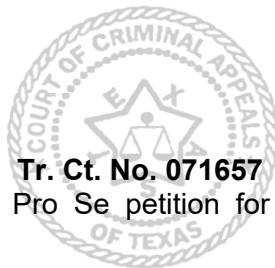


OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS **FILE COPY**
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7/30/2025

KABHA, KATY ELIZABETH Tr. Ct. No. 071657

COA No. 05-24-00008-CR

PD-0309-25

On this day, the Appellant's Pro Se petition for discretionary review has been refused.

Deana Williamson, Clerk

KATY ELIZABETH KABHA
712 S. PARK LN
ALTUS, OK 73521

* DELIVERED VIA E-MAIL & POSTAL *

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9/3/2025

KABHA, KATY ELIZABETH Tr. Ct. No. 071657

05-24-00008-CR

PD-0309-25

On this day, the Appellant's Pro Se motion for rehearing has been denied.

Deana Williamson, Clerk

KATY ELIZABETH KABHA
712 S. PARK LN
ALTUS, OK 73521

* DELIVERED VIA E-MAIL & POSTAL *

Affirm and Opinion Filed February 24, 2025



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-24-00008-CR

**KATY ELIZABETH KABHA, Appellant
v.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 59th Judicial District Court
Grayson County, Texas
Trial Court Cause No. 071657**

MEMORANDUM OPINION

Before Justices Miskel, Breedlove, and Barbare
Opinion by Justice Barbare

Appellant Katy Elizabeth Kabha was convicted of assaulting a public servant following a bench trial. In three issues, appellant argues the trial court erred by denying her pre-trial motion to dismiss, she suffered ineffective assistance of counsel, and the evidence is insufficient to support the judgment.¹ We affirm the trial court's judgment.

¹ Although appellant was represented by counsel at trial, she appears pro se on appeal. Pursuant to an order from this Court, the trial court conducted a hearing to determine whether appellant desired to prosecute an appeal of her case pro se. The trial court made findings of fact that appellant is indigent and entitled to appointed counsel on appeal, but, "after being explained the dangers of self-representation," she desired to represent herself. Appellant signed a document stating she waived her right to appointed counsel and would proceed pro se.

SUFFICIENCY OF THE EVIDENCE

We begin with the appellant’s third issue in which she argues the evidence is insufficient to support the judgment. When reviewing the sufficiency of the evidence to support a conviction, we consider the evidence in the light most favorable to the verdict. *Edward v. State*, 635 S.W.3d 649, 655 (Tex. Crim. App. 2021). We uphold a verdict if any rational trier of fact could have found all the essential elements of the offense proven beyond a reasonable doubt. *Id.* “This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

The finder of fact is the sole judge of the weight and credibility of the evidence. *See id.* When considering a claim of evidentiary insufficiency, we must keep in mind that the finder of fact may choose to believe or disbelieve all, some, or none of the evidence presented. *Id.* When faced with conflicts in the evidence, a reviewing court shall presume that the factfinder resolved those conflicts in favor of the verdict and defer to that determination. *Id.* at 656. The evidence is sufficient to support a conviction if “the inferences necessary to establish guilt are reasonable based upon the cumulative force of all the evidence when considered in the light

“We construe liberally pro se pleadings and briefs; however, we hold pro se litigants to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure.” *Chambers v. State*, 261 S.W.3d 755, 757 (Tex. App.—Dallas 2008, pet. denied); *see also Shaw v. State*, No. 05-22-01219-CR, 2024 WL 685920, at *2 (Tex. App.—Dallas Feb. 20, 2024, no pet.) (mem. op., not designated for publication).

most favorable to the verdict.” *Id.* at 655–56 (quoting *Wise v. State*, 364 S.W.3d 900, 903 (Tex. Crim. App. 2012)).

When reviewing the sufficiency of the evidence, a reviewing court must look at “events occurring before, during and after the commission of the offense and may rely on actions of the defendant which show an understanding and common design to do the prohibited act.” *Hammack v. State*, 622 S.W.3d 910, 914 (Tex. Crim. App. 2021) (internal quotation marks omitted). Each fact need not point directly and independently to the guilt of the appellant, if the cumulative force of all the incriminating circumstances is sufficient to support the conviction. *Id.* Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Id.* at 914–15.

