

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JAMEER EVERETT	:	
	:	
Appellant	:	No. 647 EDA 2025

Appeal from the Judgment of Sentence Entered February 18, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0008270-2023

BEFORE: NICHOLS, J., McLAUGHLIN, J., and KING, J.

MEMORANDUM BY NICHOLS, J.:

FILED SEPTEMBER 28, 2026

Appellant Jameer Everett appeals from the judgment of sentence convicting him of aggravated assault-attempts to cause and/or causes bodily injury with a deadly weapon.¹ While not subject to appeal, Appellant was also convicted of persons not to possess firearms, possession of a firearm without a license, carrying firearms in public in Philadelphia, possession of an instrument of crime, simple assault, and recklessly endangering another person.² We reverse Appellant's conviction of aggravated assault-attempts to cause and/or causes bodily injury with a deadly weapon and vacate its sentence. We affirm all remaining convictions and their respective sentences.

The trial court provided a thorough review of the facts in this matter:

¹ 18 Pa.C.S. § 2702(a)(4).

² 18 Pa.C.S. §§ 6105(a)(1), 6106(a)(1), 6108, 907(a), 2701(a), 2705.

On July 28, 2023, Officer Brittany Yost was dispatched to a business at 7517 Torresdale Avenue in Philadelphia at 4:16p.m. in response to a report of a person with a gun. When she arrived on scene, she encountered an individual, later identified as Ahmad Walker ("[the Victim]"), with a gunshot injury.

Detective Relova arrived on scene shortly after 5:00p.m. and recovered seven fired cartridge castings. The ballistic evidence was logged on [a] property receipt and corroborated by crime scene photographs admitted into evidence.

After an investigation, police obtained a search warrant for the residence of Jameer Everett ("[Appellant]"). Two guns, including a Smith & Wesson 9 millimeter handgun [(S&W 9mm)], were recovered from [Appellant]'s residence. Forensic firearm analysis later confirmed that both a casing recovered at the scene and another casing recovered from [Appellant]'s residence were fired from [Appellant's S&W 9mm] handgun.

[Appellant] was arrested and gave a post-Miranda recorded statement to police in which he admitted to firing a gun during the encounter with [the Victim]. He later testified in his own defense, stating that he fired it at [the Victim] out of fear for his life.

The Commonwealth initially charged [Appellant] with aggravated assault graded as a first-degree felony under 18 Pa.C.S. § 2702(a)(1). Following a waiver trial, [the trial court] amended the charge, finding the evidence supported intentional infliction of bodily injury with a deadly weapon, but not serious bodily injury as required under (a)(1). [The trial court] stated it was "amending to A4 which is an F2, not an F1, because it definitely [was] not serious bodily injury [. . .] So I'm changing count 1 to A4, which is a felony of the second degree because I do not think it meets the criteria for a felony of the first degree at all." [The trial court] found [Appellant] guilty under 18 Pa.C.S. § 2702(a)(4), a second-degree felony.

[Appellant] thereafter filed a post-verdict motion for extraordinary relief, arguing that his conviction under § 2702(a)(4) was improper and constituted an illegal sentence because he was not formally charged with that subsection. [The trial court] denied the motion, finding its amendment appropriate and imposed sentence on February 18, 2025.

Trial Ct. Op., 7/15/25, at 1-2 (citations omitted).

Appellant filed a timely notice of appeal and both Appellant and the trial court complied with Pa.R.A.P. 1925.

On appeal, Appellant presents the following issue:

Was not appellant's conviction of aggravated assault under section 2702(a)(4) a nullity and his sentence illegal, as a matter of law, inasmuch as appellant was charged with aggravated assault under 2702(a)(1), but convicted and sentenced for 2702(a)(4), which is a separate and distinct crime with which appellant had not been charged?

Appellant's Brief at 2.

Appellant argues that the trial court erred by convicting Appellant under 18 Pa.C.S. § 2702(a)(4) rather than 18 Pa.C.S. § 2702(a)(1). ***See id.*** at 10. Appellant contends that he was on notice that he was charged with aggravated assault under Subsection 2702(a)(1) and his counsel tailored his arguments for trial based on that charge. ***Id.*** at 11. Appellant explains that Subsection 2702(a)(4) is not a lesser included offense of Subsection 2702(a)(1), therefore the trial court lacked jurisdiction to convict him of an offense that was not in the information nor a lesser-included offense of the charged crime. ***Id.*** at 12. Appellant also opines that the trial court improperly stepped into the role of the prosecutor and convicted Appellant of a crime "that made more sense to the [trial court]." ***Id.*** at 14-15.

A challenge to the trial court's subject matter jurisdiction is a question of law for which our standard of review is *de novo* and our scope of review is plenary. ***Commonwealth v. Jones***, 929 A.2d 205, 211 (Pa. 2007). Additionally, our Supreme Court has previously held that:

The right to formal notice of charges, guaranteed by the Sixth Amendment to the Federal Constitution and by Article I, Section 9 of the Pennsylvania Constitution, is so basic to the fairness of subsequent proceedings that it cannot be waived even if the defendant voluntarily submits to the jurisdiction of the court.

Commonwealth v. Little, 314 A.2d 270, 273 (Pa. 1974) (citations omitted); ***see also Commonwealth v. Hoffman***, 594 A.2d 772, 775, n.2 (Pa. Super. 1991) ("Subject matter jurisdiction is non-waivable.") (citations omitted).

Aggravated assault is a first-degree felony and is defined under Subsection 702(a)(1) as follows:

(a) Offense defined.—A person is guilty of aggravated assault if he:

(1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life . . .

18 Pa.C.S. § 2702(a)(1), (b).

By comparison, aggravated assault is a second-degree felony and is defined under Subsection 2702(a)(4) as follows:

(a) Offense defined.—A person is guilty of aggravated assault if he:

(4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon;

18 Pa.C.S. § 2702(a)(4), (b).

Rule of Criminal Procedure 564 states:

The court may allow an information to be amended, provided that the information as amended does not charge offenses arising from a different set of events and that the amended charges are not so materially different from the original charge that the defendant

would be unfairly prejudiced. Upon amendment, the court may grant such postponement of trial or other relief as is necessary in the interests of justice.

Pa.R.Crim.P. 564.

This Court has held that aggravated assault under Subsection 2702(a)(4) is not a lesser included offense of aggravated assault under Subsection 2702(a)(1). **See Commonwealth v. Ritchey**, 459 A.2d 828, 830 (Pa. Super. 1983). We have also held that a “trial court [is] without authority to *sua sponte* add a charge to the information.” **Commonwealth v. Donaldson**, 488 A.2d 639, 641 (Pa. Super. 1985).

Additionally,

The law is clear . . . that a court is without jurisdiction to convict a defendant of a crime for which he was not charged. Indeed, there are two requirements for subject matter jurisdiction as it relates to criminal defendants: competency of the court to hear the case, and formal and specific notice to the defendant. Thus, to invoke the jurisdiction of the court to try an accused for a criminal offense, it is necessary that the Commonwealth confront the defendant with a formal and specific accusation of the crimes charged. This is true unless the offense for which the defendant is convicted is considered a lesser-included-offense of the crime originally charged.

Commonwealth v. Poles, 2985 EDA 2017, 2020 WL 5802298 at *3 (Pa. Super. filed Sept. 29, 2020) (unpublished mem.).³

Here, the trial court explained:

Pennsylvania Rule of Criminal Procedure 564 allows the trial court to amend the criminal information before or during the trial,

³ Unpublished memoranda filed by this Court after May 1, 2019 may be cited as persuasive authority. Pa.R.A.P. 126(b).

provided that the information as amended does not charge offenses arising from a different set of events and that the amended charges are not so materially different from the original charge that the defendant would be unfairly prejudiced. . .

Here, the amendment from [18 Pa.C.S. § 2702(a)(1) to [18 Pa.C.S. § 2702(a)(4)] did not introduce a different set of events. The criminal act in question, [Appellant]’s assaultive conduct, remained the same. The only change was the statutory subsection and grading, reflecting a lesser degree of injury proven coupled with the use of a weapon. This amendment is one of form, not substance. It did not suddenly accuse [Appellant] of a new incident or different conduct; it merely aligned the conviction with the facts that came out at trial (i.e. that the victim suffered bodily harm inflicted with a deadly weapon, but perhaps not “serious” injury). Pennsylvania courts have treated such subsection or grading changes as permissible so long as the defendant had notice of the essential facts. For example, in **Commonwealth v. Page**, [965 A.2d 1212, 1224 (Pa. Super. 2006),] the [trial] court permitted the Commonwealth to amend the information after the close of evidence to add a new subsection of the offense, which raised the grading from F2 to F1, because the victim’s age (under 13) was clearly part of the trial evidence and the defense was on notice of that fact. Similarly, [Appellant] was on notice from the outset that he was charged with aggravated assault stemming from a single incident. There was no dispute at trial as to [Appellant]’s identity or as to whether [Appellant] discharged his gun at [Victim]. Indeed, [Appellant] acknowledged that video footage shows him shooting [the Victim]. [18 Pa.C.S. § 2301] of the Pennsylvania Criminal Code defines a deadly weapon, in part, as “[a]ny firearm, whether loaded or unloaded,” and [Appellant’s S&W 9mm] handgun clearly falls under this definition. Both [Appellant] and Commonwealth presented evidence linking the gun to [Appellant]. Commonwealth provided evidence that guns were recovered from [Appellant]’s residence. . . It was admitted by stipulation of the parties that forensic evidence showed that the handgun recovered from [Appellant]’s property was the same weapon that was used in the shooting at issue. [Appellant] admitted to police that he shot at [the Victim]. [Appellant] testified at trial that he shot [the Victim]. Thus, [Appellant] was aware that his use of a deadly weapon was part of the case. Changing the subsection to [18 Pa.C.S. § 2702(a)(4)] did not require [Appellant] to confront any unexpected factual allegations or shift his defense strategy. Even

