STATE OF MINNESOTA
IN COURT OF APPEALS
A11-10

State of Minnesota,
Respondent,

vs.

Jessica Ann Nielson,
Appellant.

Filed December 12, 2011
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR1019219

Lori Swanson, Attorney General, John Garry, Sr., Assistant Attorney General, St. Paul, Minnesota; and

Susan L. Segal, Minneapolis City Attorney, Heidi Johnston, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Jill Clark, Jill Clark, P.A., Golden Valley, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Klaphake, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal from her convictions of fourth-degree assault, obstruction of legal process, and disorderly conduct, appellant argues that (1) the evidence was insufficient to support the

findings of guilt; (2) the district court's factual findings are not supported by the record; (3) the district court abused its discretion by finding that she did not act in self defense; (4) the state's amendment of the complaint denied her due process of law; (5) her jury-trial waiver was not knowing and voluntary; and (6) the district court abused its discretion by denying her access to the audio recordings of the trial. We affirm.

FACTS

Appellant Jessica Nielson was charged with two counts of gross-misdemeanor fourth-degree assault in violation of Minn. Stat. § 609.2231, subd. 1 (2008), and one count of gross-misdemeanor obstructing legal process in violation of Minn. Stat. § 609.50, subds. 1(2), 2(2) (2008). The complaint was later amended to add one count of misdemeanor disorderly conduct in violation of Minn. Stat. § 609.72, subd. 1(3) (2008), and one count of misdemeanor disorderly conduct in violation of Minneapolis, Minn. Code of Ordinances § 385.90 (2009). Appellant waived her right to a jury trial and the matter proceeded as a trial to the court.

At trial, C.O. testified that she was at her apartment in Minneapolis on April 27, 2010, when she heard screaming from a nearby apartment. According to C.O., the "screaming sounded like it was coming from a horror movie." The screaming frightened C.O., and she shut her apartment window to try to muffle the noise. But when the screaming continued, C.O. called the police because she was concerned that it might be related to a domestic dispute.

Minneapolis Police Officers Kristopher Brown and Paul O'Hanlon arrived at the scene and were let into the apartment complex by C.O. The officers could hear the

screaming and yelling and determined that the noise was coming from apartment 301. Because the officers believed that the screaming sounded as though a female was in distress, the officers knocked on the partially ajar apartment door. Appellant's roommate answered the door, invited the officers in, and informed them that appellant was "by herself" in the bedroom.

After establishing that appellant was by herself, the officers believed that they "needed to establish whether or not [appellant] was a danger to herself or someone else." The officers then confronted appellant in an attempt to "calm her down." Appellant was talking to her boyfriend on the phone and informed the officers that her boyfriend had "just dumped her." According to the officers, appellant was "screaming into the phone and screaming at us and crying historically[sic]. She didn't have very much self control."

Appellant refused to calm down and "was getting [angrier] with the person on the phone." Appellant then left the bedroom by "push[ing]" past the officers. Because the officers were afraid that appellant was heading for the kitchen where there were knives, Officer O'Hanlon blocked appellant with an extended arm. When appellant pushed past Officer O'Hanlon, the officers attempted to restrain her. A struggle ensued wherein appellant began "pawing" at the officers, flailing her arms, and kicking at them. Although appellant was eventually handcuffed, appellant kicked Officer Brown in the face during the struggle. Appellant was then placed in the back of the squad car. The squad car's video camera was turned on and the video depicting appellant's demeanor while in the squad car was admitted into evidence.

Appellant testified that prior to the incident on April 27, she had been bothered by pain in her right side. According to appellant, she was not feeling well when she got home from work on the evening of April 27. Appellant claimed that she called her boyfriend to make arrangements for later that evening, and then took a nap. Appellant testified that when she woke up, she was still not feeling well and went to the bathroom and passed a "large amount of blood." Appellant then called her boyfriend, and the two began to have an argument over the phone.

Appellant testified that while she was talking to her boyfriend, two police officers entered her room and began to ask her questions. One of the officers asked appellant if she had been drinking, and referenced a prior incident in October 2009, in which appellant had been taken to the hospital. Although appellant admitted that she was crying and upset when she was talking with her boyfriend, she claimed that the officers' presence at her apartment made her "completely terrified." According to appellant, she felt like she was going to pass out, so she left the bedroom to sit on the couch in the living room. Appellant claimed that one of the officers then grabbed her and a struggle ensued in which appellant was pushed into a wall and had the wind knocked out of her. Appellant was then taken to the floor and handcuffed.