The indictment charged the appellant with intentionally, knowingly, or recklessly causing bodily injury to Crystal Arrington by biting Arrington, and the indictment alleged appellant knew Arrington was a public servant who was lawfully discharging an official duty by attempting to arrest or detain her. *See* TEX. PENAL CODE ANN. §§ 22.01(a)(1), 22.02(b)(1).

Officers Crystal Arrington and Jacob Shoemate of the Denison Police Department sought to arrest appellant for two outstanding warrants. The appellant was in her car when the officers encountered her; she refused to exit the vehicle

when Shoemate instructed her to do so, and the officers attempted to forcibly remove her. Arrington testified:

As I was trying to get Ms. Kabha from the vehicle, she had wedged herself in between the bottom of the vehicle - - the floorboard and her seat. . . . We were really having a very hard time getting her out. . . . I remember her grabbing the back of her car - - the head rest [sic]. And I went to try to get her hands from the head rest [sic]. And as I was doing that, I saw her move her head and she put her mouth on my hand. And that's when I said, "Don't f-ing bite me," and I felt pain. So, I yanked my hand away and proceeded to try to grab her out of the vehicle.

Arrington described appellant placing her open mouth on Arrington's hand, and she "could feel like saliva." Footage from Shoemate's body camera was admitted, and Arrington can be heard stating "[d]on't fucking bite me."

After the officers removed appellant from her vehicle, Arrington told Shoemate she had been bitten and showed her hand to him. Photos of Arrington's hand were admitted as exhibits, and Arrington testified that the photos showed a mark on her hand, and the mark was caused by appellant. Arrington testified several times that appellant bit her.

Dustin Earley, a bystander, saw the appellant refuse to exit her vehicle and become "pretty violent." Earley described appellant's actions as "[a] lot of flailing around, kicking - - kicking at them." He testified he "saw her [appellant] kick at them [the officers]. I'm pretty sure she connected with the male [officer] or maybe the female." He also testified: "I saw her kick one of the officers. I don't know if it was a man or a woman. She kicked one of them. I know that for sure."

Appellant argues the evidence is insufficient because none of the State’s witnesses testified they saw her bite Arrington and Arrington’s injury did not resemble a bite mark. However, Arrington testified several times that appellant bit her, and Shoemate stated he and Arrington were lawfully discharging an official duty to arrest appellant. While appellant may not consider Arrington’s testimony credible, the trial court, acting as the trier of fact, was the sole judge of the weight and credibility of the testimony, and we must defer to the trial court’s determination. *See Edward*, 635 S.W.3d at 655–56. Applying the proper standard of review, we conclude the evidence is sufficient. *See id.* We overrule appellant’s third issue.

MOTION TO DISMISS

In her first issue, the appellant argues the trial court erred by denying her motion to dismiss the indictment on account of alleged prosecutorial misconduct and multiple *Brady* violations, which she argues deprived her of a fair trial.² We review a trial court’s ruling on a motion to dismiss a charging instrument for an abuse of discretion. *Mangiafico v. State*, No. 05-21-00601-CR, 2023 WL 4861783, at *7 (Tex. App.—Dallas July 31, 2023, pet. ref’d) (mem. op., not designated for publication) (citing *State v. Terrazas*, 962 S.W.2d 38, 42 (Tex. Crim. App. 1998);

² Rule of Appellate Procedure 33.1(a) provides that, as a prerequisite to presenting a complaint for appellate review, the appellate record must show that the complaint was made to the trial court by a timely request, objection, or motion stating the grounds for the ruling sought with sufficient specificity to make the trial court aware of the complaint. TEX. R. APP. P. 33.1(a)(1); *see Pena v. State*, 285 S.W.3d 459, 464 (Tex. Crim. App. 2009). Appellant filed a motion to dismiss in the trial court, and we will consider the arguments appellant raised in that motion and also argues on appeal. However, we may not consider new arguments appellant raises for the first time on appeal.

