Filed
Washington State
Court of Appeals
Division Two

January 31, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DALE GORDON FARRELL, Appellant.	No. 48309-2-II UNPUBLISHED OPINION

WORSWICK, J. — Dale Gordon Farrell appeals his convictions for two counts of second degree assault. Farrell argues (1) there was insufficient evidence to prove (a) the knife involved was a deadly weapon and (b) the victims' apprehension of bodily injury was reasonable, (2) the trial court erred in denying his proposed limiting instruction and in instructing the jury that it could consider ER 404(b) evidence, and (3) trial counsel was ineffective for failing to request a mistrial. Farrell also raises several issues in a statement of additional grounds (SAG) for review. We affirm Farrell's convictions.

FACTS

On October 3, 2014, Dori LeBoeuf noticed her next door neighbor, Dale Gordon Farrell, erratically run to the property line separating her property from Farrell's. LeBoeuf had obtained a no-contact order against Farrell in May. LeBoeuf observed Farrell waiving a knife with "a good size blade on it" and yelling, "Dori, you f*cking c*nt. I'm going to kill you. Yes, you. You f*cking c*nt, I'm going to kill you." 1 Verbatim Report of Proceedings (VRP) at 79, 95.

Farrell appeared agitated, and his actions seemed unpredictable. LeBoeuf feared for her life and called 911.

While LeBoeuf was on the phone with the 911 operator, her other next door neighbor, Lisa Hardy, arrived home. Hardy had also obtained a no-contact order against Farrell a few months prior. While Hardy walked across her yard to her mailbox, Farrell looked at her and yelled, "Hey, you mother f*cking c*nt, dyke b*tch, whore, I will kill all of you motherf*ckers." 2 VRP at 237. While Farrell yelled at Hardy, he jabbed a knife approximately six inches in length in the air. Hardy was afraid Farrell would kill her and her neighbors, and she called 911. Farrell never left his property, and he maintained a distance of at least 25 feet from both Hardy and LeBoeuf.

Officers responded and observed Farrell with a standard steak knife. Soon after, Farrell was placed under arrest. The State charged Farrell with two counts of second degree assault, with special allegations that Farrell was armed with a deadly weapon,[1] two counts of violation of a protection order,[2] and three additional charges.[3]

Before trial, the State filed a motion in limine to admit Hardy's and LeBoeuf's no-contact orders into evidence under ER 404(b) because the orders were directly relevant to Farrell's violation of a protection order charges. Farrell did not object. At trial, witnesses testified to the

[1] RCW 9A.36.021(1)(c).

[2] RCW 26.50.110(1).

[3] Farrell was also charged with two counts of felony harassment, with special allegations that he was armed with a deadly weapon, one count of obstructing a police officer, and one count of resisting arrest. The jury returned a not guilty verdict for resisting arrest, but it returned guilty verdicts for both felony harassment counts and the obstructing a police officer count. These convictions are not at issue in this appeal.

above facts, and the no-contact orders were admitted into evidence. Farrell also testified in his defense.

Prior to closing arguments, the trial court granted Farrell and the State's joint motion to dismiss the violation of a protection order charges. Then, Farrell proposed a limiting instruction directing the jury to "disregard any and all evidence regarding any protection orders issued with respect to Lisa Hardy or Dori Leboeuf." 3 VRP at 376. The State agreed that a limiting instruction was appropriate but argued that the no-contact orders were admissible under ER 404(b) to prove Farrell's motive in the second degree assaults and to show Hardy's and LeBoeuf's reasonable apprehension of bodily injury.

The trial court determined that the no-contact orders were admissible under ER 404(b). The trial court stated that the no-contact orders were "probative, and the prejudice does not substantially outweigh the probative value of the admission of the protection orders themselves." 3 VRP at 390. The trial court declined to give Farrell's proposed limiting instruction, but it provided the following limiting instruction:

> Certain evidence has been admitted in this case consisting of two protection orders . . . . The charges alleging that Dale Farrell violated those have been dismissed. . . . You may only consider this evidence, if at all, for the limited purpose of motive and/or the alleged victims' state of mind, and for no other purpose.

Clerk's Papers (CP) at 74.

The trial court also instructed the jury that "[a] person commits the crime of Assault in the Second Degree when he assaults another with a deadly weapon." CP at 49. The court defined a "deadly weapon" as "any weapon, device, instrument, substance, or article, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is

readily capable of causing death or substantial bodily harm." CP at 67. The jury returned guilty verdicts for both counts of second degree assault. Farrell appeals.

ANALYSIS

I. SUFFICIENCY OF THE EVIDENCE

Farrell challenges the sufficiency of the evidence supporting his second degree assault convictions, arguing that the State (a) failed to prove that he was armed with a deadly weapon and (b) failed to prove that Hardy's and LeBoeuf's apprehension of bodily injury was reasonable. We disagree.

The due process clause protects a defendant "against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). Due process further guarantees a defendant the right to challenge the sufficiency of the evidence the State presents at trial. *State v. Tyler*, 195 Wn. App. 385, 392, 382 P.3d 699 (2016). Washington courts apply the federal constitutional standard of appellate review for sufficiency of the evidence questions. 195 Wn. App. at 392. Accordingly, sufficiency of the evidence is a question of constitutional law that we review de novo. *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016).

Evidence is sufficient to support a defendant's conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Andy*, 182 Wn.2d 294, 303, 340 P.3d 840 (2014). "'A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.'" *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004) (quoting

State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). We deem circumstantial and direct evidence equally reliable, and we defer to the trier of fact on issues of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence. *State v. Ozuna*, 184 Wn.2d 238, 248, 359 P.3d 739 (2015); *Andy*, 182 Wn.2d at 303.

A. *Deadly Weapon*

Farrell argues that because the State "did not proceed under the per se rule," it presented insufficient evidence to satisfy his second degree assault convictions because it failed to prove that the knife was readily capable of causing death or substantial bodily harm. Br. of Appellant at 8. We disagree.

A defendant is guilty of second degree assault if he assaults another with a deadly weapon. RCW 9A.36.021(1)(c). Under RCW 9.94A.825, an instrument is a "deadly weapon" if (1) the instrument is a per se deadly weapon, as listed in the statute, or (2) the instrument "has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death." *State v. Peterson*, 138 Wn. App. 477, 482, 157 P.3d 446 (2007). We evaluate the second category by looking to the circumstances in which the instrument was used, including the defendant's intent and present ability. *State v. Holmes*, 106 Wn. App. 775, 781-82, 24 P.3d 1118 (2001). The instrument's capacity to inflict death "'is determined in relation to surrounding circumstances, with reference to potential substantial bodily harm.'" 106 Wn. App. at 782 (quoting *State v. Shilling*, 77 Wn. App. 166, 171, 889 P.2d 948 (1995)).

Here, the State charged Farrell with two counts of second degree assault for assaulting another with a deadly weapon, as defined in RCW 9.94A.825. At trial, LeBoeuf testified that

Farrell stood on the edge of his property and threatened to kill her while holding a knife with "a good size blade on it." 1 VRP at 95. LeBoeuf also stated that Farrell seemed agitated and that his actions were unpredictable. In addition, Hardy testified that Farrell jabbed the knife in the air while looking at her and threatening to kill her.

The trial court instructed the jury that "[a] person commits the crime of Assault in the Second Degree when he assaults another with a deadly weapon." CP at 49. The trial court also instructed the jury that a "deadly weapon" was "any weapon, device, instrument, substance, or article, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm." CP at 67. The jury returned guilty verdicts for both second degree assault charges, finding that Farrell was armed with a deadly weapon at the time of the assaults.