Appellant denied that she was "flailing" before she was handcuffed, and insisted that she was cooperative with the officers' requests. Although the squad car video depicts appellant apologizing to the officer for kicking him, appellant claimed at trial that she did not try to kick the officers. Appellant's boyfriend also testified at trial, and his testimony was consistent with appellant's testimony regarding their phone conversation.

At the close of testimony, the state dismissed one of the assault counts. The district court then found appellant guilty of the remaining charges and filed its findings of fact, conclusions of law, and verdicts on October 21, 2010. Appellant subsequently obtained new counsel and then brought a post-trial motion for judgment of acquittal, or in the alternative, a new trial. Appellant also submitted affidavits claiming that the district court made reference to (1) the defense impugning the integrity of the officers and (2) appellant saying anything to protect her medical career. Based on these affidavits, appellant's post-trial motion sought, in part: (1) to hear the playback of the audio recordings of the trial; (2) to preserve the audio recording; and (3) for a confirmation that all audio was being preserved through appeal.

The district court denied appellant's motions to hear playback of the audio recordings, but granted the motion to preserve the audio recordings. In doing so, the court found that the "transcript is accurate." The court further denied the remaining requests set forth in appellant's post-trial motion. This appeal followed.

D E C I S I O N

I.

Appellant challenges the sufficiency of evidence with respect to each of her convictions. In considering a claim of insufficient evidence, this court's review is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the [fact-finder] to reach the verdict which [it] did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that the fact-finder "believed the state's

witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This court will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant is guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004). The principle that this court does not reweigh evidence applies whether the trier of fact is a jury or the court. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009).

A. Fourth-degree assault

Minn. Stat. § 609.2231, subd. 1, provides that "[w]hoever physically assaults a peace officer licensed under section 626.845, subdivision 1, when that officer is effecting a lawful arrest or executing any other duty imposed by law is guilty of a gross misdemeanor and may be sentenced to imprisonment."

1. Licensed peace officer

Appellant argues that the district court's finding that Officers Brown and O'Hanlon are licensed peace officers is not supported by the record because they were only asked if they were "certified police officers." We disagree. Officer Brown explained in detail his training to become a certified peace officer and testified that the training continues over the years to "maintain your license as a police officer." The logical inference from this testimony is that Officer Brown is a "licensed peace officer." Later, when Officer O'Hanlon took the stand, the defense stipulated to Officer O'Hanlon's "qualifications." Accordingly, there was sufficient evidence to conclude that the officers were licensed peace officers.

2. Lawful arrest

Appellant argues that the evidence is insufficient to support a finding of a lawful arrest. To support her claim, appellant cites Minn. Stat. § 629.34, subd. 1(c)(1) (2008), which provides that a custodial misdemeanor arrest may only be made if the offense occurs in the officer's presence. Appellant contends that because the alleged disorderly conduct occurred before the officers arrived at the scene, the officers could not make a custodial arrest for disorderly conduct. Appellant further claims that the arrest occurred before the alleged assault occurred. Thus, appellant claims that her conviction for fourth-degree assault must be reversed.

"There is probable cause to arrest without a warrant when a person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a *specific* individual has committed a crime." *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009). The crime for which probable cause exists must be one for which a custodial arrest is authorized. *State v. Varnado*, 582 N.W.2d 886, 892 (Minn. 1998). An officer may make a custodial arrest for a misdemeanor offense if it "reasonably appears to the officer that the arrest or detention is necessary to prevent further criminal conduct or prevent bodily injury to the accused, or there is a substantial likelihood that the accused will fail to respond to a citation." Minn. R. Crim. P. 6.01, subd. 1(1)(a) (2008); *see also In re Welfare of T.L.S.*, 713 N.W.2d 877, 881–82 (Minn. App. 2006).

