

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1051 - 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
JOHN MUNRO,	:	
Defendant	:	Petition for Habeas Corpus

**OPINION AND ORDER**

Before the Court is Defendant’s Petition for Habeas Corpus, contained in his Omnibus Pre-trial Motion, filed September 20, 2006. At the time set for a hearing on the petition, counsel stipulated to the Court’s use of a transcript of the preliminary hearing to decide the matter.

Defendant was charged with simple assault by physical menace, recklessly endangering another person, disorderly conduct and two counts of harassment, in connection with an incident at his home involving his wife. In his Petition for Habeas Corpus, Defendant contends the Commonwealth has failed to present a prima facie case of simple assault by physical menace.

To support the charge in question, the Commonwealth must show that Defendant “attempt[ed] by physical menace to put another in fear of imminent serious bodily injury.” 18 Pa.C.S. Section 2701(a)(3). Defendant argues that although the evidence showed that he loaded a shotgun and made threatening statements directed to any police officers who might thereafter enter his home (Defendant’s wife had threatened to call the police in response to an altercation they were having), he did not threaten his wife and therefore the Commonwealth cannot show that he intended to put her in fear of imminent serious bodily injury. The evidence also showed, however, that Defendant made a point of loading the shotgun in his wife’s presence in the course of a heated argument which the victim described as Defendant harassing her, and, further, that the victim was indeed in fear of imminent serious bodily injury.<sup>1</sup> The

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<sup>1</sup> The victim testified that she “was afraid he was gonna shoot me or start shooting up the place or just start shooting.” N.T., June 7, 2006 at p. 7.

Court believes that under the circumstances presented here, it would be reasonable to infer that Defendant took the actions he did for the purpose of seriously frightening his wife, his protestations to the contrary notwithstanding.

Sufficient evidence of an assault by physical menace having been presented, the petition for habeas corpus will be denied.

**ORDER**

AND NOW, this 13<sup>th</sup> day of October 2006, for the foregoing reasons, the Petition for Habeas Corpus is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA  
Eric Linhardt, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson