

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-10,759
	:
	:
vs.	: CRIMINAL DIVISION
	: Habeas Corpus
DAVID KEMPER CARTER,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant's Petition for Habeas Corpus, filed May 14, 2001. Argument on the Petition was heard July 2, 2001.

Defendant has been charged with burglary, criminal trespass, aggravated assault, two counts of simple assault, possessing an instrument of crime, and former felon not to own a firearm, in connection with an incident on March 22, 2001, in which he entered the residence of his estranged wife, resulting in an altercation involving a firearm possessed by Defendant. In the Petition for Habeas Corpus, Defendant contends the evidence presented at the preliminary hearing was insufficient to support the charges of burglary, criminal trespass, and aggravated assault. Defendant and the Commonwealth agreed the matter could be decided based on the transcript of the preliminary hearing, which has been prepared and is hereby made a matter of record.

After reviewing the transcript, the Court agrees with Defendant that the Commonwealth failed to show that Defendant was not licensed or privileged to enter the residence and therefore the counts of burglary and criminal trespass cannot be sustained. The evidence presented indicated that Defendant and his wife had been separated for approximately eight days, Defendant having left the marital residence, an apartment. Defendant's wife had changed the locks on the residence but no Order had been entered preventing Defendant from entering the residence or excluding him from possession thereof. There was no indication that Defendant's name was not on the lease and it was

testified to by Defendant's wife that Defendant had been the one to pay the rent, when the rent was paid. All of the evidence presented actually showed that Defendant was licensed or privileged to enter the residence, rather than showing that he was not. The Petition must therefore be granted with respect to these two charges.

With respect to the charge of aggravated assault, the Court does not agree with Defendant that the Commonwealth failed to present a prima facie case. Defendant's wife testified that Defendant hit her with the butt of the gun he was carrying, in the nose and mouth, causing her to bleed from the nose and mouth, accompanied by swelling and pain. Defendant has been charged with aggravated assault with a deadly weapon which makes it unlawful to attempt to cause, or intentionally or knowingly cause, bodily injury to another with a deadly weapon. The Commonwealth did show bodily injury to Defendant's wife and did show that a deadly weapon, a gun, was used to cause such injury.

ORDER

AND NOW, this day of July, 2001, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is granted in part and denied in part. The counts of burglary and criminal trespass are hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

cc: DA
 PD
 Gary Weber, Esq.
 Hon. Dudley N. Anderson