Here, the officers testified that when they arrived at the scene, appellant was crying, screaming, and out of control. The record also reflects that the bedroom window

was open and people on the street were looking up at the window. Appellant's conduct constituted disorderly conduct and occurred in the officers' presence. The record further reflects that appellant continued to engage in this conduct despite efforts by the officers to calm her down. Moreover, the record reflects that appellant appeared to be headed toward the kitchen where there were knives, and the officers testified that in light of her state of mind, they were concerned that appellant might hurt herself. Because appellant displayed disorderly conduct in the officers' presence, and the arrest was necessary to prevent appellant from continuing to engage in disorderly conduct and to prevent harm to herself, the arrest was lawful. Accordingly, the evidence was sufficient with respect to appellant's custodial misdemeanor arrest.

3. Physical assault

Appellant also contends that her fourth-degree assault conviction must be reversed because "'[k]icking at' is not *physical* assault" and there is no evidence that she intended to kick the officer. To prove an assault, the evidence must show that the blows to the complainant were not accidental but were intentionally inflicted. *State v. Lindahl*, 309 N.W.2d 763, 767 (Minn. 1981). "Intent is an inference drawn by the [fact-finder] from the totality of the circumstances. The defendant's statements as to his intentions are not binding on the [fact-finder] if defendant's acts demonstrate a contrary intent." *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989) (citations omitted).

Here, the record reflects that when the officers seized appellant, she was out of control—screaming, flailing her arms, and kicking at the officers. During the course of this conduct, appellant kicked Officer Brown in the face. In fact, the squad car video tape

admitted into evidence depicts appellant admitting to the officer that she kicked him, as well as apologizing for kicking him. The only rational inference from the evidence presented at trial was that appellant intended to inflict some type of bodily harm in order to avoid being handcuffed. Although appellant claims that she did not intend to assault the officer, the district court did not find her testimony to be credible. *See State v. Sletten*, 664 N.W.2d 870, 876 (Minn. App. 2003) (stating that weighing witness credibility is the exclusive function of the fact-finder). Accordingly, there was sufficient evidence to support appellant's conviction of fourth-degree assault.

B. Obstructing legal process

Whoever intentionally "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties" is guilty of obstructing legal process. Minn. Stat. § 609.50, subd. 1(2). The offense may be sentenced as a gross misdemeanor if the conduct "was accompanied by force or violence or the threat thereof." Minn. Stat. § 609.50, subd. 2(2).

Appellant argues that there is insufficient evidence to support her conviction of gross misdemeanor obstruction of legal process. To support her claim, appellant cites *State v. Morin*, in which this court addressed the obstruction-of-legal-process statute. 736 N.W.2d 691, 697 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). In *Morin*, this court stated that the obstruction-of-legal-process statute "cannot be read so broadly as to include any act that merely reduces the ability of a police officer to successfully apprehend a suspect." *Id.* Thus, the court held that the statute only includes conduct "directed at" police officers that obstructs, resists, or interferes with the performance of

their official duties, and does not include conduct such as fleeing a police officer. *Id.* at 698.

Appellant argues that her conviction of obstructing legal process must be reversed because there is no evidence that her conduct was directed at the police officers or that her conduct was accompanied by force. But the record reflects that when the officers attempted to restrain appellant, she proceeded to flail, contort her body, and kick at the officers. This conduct was directed at the officers in order to prevent them from handcuffing appellant. The record also reflects that force was involved; the officers testified that it took both of them to subdue appellant to the point at which she could be handcuffed. There is sufficient evidence in the record to support appellant's conviction of obstructing legal process.

C. Disorderly conduct under Minn. Stat. § 609.72, subd. 1(3)

Under Minn. Stat. § 609.72, subd. 1(3), whoever "engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others" in a public or private place, "knowing, or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct." "[W]hether particular conduct or words or acts are or are not disorderly must at all times be dependent upon the facts of each particular case and the circumstances that surround the incident." *State v. Reynolds*, 243 Minn. 196, 201, 66 N.W.2d 886, 890 (1954). A conviction of disorderly conduct cannot be predicated only

on a person's words unless those words are "fighting words." *In re S.L.J.*, 263 N.W.2d 412, 419 (Minn. 1978).

