

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v.

JOSHUA R. SHOEMAKER,
Defendant

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NO. CR-717-2024

Kara Marie Beck, Esquire
Assistant District Attorney
Joshua R. Shoemaker

Counsel for Commonwealth

Pro Se

MEMORANDUM OPINION

Nanovic, P.J. – September 9th, 2026

Before the Court is Defendant's appeal from the judgment of sentence imposed upon him following his conviction for aggravated assault by a prisoner.

PROCEDURAL AND FACTUAL BACKGROUND

On April 18, 2024, while an inmate at the Carbon County Correctional Facility in Nesquehoning, Carbon County, Pennsylvania, Defendant, Joshua Shoemaker, spit on a corrections officer. (N.T., 3/9/26, pp. 24-26, 61; Commonwealth Exhibit 1 (Incident Report)). At the time, Defendant was naked and on suicide watch in a booking cell at the Carbon County Correctional Facility. He was pacing back and forth, screaming and yelling, and causing a general disturbance. (N.T., 3/9/26, pp. 26-27, 42, 46, 67, 70).

Officer Dennis Hawk approached the Defendant's cell to investigate and requested Defendant to calm down in order that another inmate who was making a bail call could hear. (N.T., 3/9/26, p.26). Officer Hawk was speaking through a gap between the cell door and door frame of the glass and metal enclosed cell so that Defendant could hear

him better. (N.T., 3/9/26, p.28; Commonwealth Exhibit 3). Within seconds, Officer Hawk heard a spitting sound and then felt saliva hit his forehead. (N.T., 3/9/26, pp. 29, 50, 62-63). All of this was captured on the prison's video camera which does not record sound. (N.T., 3/9/26, p.68; Commonwealth Exhibit 2 (video)).

Defendant was charged with a single count of aggravated assault by a prisoner, 18 Pa.C.S.A. §2703.1, a felony of the third degree. (See Criminal Complaint filed on 4/25/24). Defendant was represented by Attorney Shannon N. Masington of the Carbon County Public Defender's Office until March 5, 2026, at which time Defendant's request to represent himself was granted and Attorney Masington was appointed as standby counsel.

The case was tried before a jury on March 9 and March 10, 2026, at which time Defendant was found guilty. A pre-sentence investigation report was ordered and Defendant was sentenced on June 23, 2026, to a county sentence of not less than seven months nor more than two years less one day incarceration in the Carbon County Correctional Facility. This sentence was within the standard guideline range of seven to ten months and below the recommended sentence of thirteen to twenty-six months in a state correctional facility made in the pre-sentence investigation report.

Defendant filed a timely appeal with the Pennsylvania Superior Court on July 22, 2026. By Order dated July 28, 2026, we directed Defendant to file a concise statement of the errors complained of on appeal within twenty-one days of the entry of the Order. Defendant has not done so, however, in Defendant's appeal filed with the Superior Court, he identified the following four issues which we discuss below:

- (1) That Defendant was found guilty by a trial court in Carbon County, Pennsylvania, with no physical evidence;
- (2) That Defendant was found guilty without a competent witness;
- (3) That Defendant was found guilty in the same county where the alleged victim was a county worker with no change of venue; and
- (4) That Defendant is currently housed in the same facility where the alleged victim is employed.

DISCUSSION

No Physical Evidence

Evidence is of three basic types: (1) testimonial; (2) documentary; and (3) demonstrative. Commonwealth v. Bledsoe, 239 A.3d 72, 2026 WL 2494206 *5 (Pa.Super. 2026) (Non-Precedential Decision), appeal denied, 243 A.2d 733 (Pa. 2020). As a general matter, physical evidence is not required to support a conviction which may be, and often is, based solely on testimonial evidence. Indeed, the uncorroborated testimony of a single witness is sufficient to sustain a conviction for a criminal offense. Commonwealth v. Johnson, 180 A.3d 474, 481 (Pa.Super. 2018), appeal denied, 205 A.3d 315 (Pa. 2019). This notwithstanding, the Commonwealth placed in evidence before the jury without objection a video of the incident and also pictures of the booking cell and measurements of the gap between the cell door and door frame through which Defendant spit at Officer Hawk. (N.T., 3/9/26, pp. 96-97; Commonwealth Exhibit No(s). 2 through 9). The testimonial evidence alone supports the conviction.

Witness Competency

At trial the Commonwealth presented the testimony of Dennis Hawk; Annette Kelly, an officer on duty in the booking unit at the time of the incident; Timothy Wuttke, a detective in the Carbon County District Attorney's Office; and Jack Soberick, also a detective in the Carbon County District Attorney's Office. Unless expressly excluded by some statute or rule of law, the competency of a witness is presumed and the burden of demonstrating incompetency falls on the objecting party. Pa.R.E. 601; Commonwealth v. Walter, 93 A.3d 442, 451 (Pa. 2014). Grounds for disqualification of a witness are enumerated in Pa.R.E. 601(b).

At trial, Defendant failed to make any objection to the competency of the witnesses presented by the Commonwealth and fails in his statement of the issues to identify to any extent what witnesses he claims were incompetent and the basis of such incompetency. This issue has been waived.

Venue

Under the Pennsylvania Rules of Criminal Procedure, criminal charges are to be filed in the judicial district where the offense is alleged to have occurred. See Pa.R.Crim.P. 130(A). The offense in this case occurred at the Carbon County Correctional Facility located in Nesquehoning, Carbon County, Pennsylvania. Consequently, the Carbon County Court of Common Pleas was the appropriate venue for the charge filed against Defendant. Commonwealth v. Bethea, 828 A.2d 1066, 1075-76 (Pa. 2003). Further, at no time did Defendant file a motion for change of venue, nor are we aware of any basis on which such a motion would be properly founded. See

Pa.R.Crim.P. 584. Defendant's contention that the Carbon County Court of Common Pleas was inappropriate because the victim of his crime, Corrections Officer Dennis Hawk, was employed by the Carbon County Correctional Facility has no legal merit.

Service of Sentence in Carbon County Correctional Facility

In his fourth and final issue, Defendant contends that it was an error for him to be sentenced to a period of imprisonment in the same correctional facility where his crime occurred. We are unaware of any law that supports this position. See 42 Pa.C.S.A. §9762(b)(3) (requiring a sentence of less than two years to be served in a county prison within the jurisdiction of the sentencing court). Carbon County has only one prison and that is where Defendant was sentenced to serve his sentence. Although we could have imposed a state sentence, we chose not to do so and believe this was to Defendant's benefit.

CONCLUSION

For the foregoing reasons, we believe none of the issues Defendant has identified have any legal merit.

BY THE COURT:

\s\ President Judge Roger N. Nanovic
P.J.