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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08-CF-4234
)	
CLARENCE J. WEBER,)	Honorable
)	Theodore S. Potkonjak,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* Although collateral estoppel did not necessarily apply, the trial court properly denied defendant's motion to suppress, as defendant's conversation with a police informant, even while in custody, did not qualify as an interrogation and thus did not implicate *Miranda*.

¶ 2 Following a bench trial in the circuit court of Lake County, defendant, Clarence J. Weber, was found guilty of two counts of solicitation of murder for hire (720 ILCS 5/8-1.2(a) (West 2008)). Defendant argues on appeal that the trial court erred by applying the doctrine of collateral estoppel to bar him from relitigating the issue of whether certain incriminating statements were obtained in

violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). The issue had previously been resolved in the State's favor in a separate prosecution for first-degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) arising from the stabbing death of defendant's estranged wife, Adelina Weber. Whether or not collateral estoppel applies, the trial court's decision was correct on the merits. Accordingly we affirm.

¶ 3 While defendant was in custody in the Lake County jail awaiting trial for the murder of Adelina Weber, a fellow inmate, Jermaine Daniels, contacted law enforcement officials and advised them that defendant had offered to pay him to kill certain witnesses who were expected to testify against defendant. Thereafter, a conversation between defendant and Daniels, in which defendant offered to pay Daniels to kill two witnesses, was secretly recorded pursuant to a judicial overhear order. In the murder prosecution, defendant moved *in limine* to bar admission of the recorded conversation into evidence. At the hearing on the motion, the parties stipulated to the facts recounted above. Defendant contended that, prior to the recorded conversation with Daniels, he had invoked his right under *Miranda* to have counsel present during custodial interrogation. Defendant maintained that Daniels was acting as an agent of the State during that conversation, so that using defendant's statements to Daniels would violate defendant's right to counsel under *Miranda*. The trial court denied the motion, but the State did not offer the conversation as evidence at defendant's murder trial. On May 13, 2010, a jury found defendant guilty of Adelina Weber's murder. We affirmed the conviction. *People v. Weber*, 2012 IL App (2d) 100870-U.

¶ 4 On May 10, 2011, defendant filed a motion to suppress in the present case, seeking to bar admission of the recorded conversation into evidence at the trial of the charges of solicitation of murder for hire. Defendant again argued that *Miranda* barred the use of statements to an agent of

the State (Daniels) while defendant was in custody and had previously requested an attorney. The State responded that the motion to suppress was the “exact same motion” that defendant had filed in the murder case and that defendant was collaterally estopped from relitigating the *Miranda* issue. Judge Theodore S. Potkonjak heard the motion to suppress. He had previously ruled on the motion *in limine* in the murder prosecution. In denying the motion to suppress, Judge Potkonjak explained as follows:

“I am basing [the denial of the motion to suppress] on the fact that we have already heard this motion. The only thing different on it—there is no facts, no issues, nothing different than what I already ruled on. I mean, it is—nothing has changed but the names of the attorneys; not the names of the defendant. Everything is exactly the same. I have already ruled on it. Unless you have got some new evidence to present that I didn’t hear in that first hearing, nothing has changed.

So, the motion—the motion to suppress statements was denied then. Unless you have something different that you are going to present that you didn’t present then, my ruling from then would stand now because it had already been adjudicated. That’s why I am granting the motion.”

In its written order, the court indicated that the motion to suppress was denied “on collateral estoppel grounds.”

¶ 5 Defendant contends that the doctrine of collateral estoppel has no application here and that the trial court erred in failing to consider his motion to suppress on the merits. Our supreme court has observed:

“Under the collateral estoppel doctrine, ‘when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit.’ [Citation.] The party seeking to invoke collateral estoppel must show that: (1) the issue was raised and litigated in a previous proceeding; (2) *that the determination of the issue was a critical and necessary part of the final judgment in a prior trial*; and (3) the issue sought to be precluded in a later trial is the same one decided in the previous trial.” (Emphasis added.) *People v. Jones*, 207 Ill. 2d 122, 138-39 (2003).

At issue here is whether, under collateral estoppel principles, defendant was precluded from relitigating the question of whether *Miranda* required the suppression of his statements to Daniels. That issue was decided adversely to defendant in the first-degree murder prosecution. However, in order for collateral estoppel to apply, the decision on the *Miranda* issue would have to have been “a critical and necessary part of the final judgment” (*Jones*, 207 Ill. 2d at 139). That does not appear to be the case. Because the State did not offer defendant’s statements to Daniels as evidence in defendant’s trial for the murder of Adelina Weber, the trial court’s ruling on the *Miranda* issue was purely academic and could have had no conceivable effect on the outcome of that trial.

¶ 6 In support of its argument that the doctrine of collateral estoppel applies in this case, the State cites *People v. Page*, 156 Ill. 2d 258 (1993). In *Page*, the defendant had given police a statement implicating himself in the murders of Andrew Devine and Charles Howell. The defendant was tried in Will County for the murder of Devine. He was later tried in Cook County for the murder of Howell. The defendant unsuccessfully moved to suppress the statements in the Will County prosecution, and the *Page* court held that the doctrine of collateral estoppel barred the defendant from relitigating the issue in the Cook County prosecution. It is clear, however, that the statements

at issue were crucial evidence in the Will County prosecution. See *People v. Page*, 196 Ill. App. 3d 285, 286-88 (1990). Accordingly, *Page* is distinguishable.

¶ 7 Moreover, we have observed that “[i]n criminal cases, application of the doctrine against a defendant is severely limited, particularly where an issue decided adversely to the defendant will be effectively insulated from review.” *People v. Weilmuenster*, 283 Ill. App. 3d 613, 623 (1996). Because the State did not use the statements at issue here in the first-degree murder prosecution, defendant could not have obtained review of the suppression ruling on appeal from his conviction of that offense.

¶ 8 In view of the foregoing, it is doubtful that the doctrine of collateral estoppel has any application here. We need not definitively resolve the question, however. Irrespective of whether collateral estoppel applies, denial of the motion to suppress was the only proper ruling, and further proceedings on the matter would serve no useful purpose. The relevant facts, as set forth in the motion and as stipulated at the hearing in the murder prosecution, are undisputed. The police outfitted Daniels with a hidden audio-recording device and recorded a conversation in which defendant made incriminating statements. Despite defendant’s invocation of the right to counsel, this tactic by the State did not violate *Miranda*. *Miranda* affords a suspect the right to have counsel present during custodial *interrogation*. Conversations with police informants, even while in custody, do not qualify as interrogations. *People v. Hunt*, 2012 IL 111089, ¶¶ 33, 41.

¶ 9 Defendant argues that whether to grant the motion to suppress was a matter for the trial court’s discretion. According to defendant, because the trial court mistakenly believed that collateral estoppel principles dictated that the motion be denied, the trial court failed to exercise its discretion. Defendant argues that a trial court’s failure to exercise its discretion in the mistaken belief that it has

none is prejudicial error. However, the abuse-of-discretion standard does not apply here. Because the relevant facts were undisputed, the trial court's ruling is subject to *de novo* review. *People v. Nash*, 409 Ill. App. 3d 342, 347 (2011). Where appellate review is *de novo*, the trial court necessarily lacks discretion, and we may affirm on any ground. See *People v. Johnson*, 208 Ill. 2d 118, 134 (2003).

¶ 10 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 11 Affirmed.