Relying on *S.L.J.*, appellant argues that she cannot be convicted of disorderly conduct under section 609.72, subdivision 1(3) because her words did not constitute "fighting words." But appellant's reliance on *S.L.J.* is misplaced because the statute does not limit disorderly conduct to fighting words; it also includes "abusive, boisterous, or noisy conduct." Minn. Stat. § 609.72, subd. 1(3); *see also T.L.S.*, 713 N.W.2d at 880. In *T.L.S.*, police arrested a girl for engaging in "boisterous" and "noisy" conduct after she shrieked profanities inside a school administration office. *Id.* at 881. The shrieking was so loud that it was "disruptive to the running of the school and purposes of the school." *Id.* at 879 (quotation omitted). The girl challenged her arrest for disorderly conduct under *S.L.J.*, arguing that the officers could not arrest her for using profanity. *Id.* at 880. However, the court held that while *S.L.J.'s* narrowing construction applied to profanity, it did not apply to the girl's shrieking. *Id.* at 881. Specifically, the court held that "the statute may be applied to punish the manner of delivery of speech *when the disorderly nature of the speech does not depend on its content.*" *Id.* at 881 (emphasis added). In other words, the statute may be applied to boisterous and noisy *non-expressive* conduct, such as shrieking, screaming, and yelling. *See id.*

Here, appellant was not convicted for the content of her speech. Instead, the evidence presented at trial focused on appellant's "boisterous" and "noisy" conduct. Thus, *S.L.J.* is not implicated by the facts and circumstances presented here.

Appellant also contends that *T.L.S.* is not good law and requests that this court abrogate the decision in that case. But this court in *T.L.S.* distinguished the conduct before it from the conduct in *S.L.J.*, and the Minnesota Supreme Court has not overruled *T.L.S.*, 713 N.W.2d at 880–81. There is no reason for us to abrogate *T.L.S.*, and the question is whether there is sufficient evidence in the record to support appellant's conviction of disorderly conduct.

The record reflects that while her window was open, appellant engaged in yelling and screaming that escalated for about an hour. C.O. testified that she heard the screaming, that it "scared" her, and that she could still hear the screaming after she shut her window. C.O. also testified that there were people outside on the street corner staring up at the apartment complex. Moreover, the officers testified that after they arrived at the scene, appellant was "screaming into the phone and screaming at us and crying hysterically." According to the officers, appellant "didn't have very much self control." This evidence demonstrates that appellant engaged in "boisterous" and "noisy" behavior that she reasonably should have known would cause others to be alarmed or disturbed.

Appellant further argues that the evidence is insufficient to support her conviction because C.O. testified that she was "scared" and she did not testify that she was "disturbed," which is necessary for a conviction under the statute. But appellant's claim presents a distinction without a difference. The fact that the statute did not specifically use the word "scared" does not mean that such a reaction absolves the perpetrator from liability under the statute. Indeed, it would be impractical for the legislature to include every possible relevant word in the statutory language. The common definition of the

word "scared" is essentially the same as the common definition of the words "alarmed" or "disturbed." Accordingly the evidence was sufficient to sustain appellant's conviction of disorderly conduct under Minn. Stat. § 609.72, subd. 1(3).

D. Disorderly conduct under the Minneapolis City Ordinance

The Minneapolis Code of Ordinances provides that:

> No person, in any public or private place, shall engage in, or prepare, attempt, offer or threaten to engage in, or assist or conspire with another to engage in, or congregate because of, any riot, fight, brawl, tumultuous conduct, act of violence, or any other conduct which disturbs the peace and quiet of another save for participating in a recognized athletic contest.

Minneapolis, Minn. Code of Ordinances § 385.90.

Appellant argues that section 385.90 of the Minneapolis Code of Ordinances is unconstitutional because "it does not limit itself to fighting words."[1] But this argument was rejected by this court in *State, City of Minneapolis v. Lynch*, 392 N.W.2d 700, 703-04 (Minn. App. 1986). In that case, the court recognized that although the supreme court in *S.L.J.* held that Minn. Stat. § 609.72 was overbroad, it saved the statute by narrowly construing it to "fighting words" only. *Id.* at 704. The court also recognized a footnote in *S.L.J.* stating that other disorderly conduct and breach of the peace statutes should be similarly construed to punish only fighting words. *Id.* Thus, the court concluded that

[1] The state contends that appellant's challenges to the constitutionality of Minn. Stat. § 609.72 and Minneapolis, Minn. Code of Ordinances § 385.90 were not raised below and, therefore, have been waived. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that arguments not raised below are waived). But the record reflects that appellant did challenge the constitutionality of the statute and ordinances below. Therefore, the issues are properly before this court.

