NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 1383

STATE OF LOUISIANA

VERSUS

COLUMBUS CHRISTOPHER WILLIAMS

DATE OF JUDGMENT: December 21, 2007

ON APPEAL FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 376,584), PARISH OF TERREBONNE
STATE OF LOUISIANA

HONORABLE RANDALL L. BETHANCOURT, JUDGE

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Joseph L. Waitz, Jr., District Attorney Ellen D. Doskey, Asst. District Attorney Houma, Louisiana	Counsel for Plaintiff/Appellee State of Louisiana
Frank Sloan Mandeville, Louisiana	Counsel for Defendant/Appellant Columbus Christopher Williams

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BEFORE: PARRO, KUHN AND DOWNING, JJ.

Disposition: CONVICTION AND SENTENCE AFFIRMED.

KUHN, J.

Defendant, Columbus Christopher Williams, was charged by bill of information with obscenity, a violation of La. R.S. 14:106(A)(1). He pled not guilty. Defendant waived his right to a jury trial and, following a bench trial, he was found guilty as charged. He was sentenced to fifteen months at hard labor. Defendant now appeals, designating two assignments of error. We affirm the conviction and sentence.

FACTS

Defendant was being held in the Terrebonne Parish jail for various charges, including battery on a correctional officer, unauthorized entry of an inhabited dwelling, harassing phone calls, and criminal damage to a coin-operated device.[1] On September 27, 2001, Elizabeth Brown, an EMT, was checking blood-sugar levels of inmates and passing out medication on the Bravo pod.[2] Brown was being escorted by Deputy Wilton Leon, Jr. Because defendant said he was not going to eat, Brown did not give defendant his medication. Defendant began arguing with Brown. Deputy Leon told defendant to step away from the hatch hole. Defendant became very upset, stepped away from the hatch hole, and began cursing at Deputy Leon. Deputy Leon observed defendant through the window. Defendant pulled down his pants with one hand and grabbed and shook his groin area with the other hand. Defendant's penis came out of his boxer shorts. Defendant told Deputy Leon to "suck his dick" while he shook his penis. Defendant pulled his pants back up and, moments later, repeated these actions.

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[1] The defendant was convicted on November 6, 2001, on the criminal damage to a coin-operated device charge. This court reversed that conviction. See ***State v. Williams***, 2003-0814 (La. App. 1st Cir. 11/7/03), 868 So.2d 48.

[2] The pod is a secure, enclosed area with large pane windows where the inmates gather for medical attention. Blood is drawn and medication is administered through a hatch hole, a narrow opening through which inmates extend their hands.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, defendant argues that the obscenity statute as applied to him is unconstitutional. Specifically, he contends that the term "offensive" is unconstitutionally vague and susceptible to more than one interpretation. Defendant suggests that his mocking gestures that provoked laughter from the other inmates, while rude, were "not offensive in the meaning of the criminal statute."

Defendant has raised the constitutionality of La. R.S. 14:106 for the first time on appeal. Generally, in order to preserve an alleged error for consideration on appeal, the Louisiana Code of Criminal Procedure requires that an objection be made to the irregularity at the time of its occurrence. La. C.Cr.P. art. 841. The Louisiana Supreme Court has dispensed with the necessity for objection in those cases where an attack is on the facial constitutionality of the statute. ***State v. Holmes***, 2001-0955, p. 3 (La. App. 1st Cir. 2/15/02), 811 So.2d 955, 957. See ***State v. Hoofkin***, 596 So.2d 536 (La. 1992) (per curiam).

However, in the instant matter, defendant has not attacked the facial constitutionality of the statute. Instead, he attacks the statute as it applies to him and the particular facts of this case.[3] Such an alleged constitutional error is not discoverable by the mere inspection of pleadings and proceedings, without inspection of the evidence, subject to appellate review under La. C.Cr.P. art. 920. See ***Hoofkin***, 596 So.2d at 536. Since the issue of the constitutionality of La. R.S. 14:106 was not raised in the trial court below by motion or objection, this assignment of error is not properly before us. See ***State v. Hennis***, 98-0664, p. 5 (La. App. 1st Cir. 2/19/99), 734 So.2d 16, 19, ***writ denied***, 99-0806 (La. 7/2/99),

[3] In his brief, defendant states, "At issue in this case is whether the phrase 'or is patently offensive' includes the facts of this case where the exposure was meant as an insult or a mock display of dominance and was not offensive in the sexual sense that it would have been if directed at a female." Defendant concludes in this assignment of error, "[a]ccordingly, it is unconstitutionally vague as it was applied to Mr. Williams in this case."

747 So.2d 16. See also ***Holmes***, 2001-0955 at p. 3, 811 So.2d at 957.

Moreover, even if we were to review the assignment of error, we would find the defendant's contention baseless. The constitutional guarantee that an accused shall be informed of the nature and cause of the accusation against him requires that a penal statute describe unlawful conduct with sufficient particularity and clarity that ordinary men of reasonable intelligence are capable of discerning its meaning and conforming their conduct thereto. U.S. Const. amend. XIV, § 1; La. Const., art. I, §§ 2 & 13; ***State v. Powell***, 515 So.2d 1085, 1086 (La. 1987). The constitutionality of the provisions of La. R.S. 14:106(A)(1) has consistently been upheld. See ***State v. Ludwig***, 468 So.2d 1151 (La. 1985); ***State v. Walters***, 440 So.2d 115, 121-22 (La. 1983); ***State v. Jacobson***, 459 So.2d 1285, 1289-90 (La. App. 1st Cir. 1984), ***writ denied***, 463 So.2d 599-600 (La. 1985); ***State v. Odom***, 554 So.2d 1281, 1287 (La. App. 1st Cir. 1989), ***writ granted on other grounds***, 559 So.2d 1362 (La. 1990).

The term "offensive" is not so indefinite as to render the statute unconstitutional, because persons of ordinary intelligence could determine what conduct was regulated by the statute. La. R.S. 14:106 complies with state and federal constitutional requirements. See ***State v. Davis***, 457 So.2d 91, 93 (La. App. 4th Cir. 1984), ***writ denied***, 462 So.2d 206 (La. 1985). We find that the defendant's actions of pulling down his pants, and grabbing and shaking his penis while cursing at Deputy Leon easily fall within the ambit of "patently offensive" (no less "offensive") behavior.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, defendant urges that the trial court erred in allowing him to waive his right to trial by jury. Specifically, he contends that his right to trial by jury was not knowingly and intelligently waived.

Although it remains the preferred method for the trial court to advise a defendant of his right to trial by jury in open court before obtaining a waiver, such a practice is not statutorily required. See La. C.Cr.P. art. 780; ***State v. Pierre***, 2002-2665, p. 1 (La. 3/28/03), 842 So.2d 321, 322 (per curiam). Only a waiver which is knowingly and intelligently made is acceptable. ***State v. Kahey***, 436 So.2d 475, 486 (La. 1983). While the trial judge must determine if the defendant's jury trial waiver is knowing and intelligent, that determination does not require a ***Boykin***-like colloquy. ***State v. Brooks***, 2001-1138, p. 8 (La. App. 1st Cir. 3/28/02), 814 So.2d 72, 78, ***writ denied***, 2002-1215 (La. 11/22/02), 829 So.2d 1037.

In this case, prior to the start of trial, defense counsel informed the trial court that defendant was waiving a jury trial. The trial court then confirmed the waiver with defendant. The relevant pretrial colloquy is as follows:

> [Defense counsel]: Your Honor, Mr. Williams is present, and we're going to waive the jury in this matter today.
>
> The Court: Chris, is that correct?
>
> Mr. Williams: Yes, sir. Juries haven't been the best of luck.
>
> The Court: Okay.

Defendant stated in open court and on the record that he was waiving a jury trial. Nothing in the record indicates that defendant did not understand the right to a jury trial. In fact, the day prior to this bench trial, defendant was on trial for another crime. This previous trial was a jury trial wherein defendant was found guilty. As his own words suggest, defendant chose to forego a jury trial because he had not had the "best of luck" with juries. We find the trial court correctly accepted defendant's waiver as knowingly and intelligently made. See ***Brooks***, 2001-1138 at p. 8, 814 So.2d at 78; see also ***State v. Bryant***, 2006-1154, pp. 5-8 (La. App. 4th Cir. 1/10/07), 950 So.2d 37, 40-41.

This assignment of error is without merit.

DECREE

For these reasons, the conviction and sentence of defendant, Columbus Christopher Williams is affirmed.

CONVICTION AND SENTENCE AFFIRMED.