

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001642-MR

JOHN DANIEL FIELDS

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE THOMAS O. CASTLEN, JUDGE  
ACTION NO. 03-CR-00339

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; ACREE AND THOMPSON, JUDGES.

ACREE, JUDGE: John Fields appeals, *pro se*, from an order of the Daviess Circuit Court denying his motion for Kentucky Rule of Criminal Procedure (RCr) 11.42 relief. He alleges that his trial counsel's failure to object to a transcript of his tape recorded police interview prejudiced his case. We have reviewed the arguments and the applicable law, and we disagree.

Fields was convicted by a jury of first-degree rape, second-degree unlawful imprisonment, and fourth-degree assault.

The victim was his estranged wife. By pretending to be in Missouri, he lured her to the marital residence she had previously vacated so that she could collect some personal possessions she had left behind. Once she was in the house, he attacked her, prevented her from leaving, and subjected her to unwanted sexual intercourse. Afterwards, he forced her to leave with him in her car. Due to his erratic driving, Fields was stopped by a police officer who arrested him when his wife escaped from the car and reported that she had been assaulted and held against her will.

During the jury trial, the Commonwealth played a recorded statement which Fields made to the investigating officer. A transcript was passed out to members of the jury for them to read as the statement was played. In several places, the transcript contained a notation that Fields' words were "inaudible." His attorney initially objected to the transcript; however, he withdrew the objection after the Commonwealth stated that the transcript would not be introduced as an exhibit. Fields was convicted of the aforementioned offenses and sentenced to ten years' imprisonment.

Fields appealed his conviction to this Court as a matter of right. While the appeal was pending, he attempted to file an RCr 11.42 motion which was returned to him until such time as his conviction became final. This Court affirmed the conviction, and the Kentucky Supreme Court denied discretionary review. With his direct appeal over, Fields filed another

motion pursuant to RCr 11.42. He alleged his attorney was ineffective for failing to move for suppression of his taped statement and failing to maintain his objection to the transcripts which were used by jury members listening to his taped statement. The trial court denied the motion without an evidentiary hearing, and this appeal followed.

Fields claims that the Commonwealth's transcript amounted to an improper interpretation of the statement he gave to the investigating officer. According to Fields, during the inaudible portions of the tape, he was actually asking for an attorney and telling the officer he wanted to stop talking.

In order to prevail on a claim of ineffective assistance of counsel Fields must show both that his counsel's performance was deficient and that, but for counsel's deficient performance, there is a reasonable probability that the outcome of his trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The evidence against Fields at trial included his estranged wife's testimony as well as the taped statement he gave the investigating officer. It is worth noting that Fields did not contest her claim that he had sexual relations with her; rather, he declared the contact was consensual while she testified it was forcibly coerced. Even now, Fields does not claim that the Commonwealth's transcript changed the words of his statement. On the contrary, he clings to his assertion that the Commonwealth substituted "inaudible" for portions of the

tape during which he tried to end the interview. This claim, even if it were proven accurate, is insufficient to meet his burden to show that the transcript likely changed the outcome of the case. Therefore, the trial court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Daniel Fields, *pro se*  
Fredonia, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

David W. Barr  
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Frankfort, Kentucky