Minneapolis City Code § 385.90 is not unconstitutionally overbroad because the content of speech is limited to fighting words. *Id.*

Appellant also contends that she cannot be convicted of disorderly conduct under the ordinance because the ordinance itself was not introduced at trial. But the specific ordinance was referred to in the amended complaint and the ordinance is readily available to the public in various venues, including being published online. Moreover, both trial and appellate courts have traditionally taken judicial notice of city ordinances. Therefore, the failure to introduce the ordinance into evidence is not fatal to appellant's conviction.

Appellant further argues that her conviction for disorderly conduct should be reversed because the police cannot be "victims" of disorderly conduct. But a finding that the police officers were victims of the disorderly conduct is not necessary to the finding of guilt under the ordinance. As stated earlier, appellant was screaming and yelling loud enough for C.O. to be "scared." This evidence was sufficient to find appellant guilty of disorderly conduct under Minneapolis, Minn. Code of Ordinances § 385.90.[2]

II.

This court accepts the district court's factual findings unless the findings are clearly erroneous. *State v. Williams*, 535 N.W.2d 277, 286 (Minn. 1995). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made. If there is reasonable evidence to support the

[2] We note that because appellant's conduct appears to be a single-behavioral incident, she should have been sentenced in accordance with Minn. Stat. § 609.035 (2008). But on this record, we cannot tell why she was not, and since that issue is not before us on appeal, the issue need not be discussed further.

trial court's findings of fact, a reviewing court should not disturb those findings." *State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006) (quotation omitted).

Appellant challenges several of the district court's findings of fact, arguing that they are not supported by evidence in the record. Specifically, appellant claims that the district court should have considered her testimony that she was suffering from major pain in her right side throughout the events of the evening, that it was the officers who escalated the situation, and that she did not intend to kick Officer Brown. Appellant also claims that the district court failed to acknowledge C.O.'s testimony that the noise stopped once the officers went to appellant's apartment, and that this testimony supports appellant's version of the events.

Appellant's argument is without merit. It is well-settled that the fact-finder is in the best position to assess the credibility of witnesses, and this court defers to the fact-finder's credibility determinations. *State v. Al-Naseer*, 788 N.W.2d at 469, 473 (Minn. 2010). Here, much of the case turned on the credibility of witness testimony, and the district court was not obligated to credit any of appellant's testimony. Although appellant may have presented a reasonable explanation of the facts and circumstances of the evening, the officers presented testimony that conflicted with much of appellant's account of the evening. The district court simply did not find appellant's testimony to be credible. The district court's findings are supported by the evidence and testimony at trial. Therefore, the district court's findings are not clearly erroneous.

III.

A person is not guilty of a crime if he used reasonable force to resist an offense against him. Minn. Stat. § 609.06, subd. 1(3) (2008). A person is justified in defending himself so long as he (1) was not the aggressor; (2) actually and honestly believed that he was in imminent danger of death or great bodily harm; (3) had reasonable grounds for that belief; and (4) lacked a reasonable opportunity to retreat. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). Although a defendant does not have a duty to retreat when claiming self-defense against an attack in his home, "the lack of a duty to retreat does not abrogate the obligation to act reasonably when using force in self-defense." *State v. Glowacki*, 630 N.W.2d 392, 402 (Minn. 2001).

"The defendant has the burden of going forward with evidence to support a claim of self-defense." *Johnson*, 719 N.W.2d at 629 (quotation omitted). "Once the defendant has met that burden, the state has the burden of disproving one or more of these elements beyond a reasonable doubt." *Id.* (quotation omitted).

