If the State meets this burden, the defendant has the burden to produce some affirmative evidence showing an infringement of his rights or a procedural irregularity in the taking of the plea. If the defendant is able to do this, then the burden of proving the constitutionality of the plea shifts to the State. The State will meet its burden of proof if it introduces a "perfect" transcript of the taking of the guilty plea, one which reflects a colloquy between judge and defendant wherein the defendant was informed of and specifically waived his right to trial by jury, his privilege against self-incrimination, and his right to confront his accusers. If the State introduces anything less than the "perfect" transcript, for example, a guilty plea form, a minute entry, an "imperfect" transcript, or any combination thereof, the judge then must weigh the evidence submitted by the defendant and by the State to determine whether the State has met its burden of proving that the defendant's prior guilty plea was informed and voluntary, and made with an articulated waiver of the three Boykin rights. (footnotes omitted).

Alexander, 98-1377 at pp. 5-6, 753 So.2d at 937.

In the case at bar, the state introduced a boilerplate minute entry indicating only a waiver of rights. Moreover, the minute entry refers to the defendant with masculine pronouns four times.

However, the waiver of rights form lists all three Boykin rights. The defendant maintains that the form is not "well-executed." She objects that the form does not explain sufficiently the rights to confront one's accusers and against self-incrimination. Rather than stating that she has the right to confront her accusers, the form states that she could:

> force the District Attorney to call witnesses who, under oath would have to testify against me at trial; and to have my attorney ask questions of each of those witnesses.

As to her right against self-incrimination, the form states that she has a right to:

> testify myself at trial, if I chose to do so; or remain silent if I chose not to testify—and not to testify [sic]—and not have my silence held against me or considered as evidence of my guilt.

The defendant objects that the wording of these two rights is confusing and unhelpful. We note that the form does not use the conventional wording; however, it is easier and not more difficult to understand than the conventional expression of rights. Moreover, the defendant was represented by an attorney who could have answered her

questions. The form has a space for initials next to each right, and it contains the defendant's initials in each space. The form is dated and signed by defendant, counsel and the trial judge.

This court has held that a minute entry showing that the defendant was attended by counsel at the time she pleaded guilty and a properly executed waiver of rights/guilty plea form is sufficient to carry the state's burden under the multiple bill statute. *State v. Wolfe*, 1999-0389 (La. App. 4 Cir. 4/19/00), 761 So.2d 596, *writ denied*, 2000-1889 (La. 9/14/01), 796 So.2d 671; *State v. Weaver*, 1999-2177, p. 13 (La. App. 4 Cir. 12/6/00), 775 So.2d 613, 621. We do not find the misused pronouns of the minute entry or the simplified wording of the plea of guilty fatal in this case. Thus, the state carried its burden in submitting a valid 1998 guilty plea.

Accordingly, for reasons cited above, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED