

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO: 502016AP900295AXXXMB
L.T. NO: 502014MM011348AXXXMB

MICHAEL MANN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Opinion filed: **AUG 03 2017**

Appeal from the County Court in and for Palm Beach County,
Judge Edward Garrison.

For Appellant: Nancy Jack, Esq., Office of the Public Defender
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PER CURIAM.

Appellant Michael Mann appeals his conviction of indecent exposure under section 800.03, Florida Statutes (2016), raising two issues on appeal. First, Appellant claims reversible error because no valid waiver of his right to a jury trial appears in the record. We agree. “A defendant may waive the right to a jury trial, provided that the waiver is reflected on the record.” *Tucker v. State*, 559 So.2d 218, 220 (Fla.1990). Because no such waiver appears in the record before this Court, we reverse Appellant’s conviction and remand this case for a new trial.

Walker v. State, 149 So. 3d 170, 171 (Fla. 4th DCA 2014).

We address Appellant's second issue because we recognize it may arise again in the future. Appellant claims he was not in a "public place" for purposes of supporting a conviction under the indecent exposure statute, and the trial court thus erred in denying his Motion for Judgment of Acquittal. That statute makes it "unlawful to expose or exhibit one's sexual organs in public or on the private premises of another . . . in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose." § 800.03, Fla. Stat. (2016). In the instant case, Appellant was in the dormitory area of a county jail when a female nurse distributing medication observed Appellant masturbating and waving at her. In essence, Appellant contends that because public access to a county jail is strictly limited to certain areas, an inmate's jail cell cannot be considered a "public place" within the meaning of the statute.

The Seventeenth Judicial Circuit addressed similar circumstances sitting in its appellate capacity, finding that a defendant's cell within the jail infirmary was a "public place," stating in pertinent part:

There are clearly jail cells which could not be considered public places. But *this* particular cell was open to the view of any authorized personnel; medical staff, cleaning crews, visitors, as well as the detention personnel themselves. Appellant had no control over who could be present at any given time, depriving him of any privacy claims.

State v. Cromartie, 14 Fla. L. Weekly Supp. 430b (Fla. 17th Jud. Cir. Ct., March 8, 2007). *See also Dawes v. State*, 11 Fla. L. Weekly Supp. 611c (Fla. 10th Jud. Cir. Ct., April 6, 2004) (finding no abuse of discretion in trial court's denial of motion for judgment of acquittal because county jail shower room constitutes a public place for purposes of indecent exposure statute).

Whatever *limited* expectation of privacy an inmate may be able to claim while contained in his own cell, *see State v. Smith*, 641 So. 2d 849, 851 (Fla. 1994) (quoting *Lanza v. New York*,

370 U.S. 139, 143 (1962)), Appellant here was in another man's cell at a time when inmates were allowed to walk freely around the dormitory area, thus open to the view of both inmates and authorized personnel alike, when a female nurse distributing medication observed Appellant masturbating and waving at her. Agreeing with the reasoning of our sister courts in *Cromartie* and *Dawes*, and based on the circumstances of the instant case, we find that Appellant was in a public place for purposes of section 800.03, Florida Statutes (2016). The trial court therefore properly denied Appellant's Motion for Judgment of Acquittal.

REVERSED and REMANDED for further proceedings consistent with this opinion.

KASTRENAKES, BURTON, and WEISS, JJ., concur.

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MICHAEL MANN,
Appellant,

Opinion/Decision filed: AUG 03 2017

v.

Appeal from County Court in and for
Palm Beach County, Florida;
Judge Edward Garrison

STATE OF FLORIDA,
Appellee.

Appealed: December 5, 2016

_____/_____
DATE OF PANEL: JUNE 26, 2017

PANEL JUDGES: KASTRENAKES, BURTON, WEISS

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:)
<u>J S Date</u>	)	With/Without Opinion	)	With/Without Opinion)
<u>8/2/17</u>)))
DATE: _____ J.	)	DATE: _____ J.	)	DATE: _____ J.)
<u>CBM 8/2/17</u>)))
DATE: _____ J.	)	DATE: _____ J.	)	DATE: _____ J.)
<u>DW 8/3/17</u>)))
DATE: _____ J.	)	DATE: _____ J.	)	DATE: _____ J.)