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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1303**

Larry Jermaine McCool, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 26, 2018
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CR-12-3234

Larry McCool, Stillwater, Minnesota (pro se appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and
Reilly, Judge.

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

HALBROOKS, Judge

Appellant challenges the postconviction court's denial of his petition on the ground
that the district court abused its discretion by ruling that his claims are barred by *State v.*
Knaffla, 243 N.W.2d 737, 741 (Minn. 1976). We affirm.

FACTS

In January 2012, a confidential reliable informant (CRI) reported to the Violent Offender Task Force that appellant Larry Jermaine McCool was distributing crack cocaine from a residence and using a Cadillac Deville to transport it. Officers obtained a search warrant for the residence and the Cadillac. Investigators seized a large quantity of crack cocaine from the residence and 24 grams of crack cocaine from the Cadillac, and McCool was arrested. During a custodial interview of McCool, the investigator activated a handheld digital audio-recording device before advising McCool of his *Miranda* rights. The investigator observed a red light come on and stopped the recording at the end of the interview. During this interview, McCool reportedly confessed to possessing crack cocaine. But the interview recording was not available at trial allegedly due to an equipment malfunction.

The state charged McCool with first-degree controlled-substance sale, and a jury convicted him. In 2014, McCool challenged his conviction in a direct appeal to this court, arguing that the district court (1) erred by denying his motion to suppress evidence obtained from a warranted vehicle search; (2) denied him his right to a fair trial by denying his request for an in camera review of the CRI's identity; (3) abused its discretion by denying his request for a continuance to hire substitute counsel; and (4) abused its discretion by denying his motion for a mistrial or to reopen the *Rasmussen* hearing based on new information. *State v. McCool*, No. A13-2128, 2014 WL 6608923, at *1-9 (Minn. App. Nov. 24, 2014). In pro se supplemental and reply briefs, McCool raised three issues. *Id.* We affirmed his conviction in an unpublished opinion. *Id.* at *9.

In 2017, McCool petitioned for postconviction relief, asserting that (1) he was entitled to an in camera review of the CRI's identity because the CRI was a material witness and (2) he was never given a *Miranda* advisory. The postconviction court denied McCool's petition, reasoning that his claims are barred by *Knaffla*, 243 N.W.2d at 741. This appeal follows.

D E C I S I O N

McCool contends that the district court erred by denying his petition for postconviction relief. We review the denial of a petition for postconviction relief for abuse of discretion. *Quick v. State*, 692 N.W.2d 438, 439 (Minn. 2005).

On appeal, McCool asserts that (1) not knowing the CRI's identity violated his Sixth Amendment confrontation rights and his Fourteenth Amendment due-process rights, thereby denying him a complete defense and a fair trial and (2) his *Miranda* rights were violated because the state failed to prove that he knowingly waived them.

A person convicted of a crime is entitled to one review, but issues that have already been fully and fairly litigated should not be re-litigated on subsequent appeals or petitions. *Knaffla*, 243 N.W.2d at 741. There are two exceptions to the *Knaffla* rule: (1) “a postconviction court may hear and consider a claim that was previously known but not raised if the claim is so novel that its legal basis was not reasonably available at the time of the direct appeal” and (2) “when fairness so requires and the petitioner did not deliberately and inexcusably fail to raise the issue on direct appeal.” *Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004) (quotation omitted).

McCool's first argument is that he is entitled to an in camera review of the CRI's identity. In denying postconviction relief, the postconviction court stated that McCool sought disclosure of the CRI's identity in pretrial motions. *See McCool*, 2014 WL 6608923, at *1-2. On direct appeal, McCool challenged the district court's ruling that the CRI's identity need not be disclosed. Therefore, the postconviction court concluded that his CRI claim was fully and fairly litigated and is barred by *Knaffla*. 243 N.W.2d at 741.

McCool contends that his CRI issue is not *Knaffla* barred because a *Knaffla* exception applies—arguing that the CRI was a material witness and he could not have raised the issue on direct appeal because he had not raised it at trial. But as the postconviction court stated, the first *Knaffla* exception does not apply because McCool's CRI claims were raised on appeal and rejected. *See McCool*, 2014 WL 6608923, at *5-6. The postconviction court also determined that the second *Knaffla* exception does not apply because the factual issues surrounding the CRI claims were fully and fairly litigated. We agree.

McCool's second argument is that his *Miranda* rights were violated because he was not read the *Miranda* advisory, he did not receive an attorney when he requested one, and he did not confess in the custodial interview. Again, the postconviction court determined that the factual issues underlying those claims were fully and fairly litigated at both trial and on direct appeal. The postconviction court noted that this court, on direct appeal, affirmed the district court's denial of McCool's motion for a mistrial stemming from the *Miranda* issues. We agree with the postconviction court's conclusion that McCool's *Miranda* claims were fully and fairly litigated.

McCool maintains that his *Miranda* claims are not *Knaffla* barred because he raised a *Scales* issue on direct appeal—not a *Miranda* issue.¹ But in denying postconviction relief, the postconviction court stated:

However it is labeled, the core of the issue turn[ed] on whether the custodial interview was recorded, and whether the investigator’s report of the interview is reliable. In analyzing the alleged *Scales* violation, the Court of Appeals determined that the unavailability of the record [of] a custodial interview was not prejudicial to the accused.

The postconviction court also noted that, at trial, McCool did not dispute that a *Miranda* warning had been given or that he waived his *Miranda* rights.

The postconviction court concluded that neither *Knaffla* exception applies to the *Miranda* issue because McCool was attempting to re-litigate issues that were fairly and fully decided at trial and on appeal. We agree. The postconviction court properly exercised its discretion by denying McCool’s postconviction petition.

Affirmed.

¹ The facts underlying an alleged *Scales* or *Miranda* violation are interrelated. The *Scales* requirement mandates that law enforcement record all custodial interviews at a place of detention to prevent “factual disputes about the existence and content of *Miranda* warnings and any ensuing waiver of rights.” *State v. Inman*, 692 N.W.2d 76, 80, 81 n.4 (Minn. 2005). But if the accused does not dispute that a *Miranda* warning was given, or that the accused waived his or her right to remain silent, “the lack of a recording creates no prejudice to the accused.” *Id.* at 81.