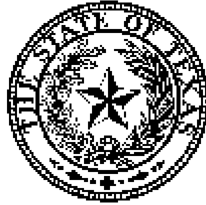
**Affirmed and Opinion filed March 2, 2000.**



**In The**

# Fourteenth Court of Appeals

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**NO. 14-97-01085-CR**

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**LINDA ANN PAGE, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 182nd District Court**
**Harris County, Texas**
**Trial Court Cause No. 748,582**

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## O P I N I O N

A jury convicted Linda Ann Page for the misdemeanor offense of official oppression, and the trial court assessed punishment at one year's imprisonment in the Harris County Jail and a fine of $2,000. In one point of error, Page appeals that she received ineffective assistance of counsel at trial. We disagree and affirm her conviction.

## BACKGROUND

Page worked for the Houston Independent School District as a police officer on the campus of Jack Yates Senior High School. While on duty, she observed two students engaged

in horseplay over possession of a necklace. Page confiscated the necklace and told one of the students to retrieve it after school. At the end of the day, the student went to the school's security office to get her necklace. Page, however, told her that she was busy and to return the next day. The student eventually sought other adults' intervention to get the necklace back after Page transferred to a different school campus. Page ultimately denied recollection of the necklace and her confiscation of it, and the student never received her necklace back. The charge of official oppression resulted for Page's seizure of the necklace with the intent to dispossess the student of it.

## STANDARD

The standard for appellate review of effectiveness of counsel was set out in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L. Ed.2d 674 (1984), and adopted by the Court of Criminal Appeals in *Hernandez v. State*, 726 S.W.2d 53, 57 (Tex. Crim. App.1986). *See Ex parte Menchaca*, 854 S.W.2d 128, 131 (Tex. Crim. App.1993). The appellant must prove that her counsel's representation so undermined the "proper functioning of the adversarial process that the trial cannot be relied on having produced a just result." *Strickland*, 466 U.S. at 686, 104 S.Ct. at 2064. Appellant's claim that counsel's assistance was so defective as to require reversal of a conviction has two components. First, appellant must show that her counsel's performance was deficient; second, she must show the deficient performance prejudiced the defense. *See id*. at 687, 104 S.Ct. at 2064.

The first component of this test is met by showing appellant's trial counsel made errors so significant that he was not functioning as the "counsel" guaranteed by the Sixth Amendment to the United States Constitution. *See id.* The second prong of *Strickland* requires a showing that counsel's errors were so serious that they deprived the defendant of a fair trial, i.e., a trial whose result is reliable. *See id.* at 687, 104 S.Ct. at 2064. This means an appellant must prove by a preponderance of the evidence that her defense attorney's representation fell below the standard of prevailing professional norms, and that there is a reasonable probability that but

for counsel's deficiency the result of the trial would have been different. *See id.* at 694, 104 S.Ct. at 2068; *McFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App.1996).

The question for our review is whether there is a reasonable probability that, absent counsel's errors, the fact-finder would have had a reasonable doubt on the issue of guilt, considering the totality of the evidence. *See Strickland*, 466 U.S. at 695, 104 S.Ct. at 2069. Our scrutiny of counsel's performance must be highly deferential, and every effort must be made to eliminate the distorting effects of hindsight. *See id.* at 689, 104 S.Ct. at 2065. Allegations of ineffective assistance of counsel must be firmly founded in the record because the reviewing court may not speculate about counsel's trial strategy. *See Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App.1994).

First, Page claims that her counsel was ineffective for eliciting testimony from two defense witnesses that opened the door to other damaging evidence. In Page's case-in-chief, her lawyer called Detective Tony Gradney and Bruce Marquis, Chief of Police for H.I.S.D. Questions to these officers revealed that H.I.S.D. police had investigated Page, that she had filed an E.E.O.C. claim against the Chief and the school district, and that the Chief had recommended Page's termination from the job. This opened the door to evidence by the State about Page's stealing from other students, her pawning the stolen goods, her receiving worker's compensation when she was fit to return to work, her harassment of tenants at her apartment complex, investigation by H.I.S.D. police of such activities, and ultimate termination from her job because of her stealing.

We hold, however, that Page has not met the first prong of *Strickland* to show that her counsel's actions were deficient in questioning these witnesses and not the result of trial strategy. We note that Page's counsel's trial strategy was revealed in his closing statement, in which he essentially argued Page had been a scapegoat for H.I.S.D. In his argument, he urged the jury to look at the intent of the H.I.S.D. police department. He also argued that H.I.S.D. had "rounded up" people to claim ownership of items that Page had pawned. There is nothing in the record to rebut the presumption that counsel's questioning of the two H.I.S.D. officers was

based on his reasonable trial strategy. *See Gravis v. State*, 982 S.W.2d 933, 937-38 (Tex. App.–Austin 1998, pet. ref'd); *see also Gholson v. State*, 5 S.W. 3d 266 (Tex. App.–Houston [14th Dist.] 1999, pet filed). Accordingly, we do not find that his actions were deficient.

Second, Page argues that her counsel's failure to seek a limiting instruction in the charge about extraneous offense evidence constitutes ineffective assistance. However, the charge contained a limiting instruction that permitted the jury to consider extraneous offense evidence only to determine "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident of the defendant." Although Page apparently complains that her attorney should have sought to further limit the instruction, without a record reflecting trial counsel's reasons for not doing so, we find no basis for concluding he did not exercise reasonable professional judgment. *See Jackson*, 877 S.W.2d at 771. Accordingly, we overrule Page's sole point of error and affirm the judgment of the trial court.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed March 2, 2000.

Panel consists of Justices Cannon, Draughn, and Hutson-Dunn.*

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

* Senior Justices Bill Cannon, Joe L. Draughn, D. Camille Hutson-Dunn sitting by assignment.