While the trial court's second degree assault instruction set forth the elements of the charged crime, the jury instructions incorrectly stated that a deadly weapon was only an instrument readily capable of causing death or substantial bodily injury. Accordingly, the circumstances in which Farrell threatened to use the knife determine whether it was a deadly weapon. *See Peterson*, 138 Wn. App. at 482

Farrell's insufficient evidence claim necessarily admits the truth of the State's evidence. Witnesses stated that Farrell jabbed a steak knife with "a good size blade on it" while threatening to kill Hardy and LeBoeuf. 1 VRP at 95. Accordingly, witness testimony regarding the knife and Farrell's use of it supports the conclusion that the knife was readily capable of inflicting death or substantial bodily harm.

Further, witnesses testified that Farrell was extremely agitated and that his actions were unpredictable. Farrell made a number of threats to kill Hardy and LeBoeuf while holding and jabbing the knife in his agitated state. Farrell's intent and present ability, therefore, shows that he could easily and readily produce death.

Because the knife had the capacity to inflict death or substantial bodily harm and, from the manner in which it was threatened to be used, could easily and readily produce death or substantial bodily harm, the knife was a deadly weapon under RCW 9.94A.825. Accordingly, the State's evidence would permit any rational jury to find that Farrell's knife was a deadly weapon beyond a reasonable doubt.

B. *Reasonable Apprehension of Bodily Injury*

Farrell also argues the State presented insufficient evidence to satisfy his second degree assault convictions because the State did not prove beyond a reasonable doubt that Hardy's and LeBoeuf's apprehension of bodily injury was reasonable. We disagree.

Under RCW 9A.36.021(1)(c), "[a] person is guilty of assault in the second degree if he or she . . . [a]ssaults another with a deadly weapon." Because the statute does not define the term "assault," we look to its common law definition. *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009). Washington courts recognize three common law definitions of assault: "(1) an unlawful touching (actual battery); (2) an attempt with unlawful force to inflict bodily injury upon another, tending but failing to accomplish it (attempted battery); and (3) putting another in apprehension of harm." 166 Wn.2d at 215.

LeBoeuf watched Farrell run to the edge of the property line separating her property from Farrell's while he waived a knife in the air and shouted, "Dori, you f*cking c*nt. I'm going to

kill you. Yes, you. You f*cking c*nt, I'm going to kill you." 1 VRP at 79. LeBoeuf called 911 and locked the doors to her home. At trial, LeBoeuf testified that Farrell was frightening and that she feared for her life. LeBoeuf was also afraid that Farrell would "just come crashing through the door after [her]" because he seemed agitated and his actions were unpredictable. 1 VRP at 82.

As Hardy walked across her yard to the mailbox, Farrell looked at her while jabbing a knife in the air and yelling, "Hey, you mother f*cking c*nt, dyke b*tch, whore, I will kill all of you motherf*ckers." 2 VRP at 237. Scared, Hardy went into her house, locked the doors, and called 911. At trial, Hardy testified that she "was afraid he was going to kill [her] and kill [her] neighbors." 2 VRP at 243-44. Both Hardy and LeBoeuf had no-contact orders against Farrell at the time of the offenses. Hardy and LeBoeuf also testified that Farrell never left his property and remained at least 25 feet from them at all times.

The trial court instructed: "An assault is an act done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury." CP at 64.

Both Hardy and LeBoeuf had no-contact orders against Farrell and witnessed him threaten to kill them while waiving a knife in the air and acting erratically. Moreover, Hardy and LeBoeuf testified that they were afraid that Farrell would kill them. Accordingly, a rational jury could find that the combination of Farrell's hostile verbal comments, agitation, jabbing with a knife, threats to kill, and past behavior that caused Hardy and LeBoeuf to seek and obtain no-contact orders against him placed Hardy and LeBoeuf in reasonable apprehension of bodily

injury. Viewing this evidence in a light most favorable to the State, the evidence is sufficient to show that Farrell placed Hardy and LeBoeuf in reasonable apprehension of bodily injury.

Because the State presented sufficient evidence to prove that Farrell's knife was a deadly weapon and that Farrell placed Hardy and LeBoeuf in reasonable apprehension of bodily injury, sufficient evidence supported Farrell's convictions for second degree assault.

II. PROPENSITY EVIDENCE

Farrell also argues the trial court erred in denying his proposed limiting instruction and in instructing the jury that it could consider the no-contact orders because the orders were not admissible under ER 404(b). We disagree.

We review a trial court's refusal to give a proposed jury instruction for an abuse of discretion. *In re Det. of Pouncy*, 168 Wn.2d 382, 390, 229 P.3d 678 (2010). When evidence of a defendant's prior crimes, wrongs, or acts is admissible under ER 404(b) for a proper purpose, the defendant is entitled to a limiting instruction upon his request. *State v. Gresham*, 173 Wn.2d 405, 423, 269 P.3d 207 (2012). Once a defendant requests a limiting instruction, "the trial court has a duty to correctly instruct the jury." 173 Wn.2d at 424. The trial court has broad discretion to fashion its own limitation on the use of evidence. *State v. Hartzell*, 156 Wn. App. 918, 937, 237 P.3d 928 (2010). However, an adequate ER 404(b) limiting instruction informs the jury of the purpose for which the evidence is admitted and that the evidence may not be used for the purpose of concluding that the defendant had a propensity to commit the current offense. *Gresham*, 173 Wn.2d at 423.

Under ER 404(b), "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." However, such

evidence is admissible for other purposes. ER 404(b). To justify the admission of prior acts under ER 404(b), a trial judge must "(1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect." *State v. Vy Thang*, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002). The court must conduct this analysis on the record. *State v. Sublett*, 156 Wn. App. 160, 195, 231 P.3d 231 (2010), *aff'd*, 176 Wn.2d 58, 292 P.3d 715 (2012).

Farrell was initially charged with two counts of second degree assault and two counts of violation of a protection order. Prior to trial, the State moved to admit Hardy's and LeBoeuf's no-contact orders against Farrell because the orders were directly relevant to his violation of a protection order charges. Farrell did not object. At trial, the no-contact orders were admitted into evidence.

Before closing arguments, the trial court granted Farrell and the State's joint motion to dismiss his violation of a protection order charges. Farrell then argued that because the violation of a protection order charges were dismissed, a limiting instruction was necessary, and he proposed an instruction directing the jury to "disregard any and all evidence regarding any protection orders issued with respect to Lisa Hardy or Dori Leboeuf." 3 VRP at 376. The State agreed that a limiting instruction was appropriate but argued that the no-contact orders were admissible under ER 404(b) to prove Farrell's motive and to show the reasonable apprehension element of second degree assault.

The trial court recognized that the State wished to admit the no-contact orders to demonstrate the reasonableness of Hardy's and LeBoeuf's actions and determined that the no-

contact orders were admissible to show Farrell's motive and Hardy's and LeBoeuf's states of mind. The trial court also concluded the evidence was "probative, and the prejudice does not substantially outweigh the probative value of the admission of the protection orders themselves." 3 VRP at 390. Accordingly, the trial court provided the following limiting instruction:

> Certain evidence has been admitted in this case consisting of two protection orders . . . . The charges alleging that Dale Farrell violated those have been dismissed. . . . You may only consider this evidence, if at all, for the limited purpose of motive and/or the alleged victims' state of mind, and for no other purpose.

CP at 74.

Because ER 404(b) evidence was admitted at trial, Farrell was entitled to a limiting instruction. As a result, it was the trial court's duty to provide the jury a correct limiting instruction, and the court had broad discretion to create its own proper limitation on the ER 404(b) evidence. Consequently, the trial court reexamined the no-contact orders' admissibility.

