Affirmed and Opinion filed December 16, 1999.

In The

Fourteenth Court of Appeals

———————————

NO. 14-98-00655-CR

———————————

KELVIN BRUNO SANDEL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 775,960

O P I N I O N

The jury convicted appellant, Kelvin Bruno Sandel, of possession of cocaine, less than 1 gram, and sentenced him to five years imprisonment. Appellant presents three issues on appeal, arguing ineffectiveness of counsel and violation of his constitutional rights against illegal search and seizure. We affirm.

On February 19, 1998, Houston narcotics officers executed a search warrant at two adjacent residences in northeast Houston. At one residence, the officers found two small plastic baggies containing cocaine residue. One baggie was located on a bedroom dresser next to papers and other personal items belonging to appellant. A third baggie was found on appellant following his arrest in front of the residence, which contained a larger "rock" of

crack cocaine. At the guilt-innocence phase of trial, appellant admitted to two prior cocaine offenses, but stated he had been off drugs for two years and that the baggies were not his.

Under his first issue, appellant contends that his constitutional rights against illegal search and seizure were violated, as the police officers failed to produce a valid search warrant for his residence. While appellant's issue argues there was no warrant *produced,* his briefing argument contends that no warrant was *admitted* into evidence, as the trial court had sustained his objections to its admission into evidence.

We note from the onset that appellant never objected to admission of the three baggies of cocaine at trial, nor did he raise the issue of any failure by the State to produce or admit the search warrant into evidence. No motion to suppress was filed arguing that the physical evidence was seized as the result of an illegal search, or any motion for new trial filed. Nothing is presented for review by this court. TEX. R. APP. P. 33.1(a).

In *Miller v. State*, 736 S.W.2d 643 (Tex. Crim. App. 1987), the Court of Criminal Appeals set out the procedural requirements for the preservation of error when contesting search and arrest warrants and their accompanying affidavits. The burden of justifying a contested search or arrest is on the State. If the State intends to justify the search or arrest on the basis of a warrant, the State must produce the warrant and its supporting affidavit for the inspection of the trial court. *Id*. at 648. Inasmuch as appellant did not contest the search warrant or the seizures at trial or by motion to suppress, these procedural requirements did not apply. Regardless, by marking the warrant and affidavit as exhibits, having them identified at the hearing and offering them into evidence, the State sufficiently exhibited and produced the warrant to the trial court for purposes of appellant's arguments here. *Moreno v. State*, 858 S.W.2d 453, 462 (Tex. Crim. App. 1993); *Cannady v. State*, 582 S.W.2d 467 (Tex. Crim. App. 1979). It is immaterial that the trial court sustained appellant's objections to the admission of the warrant as an exhibit, as there is no requirement that a search warrant be admitted into evidence. Appellant's first issue is overruled.

By his second and third issues, appellant argues ineffectiveness of counsel for failure to object to the State's testimony and evidence of the illegal searches and seizures. Specifically, appellant contends that his trial counsel failed to investigate the search warrant,

affidavits, the facts and the law, and that but for counsel's deficiencies, the results of the trial would have been different.

The standard of review for evaluating claims of ineffectiveness of counsel during the guilt-innocence phase of trial is set forth in *Strickland v. State*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064 (1984). Appellant must show both that counsel's performance was so deficient that he was not functioning as acceptable counsel under the sixth amendment, and that but for counsel's error, the result of the trial would have been different.

It is appellant's burden to prove ineffectiveness of counsel, and he must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy. *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064. Grounds for and evidence of ineffectiveness of counsel must be firmly grounded in the record. *Harrison v. State*, 552 S.W.2d 151, 152 (Tex. Crim. App. 1977). This court will not engage in speculation as to the reasons why counsel may or may not have done certain acts that are alleged as establishing ineffectiveness of counsel. *See Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1984).

Here, there was no motion for new trial setting forth facts or evidence for the allegations being raised by appellant, and nothing in the record supports his contentions. Appellant's second and third points of error are overruled.

The judgment is affirmed.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed December 16, 1999.

Panel consists of Justices Sears, Cannon, and Dunn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Bill Cannon, and Camille Hutson-Dunn sitting by assignment.