

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

NO. 2011-CA-001043-MR

SCOTTFORD BRYANT

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT  
HONORABLE PHIL PATTON, JUDGE  
ACTION NO. 07-CR-00235

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\*

BEFORE: MAZE, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Scottford Bryant brings this appeal from a May 12, 2011, order of the Barren Circuit Court denying his Kentucky Rules of Criminal Procedure (RCr) 11.42 motion without an evidentiary hearing. We affirm.

Bryant was indicted by a Barren County Grand Jury on October 9, 2007, upon rape in the first degree, sodomy in the first degree, possession of

marijuana, and with being a persistent felony offender in the first degree. He was accused of raping and sodomizing a fifteen year-old girl, B.K.C. Before trial, the Commonwealth amended the rape and sodomy charges from first degree offenses to third degree offenses. The possession of marijuana charge was severed for trial. Following a jury trial, Bryant was found guilty of rape in the third degree, sodomy in the third degree, and with being a persistent felony offender in the first degree. Bryant was sentenced to fifteen-years' imprisonment. Bryant then pursued a direct appeal of his conviction to the Court of Appeals. In Appeal No. 2008-CA-001960-MR, Bryant's conviction was affirmed.

Bryant subsequently filed an RCr 11.42 motion alleging ineffective assistance of trial counsel in the Barren Circuit Court. The motion was denied without an evidentiary hearing by order entered March 12, 2011. This appeal follows.

Bryant contends the circuit court erred by denying his RCr 11.42 motion without an evidentiary hearing. Specifically, Bryant claims that his trial counsel rendered ineffective assistance, thus entitling him to relief under RCr 11.42.

To prevail on his ineffective assistance of counsel claim, Bryant must demonstrate that his trial counsel's performance was deficient and that such deficiency resulted in prejudice. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *Gall v. Com.*, 702 S.W.2d 37 (Ky. 1985). And, prejudice is found where a reasonable probability exists that but for trial counsel's

deficient performance the result of the proceedings would have been different. *Strickland*, 466 U.S. 668; *Bowling v. Com.*, 981 S.W.2d 545 (Ky. 1998). When reviewing an RCr 11.42 motion, an evidentiary hearing is required if a material issue of fact cannot be resolved upon the face of the record. *Fraser v. Com.*, 59 S.W.3d 448 (Ky. 2001).

In this case, Bryant's primary arguments are that trial counsel was ineffective for failing to file a motion to suppress both DNA evidence and an audiotaped statement he gave to police. We will initially address Bryant's allegation as to suppression of DNA evidence and then address the audiotaped statement.

Bryant argues that his DNA sample was obtained by police in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966) and that trial counsel was deficient for failing to file a motion to suppress the results of the DNA testing performed thereon. In particular, Bryant maintains:

In the case at bar, Bryant stated that while at the jail, Deputy [Steve] Runyon asked him for a statement. Bryant provided an initial statement on the evening he was arrested but states that he then requested a lawyer to which Deputy Runyon responded he would get a lawyer. The following day, Bryant was again questioned by Deputy Runyon, despite the fact that Bryant had invoked his right to counsel during the first interrogation. The next day, after Bryant invoked his *Miranda* rights, Deputy Runyon returned to the jail and transported Bryant to the courthouse for arraignment on these charges. Despite the fact that Bryant had invoked his right to counsel, Deputy Runyon interrogated Bryant outside of the courtroom where he requested a DNA sample and then a statement from Bryant. Bryant

complied with these requests and this statement and the DNA results were used during the trial. (Citations omitted.)

Bryant's Brief at 14.

A review of the record refutes Bryant's allegation and reveals that Bryant's DNA sample was procured by police through a search warrant. And, the search warrant was based upon B.K.C.'s statement to police concerning the sexual incident and the results of the medical examination of B.K.C. Consequently, Bryant's DNA sample was not obtained through his consent but rather through a search warrant. We, therefore, conclude that this allegation of error was refuted upon the face of the record.

As to Bryant's audiotaped statement to police, the record indicates that at trial, the Commonwealth played an audiotaped statement Bryant gave to a police detective after he was arrested. In the audiotaped statement, Bryant admitted to knowing that B.K.C. was only fifteen years old and further admitted to having sexual relations with B.K.C. Bryant believes that trial counsel was deficient for failing to suppress this audiotaped statement, again alleging it was obtained in violation of his rights under *Miranda*, 384 U.S. 436.

Upon review of the record, the evidence amassed against Bryant by the Commonwealth was overwhelming. DNA evidence established that male DNA contained on vaginal swabs and on B.K.C.'s panties matched Bryant's DNA. Additionally, B.K.C. and Bryant testified that B.K.C. told Bryant that she was only fifteen years old the day before the sexual incident occurred. Simply stated, we

cannot conclude that a reasonable probability exists that Bryant would have been found not guilty absent the introduction of Bryant's audiotaped statement. Thus, Bryant failed to demonstrate that admission of his audiotaped statement was prejudicial and his argument is clearly refuted by the record on appeal.

We also concluded that Bryant's remaining arguments regarding trial counsel's ineffectiveness to be meritless. Bryant alleges that trial counsel was unprepared for trial and failed to conduct an adequate investigation. However, the record reflects that counsel conducted a vigorous defense of Bryant given the evidence amassed by the Commonwealth in support of its case. Bryant has failed to demonstrate that trial counsel was deficient in failing to adequately investigate or to prepare for trial.

In conclusion, we hold that Bryant's allegations of trial counsel's ineffective assistance were adequately refuted upon the face of the record and that the circuit court properly denied Bryant's RCr 11.42 motion without an evidentiary hearing.

For the foregoing reasons, the Order of the Barren Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

M. Brooke Buchanan  
Assistant Public Advocate  
Department of Public Advocacy  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky  
Frankfort, Kentucky

Joshua D. Farley  
Assistant Attorney General  
Frankfort, Kentucky