if [Appellant] had not testified to firing the gun at [the Victim] and had not stipulated to the [Firearms Identification Unit] report, that [Appellant] discharged a gun at [the Victim] was conclusively established by physical, forensic, and video evidence.

Because the core allegations remained constant, [Appellant] cannot credibly claim unfair prejudice. The difference between [18 Pa.C.S. § 2702(a)(1)] and [18 Pa.C.S. § 2702(a)(4)] is the severity of injury and presence of a weapon; notably, both were addressed at trial. If anything, convicting him under [18 Pa.C.S. § 2702(a)(4)] reduced his potential sentencing exposure. This downgrade in degree suggests the amendment worked to his benefit in terms of sentencing. Pennsylvania courts have recognized that when an amendment actually charges a lesser offense or a lower grading arising from the same conduct, it is less likely to prejudice the defendant.

Furthermore, [Appellant]’s theory of self-defense squarely addressed the “deadly weapon” element from the outset. [Appellant] argued and testified that he only fired the firearm because he believed [the Victim] posed an imminent threat. That argument necessarily required the Court to consider the nature and use of the gun as part of [Appellant]’s justification. Because [Appellant]’s use of a gun was fully litigated, no new factual element arose when this Court announced the subsections change, and [Appellant] suffered no strategic surprise or prejudice.

Because the amended charge arose from the same set of events and the [Appellant] was not prejudiced by the amendment, the [Appellant]’s conviction under [18 Pa.C.S. § 2702(a)(4)] is supported and his sentence legal.

Trial Ct. Op., 7/15/25, at 3-5 (some citations omitted and formatting altered).

Following our review of the record, we find that the trial court committed legal error when it convicted and sentenced Appellant under Subsection 2702 (a)(4). **See Jones**, 929 A.2d at 211; **Little**, 314 A.2d at 273. The Commonwealth charged Appellant with a violation of 18 Pa.C.S. § 2702(a)(1). **See** Criminal Information, 9/20/23. At trial, however, the trial court *sua*

sponte amended the conviction and sentenced Appellant under Subsection 2702(a)(4). Trial Ct. Op., 7/15/25, at 2. Specifically, the trial court stated:

The other issue is, I'm not clear. I mean, it could have been a graze wound. It could have been that metal thing. But I definitely don't think it is in a category of serious bodily injury. It doesn't look that bad. He didn't seek any medical attention. We clearly, obviously, don't have any medical records. So I can't say that I think it was serious bodily injury.

So as far as the rest of the case, this is how I want to do this. I'm finding him guilty of everything. However, number 1, I am amending to A4 which is an F2 not a F1 because it is definitely not serious bodily injury. That is not bleeding profusely. It's not anything that I think would be substantially have impaired Mr. Walker's life or work or anything like that nature. So that's where I am with it. But I'm changing count 1 to A4, which is a felony of the second degree because I do not think it meets the criteria for a felony of the first degree at all.

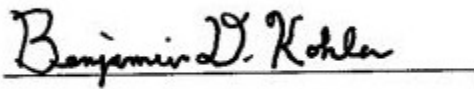
N.T. Trial, 12/9/24, at 134-135. Because the Commonwealth did not charge Appellant with violating Section 2702(a)(4), and because it is not a lesser-included offense of Section 2702(a)(1), we find that the trial court lacked subject matter jurisdiction to sentence Appellant under that provision. **See Ritchey**, 459 A.2d at 830; **see also Donaldson**, 488 A.2d at 641.

Additionally, we find that the trial court misinterpreted Rule 564. The trial court contends that Rule 564 "allows the trial court to amend the criminal information before or during trial." Trial Ct. Op., 7/15/25, at 3. However, Rule 564 explicitly states that "**the court may allow** an information to be amended. . . ." Pa.R.Crim.P. 564 (emphasis added). The rule does not permit a trial court to amend an information *sua sponte*. **See Donaldson**, 488 A.2d at 641.

For these reasons, we find that the trial court improperly convicted Appellant of aggravated assault-attempts to cause and/or causes bodily injury with a deadly weapon and vacate Appellant's conviction and sentence for that offense.

Conviction and judgment of sentence vacated for aggravated assault-attempts to cause and/or causes bodily injury with a deadly weapon. All remaining convictions and judgments of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/28/2026