Appellant argues that the district court erred by concluding that she did not act in self-defense because the court failed to consider the facts supporting her self-defense claim. We disagree. The record reflects that the officers arrived at the apartment in an attempt to ascertain the origin of the yelling and screaming. The record also reflects that when the officers attempted to calm appellant, she pushed past them, which could have been interpreted as an act of aggression. The record further reflects that the officers' next attempt to calm appellant resulted in appellant flailing her arms and kicking at the officers. Although appellant may have believed she was in danger, her belief was not

reasonable; the officers were in full uniform and were attempting to diffuse a situation involving a volatile and seemingly hysterical individual who was out of control. Appellant's claim boils down to the credibility of the witnesses, and the district court did not find appellant's claim to be credible. *See Al-Naseer*, 788 N.W.2d at 473 (stating that the fact-finder is in the best position to weigh the evidence and judge the credibility of witnesses and this court defers to the fact-finder's credibility determinations). Therefore, the district court's conclusion that appellant did not act in self-defense is supported by the record and not clearly erroneous.

IV.

This court reviews the district court's decision to allow amendments to a criminal complaint for abuse of discretion. *Gerdes v. State*, 319 N.W.2d 710, 712 (Minn. 1982). Two Minnesota Rules of Criminal Procedure frame the district court's discretion. Rule 3.04 applies in pretrial proceedings and states that a criminal complaint may be freely amended upon a motion by the prosecuting attorney. Minn. R. Crim. P. 3.04, subd. 2; *State v. Bluhm*, 460 N.W.2d 22, 24 (Minn. 1990). Rule 17.05 applies once the trial has commenced and states that the district court may allow an amendment only if "no additional or different offense is charged and if the defendant's substantial rights are not prejudiced." Minn. R. Crim. P. 17.05.

Appellant argues that rule 17.05 should be applied because the case was near trial. But appellant concedes that the complaint was amended eight days before trial. It is well settled that rule 17.05 "refers to motions to amend indictments or complaints *after* the commencement of trial." *Bluhm*, 460 N.W.2d at 24 ("Rule 17.05 comes into play once

jeopardy has attached–that is, once the jury is sworn.") (emphasis added) (quotation omitted). Because the complaint was amended before trial commenced, rule 17.05 is not applicable and the issue is reviewed in accordance with rule 3.04.

Appellant argues that the state's amendment of the complaint violated her due process rights because the complaint added additional charges and she was unaware of the charges against her. Appellant claims that she was prejudiced by the amendment because she was unable to present an adequate defense.

"Under Minn. R. Crim. P. 3.04, subd. 2, the [district] court is relatively free to permit amendments to charge additional offenses before trial is commenced, provided the [district] court allows continuances where needed." *Bluhm*, 460 N.W.2d at 24; *see also State v. Guerra*, 562 N.W.2d 10, 12 (Minn. App. 1997) ("Prior to trial the [district] court is 'relatively free' to allow an amendment charging an additional offense in a criminal complaint."). Here, the complaint was amended prior to trial, which the rules readily allow. The record reflects that appellant was advised of the amendment before trial and that she was given a recess to discuss the matter with her attorney. After discussing the matter, appellant could have requested a continuance. But there is nothing in the record to suggest that a continuance was requested. Instead, appellant agreed to proceed with the trial. Thus, appellant's claim that she was prejudiced by the amendment due to her lack of knowledge of the amendment is unavailing, and the district court's decision to permit the amendment of the complaint was not an abuse of discretion.

V.

Appellant challenges the district court's acceptance of her waiver of her right to a jury trial. Whether or not a jury-trial waiver is sufficient under the rules of criminal procedure is a question of law, which this court reviews de novo. *State v. Tlapa*, 642 N.W.2d 72, 74 (Minn. App. 2002), *review denied* (Minn. June 18, 2002).

A waiver of the right to a jury trial must be knowing, intelligent, and voluntary. *State v. Ross*, 472 N.W.2d 651, 653 (Minn. 1991). "The waiver requirement of Rule 26.01 mandates only a relatively painless and simple procedure to protect a basic right. Just as the police are required to advise an arrested individual of his rights, so must the court comply with Minn. R. Crim. P. 26.01." *Tlapa*, 642 N.W.2d at 74 (quotation omitted). A searching inquiry as to why a defendant is waiving his right is not required. *In re Welfare of M.E.M.*, 674 N.W.2d 208, 213 (Minn. App. 2004). However, the district court "must be satisfied that the defendant was informed of his rights and that the waiver was voluntary" and the required "inquiry may vary with the circumstances of a particular case." *Ross*, 472 N.W.2d at 653-54 (quotation omitted).