The trial court properly determined that the no-contact orders were admissible after conducting the four-part analysis required by ER 404(b) on the record. The trial court noted that the no-contact orders were sought to be introduced to show that Hardy's and LeBoeuf's apprehension was reasonable. Further, the trial court concluded that the orders were still admissible because they served a legitimate purpose in showing Farrell's motive, were relevant to show Hardy's and LeBoeuf's states of mind and were more probative than prejudicial.[4]

[4] Farrell's argument that *State v. Fisher*, 165 Wn.2d 727, 202 P.3d 937 (2009), requires the trial court to provide more than a mere statement that the probative value of evidence outweighs its prejudicial effect misstates the law. In *Fisher*, the Washington Supreme Court determined that a trial court must weigh the probative value against the prejudicial effect of the evidence, but the court did not require the trial court to provide a detailed record of this balancing. 165 Wn.2d at 745-46. The Washington Supreme Court approved of the trial court's detailed finding, but it did not hold that trial courts are required to make such a finding. 165 Wn.2d at 745-46.

Farrell's proposed limiting instruction did not properly inform the jury of the applicable law and did not permit the State to argue its theory of the case because the no-contact orders were still admissible to prove elements of the second degree assault charges. Because Farrell's proposed instruction did not inform the jury of the purpose for which the no-contact orders were admitted, the trial court did not abuse its discretion in denying the proposed instruction. Instead, the trial court performed its duty by properly balancing the prejudicial effect against the probative value of the evidence and correctly instructing the jury on the purposes of admitting the no-contact orders. Therefore, the trial court did not err in providing a limiting instruction permitting the jury to consider the no-contact orders.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Farrell argues his trial counsel was ineffective for failing to request a mistrial because admission of Hardy's and LeBoeuf's no-contact orders against Farrell deprived him of a fair trial. We disagree.

The Sixth Amendment to the United States Constitution and article I, section 22 of the Washington Constitution guarantee a criminal defendant the right to effective assistance of counsel. *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011). We review ineffective assistance of counsel claims de novo. *State v. Binh Thach*, 126 Wn. App. 297, 319, 106 P.3d 782 (2005). To prevail on an ineffective assistance of counsel claim, the defendant must show that defense counsel's representation was deficient and that the deficient representation prejudiced him. *Grier*, 171 Wn.2d at 32-33. Failure to establish either prong is fatal to an ineffective assistance of counsel claim. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

Counsel's performance is deficient if it falls below an objective standard of reasonableness, and there is "a strong presumption that counsel's performance was reasonable." *State v. Kyllo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009). To establish prejudice, a defendant must show a reasonable probability that but for the deficient performance, the result of the proceeding would have been different. *Grier*, 171 Wn.2d at 34.

To show prejudice here, Farrell must show there is a reasonable probability that had trial counsel moved for a mistrial, the trial court would have granted that motion. *See* 171 Wn.2d at 34. A trial court should grant a mistrial when, in light of all the evidence, the defendant has suffered prejudice such that nothing short of a new trial will ensure that he receives a fair trial. *State v. Rodriguez*, 146 Wn.2d 260, 270, 45 P.3d 541 (2002). Whether the admission of evidence at trial justifies a mistrial depends on three factors: (1) whether the error in admitting the evidence was serious enough to materially affect the trial's outcome, (2) whether it was cumulative of other evidence, and (3) whether the trial court properly instructed the jury to disregard the evidence. *State v. Hopson*, 113 Wn.2d 273, 284, 778 P.2d 1014 (1989).

As discussed above, the trial court properly instructed the jury that it could consider the no-contact orders for a limited purpose because the orders were admissible under ER 404(b). Because there was no error in admitting the no-contact orders into evidence, a mistrial is not justified. Accordingly, Farrell cannot show that the trial court would have granted Farrell's motion for a mistrial if the motion was made. Therefore, Farrell cannot demonstrate prejudice, and his claim fails.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

In his SAG, Farrell raises issues of prosecutorial misconduct and improper search and seizure. All of Farrell's claims either lack merit or require examination of matters outside the appellate record.

I. PROSECUTORIAL MISCONDUCT

Farrell contends that the prosecutor committed misconduct by referring to excluded evidence in closing argument and by suborning perjury. His claims lack merit.