Appellant argues that her jury-trial waiver was not knowing and intelligent because the record reflects that she was confused during the jury-trial waiver. We disagree. The record reveals that appellant was fully advised of her right to a jury trial. Although appellant was not informed on the record that she would be able to participate in jury selection, this omission does not invalidate the waiver. *See Ross*, 472 N.W.2d at 654. Rather, the critical question is whether appellant understood the basic characteristics of a jury trial. *See id.* The record reflects that appellant was informed of

the number of jurors that would preside over the trial, that any verdict must be unanimous, and that without a jury, the judge would decide the case. The record also reflects that when appellant did indicate some confusion, a brief recess was taken so that defense counsel could alleviate any of appellant's confusion. After the recess, defense counsel emphasized that he wanted to "make sure" that his client understood the proceedings. Defense counsel's statement indicates that he believed his client understood the situation. Moreover, the record further reflects that appellant is a "highly educated" woman in her fourth year of medical school. Thus, in light of appellant's educational background and the transcript of the proceedings, the record does not support appellant's claim that she was confused when she waived her right to a jury trial.

Appellant also contends that the district court erred by accepting her jury-trial waiver because her extreme emotional state prevented her from fully understanding the proceedings. But the record does not support this claim. The record indicates that appellant was composed when she waived her right to a jury trial, and the record contains no indication that appellant exhibited strange behavior or engaged in emotional outbursts. Appellant is a well-educated individual, was represented by competent counsel, and exhibited no signs of emotional incompetence. The district court did not err by accepting appellant's jury-trial waiver.

VI.

Finally, appellant argues that the district court erred by denying her motion to play back the audio recordings of the trial, and that such a denial violates her due process rights. We disagree. The law regarding this issue is unambiguous. Recordings of the

district court proceedings may be played back "only" in certain situations, including (1) when the court directs that a recording be played "during [a] proceeding, hearing or trial"; (2) if a court reporter or "authorized reporting service employee" plays the recording "for the purpose of creating a transcript as the official record"; or (3) "for the use of the court." Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 3(c). Except for these situations, dissemination of recordings is prohibited and dissemination is limited to the "transcript only." *Id.*, subd. 3(d). Therefore, the district court did not err by denying appellant's motion to play back the audio recordings of the trial.

Appellant, however, is not without remedy. If appellant believed the transcripts are inaccurate, she could have filed a motion under Minn. R. Civ. App. P. 110.05. *See Doty v. Doty*, 533 N.W.2d 72, 75 (Minn. App. 1995) (noting that motion to correct transcript must be made in first instance to district court). This rule provides:

> If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and determined by the trial court and the record made to conform. If anything material to either party is omitted from the record by error or accident or is misstated in it, the parties by stipulation, or the trial court, either before or after the record is transmitted to the appellate court, or the appellate court, on motion by a party or on its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be approved and transmitted. All other questions as to the form and content of the record shall be presented by the appellate court.

Minn. R. Civ. App. P. 110.05.

The procedure set forth in rule 110.05 comports with due process. *See Curro v. Watson*, 884 F. Supp. 708, 718 (E.D.N.Y. 1995). In *Curro*, a criminal defendant alleged

that four separate court reporters deliberately altered the transcript and that the State of New York violated his procedural due process rights. *Id.* at 717–18. On appeal, the issue was whether New York "provided, in theory and in practice, adequate postdeprivation remedies to correct any unfairness to the plaintiff resulting from a deliberate defalcation in his trial transcript." *Id.* at 718. The court held that the process allowed in New York, which provides for a transcript settlement hearing, presided over by the district court judge, and allowing for appeal of any significant unresolved questions regarding the transcript, satisfied the demands of due process. *Id.* The process in New York is very similar to the process set out in Minn. R. Civ. P. 110.05. Accordingly, appellant's due-process rights were not violated by the denial of her motion to play back the audio recordings of the trial.[3]

Affirmed.

[3] We note that in appellant's post-trial motion, she challenged the district court's decision not to allow her mother to testify. Because appellant failed to raise the issue in her main brief, the issue has been waived. *See McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990) (stating that issues not addressed in an appellant's primary brief are waived and cannot be revived in a reply brief), *review denied* (Minn. Sept. 28, 1990); *see also State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997).