To prevail on a claim of prosecutorial misconduct, a defendant must show that a prosecutor's conduct was both improper and prejudicial in the context of the entire record. *State v. Thorgerson*, 172 Wn.2d 438, 442, 258 P.3d 43 (2011). If a defendant fails to object at trial to the alleged misconduct, the defendant waives the issue on appeal unless he can demonstrate that the misconduct was so flagrant and ill-intentioned that the resulting prejudice was incurable by a jury instruction. 172 Wn.2d at 443.

A. *Excluded Evidence*

Prior to trial, Farrell sought to exclude evidence of his prior misdemeanor arrest warrants under ER 404(b). The trial court "order[ed] that the mention of the existing prior arrest warrants for the defendant not be mentioned, neither in opening, or by any of the witnesses." 1 VRP at 33.

At trial, Sergeant Jagodinski testified that he waited outside of Farrell's house while other officers obtained arrest and search warrants. While waiting, he was notified that the officers received the warrants. In closing argument, the prosecutor noted:

> And officer—or Sergeant Paul Jagodinski . . . waited around [Farrell's] house, as they say, as a warrant was obtained. It was, in fact, confirmed that there was an arrest warrant already in place . . . .
>
> And eventually they have the warrants in hand, and they knock on the door . . . . The defendant unlocks the door, opens up the door and Sergeant Jagodinski tells him he has—I have an arrest warrant for you.

4 VRP at 411-12. Farrell did not object.

Examining the prosecutor's argument in the context of the entire record, it is unclear whether the prosecutor was referring to Farrell's prior arrest warrants or the arrest and search warrants Sergeant Jagodinski confirmed the other officers obtained. Even if the prosecutor's statement improperly referred to Farrell's excluded *prior* arrest warrants, Farrell does not demonstrate that the statement was flagrant, ill-intentioned, and noncurable. Therefore, Farrell waived this issue.

B. *Suborning Perjury*

LeBoeuf testified at trial that she and Hardy did not discuss what they were going to write in their victim impact statements. On cross-examination, Hardy stated that while she discussed the offense with LeBoeuf, the two did not discuss their victim impact statements with each other. Then, Farrell asked, "And so, contrary to your previous testimony, your testimony now is that you discussed your victim impact statements with each other; is that correct?" 2 VRP at 257. Hardy responded, "Yes." 2 VRP at 257.

Farrell appears to suggest that the prosecutor engaged in misconduct by suborning perjury from Hardy and LeBoeuf and by coaching them. Farrell also argues Hardy's impeaching testimony shows that both Hardy and LeBoeuf committed perjury. The record, however, does not support Farrell's claims. Farrell's impeachment of Hardy, highlighting inconsistencies in her testimony, does not establish perjury. To the extent that Farrell challenges Hardy's and

LeBoeuf's credibility, "[c]redibility determinations are for the trier of fact and cannot be reviewed on appeal." *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Further, the discrepancy in the witnesses' testimony does not rise to the point of flagrant or ill-intentioned misconduct. Accordingly, there is no evidence of perjury and consequently no evidence of prosecutorial misconduct. Therefore, Farrell does not show that the prosecutor suborned perjury, and Farrell waives this issue.

II. VALIDITY OF THE SEARCH WARRANT

Farrell also contends that the search warrant for the knife involved was invalid. We do not address this issue because it is moot.

Generally, we do not review a question that is moot. *Citizens for Financially Responsible Gov't v. City of Spokane*, 99 Wn.2d 339, 350, 662 P.2d 845 (1983). A case is moot "when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief." *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005).

Officers obtained a search warrant for the knife used in the commission of the second degree assaults and seized a steak knife that appeared to be the same knife Farrell had possessed. However, the knife was not admitted into evidence at trial. Because the knife seized under the challenged search warrant was not admitted at trial, we cannot provide effective relief. Therefore, Farrell's claim is moot, and we do not address it.

We affirm Farrell's convictions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, J.

We concur:

Maxa, A.C.J.

Sutton, J.