State v. Hill, 558 S.W.3d 280, 284 (Tex. App.—Dallas 2018, no pet.) (op. on remand)). “There is no general authority that permits a trial court to dismiss a case without the prosecutor’s consent.” *Id.* (citing *State v. Mungia*, 119 S.W.3d 814, 816 (Tex. Crim. App. 2003)). A trial court may dismiss a charging instrument to remedy a constitutional violation, but such dismissal is “a drastic measure only to be used in the most extraordinary circumstances.” *Id.* (quoting *Mungia*, 119 S.W.3d at 817). Where there is no constitutional violation, or where the defendant’s rights were violated but dismissal of the indictment was not necessary to neutralize the taint of the unconstitutional action, the trial court abuses its discretion in dismissing the indictment without the consent of the State. *Id.* (citing *Mungia*, 119 S.W.3d at 817; *Hill*, 558 S.W.3d at 284).

Appellant’s motion to dismiss alleges that Arrington and Shoemate violated the Denison Police Department’s policies because: (1) Arrington either forgot to turn on her body camera or the footage was altered; (2) Arrington never explained why her body camera did not capture their entire interaction; (3) Arrington’s and Shoemate’s in-car dashboard cameras were not timely activated; and (4) neither officer drafted a memo to their superior officers explaining why in-car dashboard videos do not exist. Further, her motion alleges the written incident report failed to state that Earley was present at the scene. Finally, appellant argues that a third-person, Kevin Arrington, who was Officer Arrington’s husband at the time of the incident, was a key defense witness who eluded service “after being contacted by

‘people’ at the Denison Police Department.” Although the appellant attached documents to her motion, none were authenticated.

Before trial began, the judge stated he would carry the motion to dismiss through trial, and testimony relevant to the motion was presented at trial.

Shoemate testified that he did not activate his in-car camera until appellant was placed in his vehicle. When asked why his in-car camera was not turned on when he was driving toward appellant’s location, which would have enabled his in-car camera to capture the entire incident, Shoemate testified: “Because I had my body camera on. And at no time or place was I trained that I needed both my body camera and my car camera on unless it’s a traffic stop.” Shoemate also was asked why he muted his body camera during a portion of the encounter with appellant, and he explained he did so when he completed his investigation, which was when appellant was placed under arrest for the outstanding warrants.

Arrington testified her body camera was not activated until “after the scuffle [was] over.” She explained that she forgot to activate her body camera when she arrived on the scene because she saw Shoemate struggling with the appellant. She was concerned for Shoemate’s safety, and she rushed to help him. She testified:

- Q. Was it intentionally [sic] that you didn’t turn it on?
- A. No, sir. Again, my main priority was just to get to Officer Shoemate and try to make sure that everything was safe.

Arrington confirmed the police department’s policy states her body camera should have been recording throughout the encounter with appellant.

Arrington confirmed she was married to Kevin Arrington³ at the time of the incident, but they were separated. Appellant believes that Arrington told Kevin that she was trained to falsely claim arrestees had bitten her. Arrington testified:

Q. Did you tell him [Kevin] that you had been trained to say people bite you?

A. No, sir.

Q. Did you tell him that Ms. Kabha didn't really bite you?

A. No, sir.

Q. Would you be surprised if he said that you did say those things?

A. Absolutely.

Q. Okay. And would you be surprised that he told Devon [Kevin's wife at the time of trial] about those things?

A. Absolutely, I'd be surprised because that's a lie.

...

Q. Were you trained to put in reports that someone bit you?

A. No, sir.

Q. Was that part of your training?

A. No, sir.

Arrington testified she recalled telling Kevin that she had been in an incident, but she did not tell him that appellant bit her.

After the State rested, the trial court heard the attorneys' arguments addressing the motion to dismiss and denied the motion. Based on the testimony before the trial court, we conclude the trial judge, acting as the finder of fact, could weigh the witnesses' credibility and chose to believe or disbelieve some or all of the testimony, including that Arrington was not trained to falsely claim she had been bitten, she did

³ Because Officer Arrington and Kevin Arrington share a surname, we will refer to Officer Arrington as "Arrington" and Kevin Arrington as "Kevin."

not tell Kevin she had not been bitten, and the officers' failures to activate their cameras pursuant to department policies were mistakes only. Based on the testimony at trial, we cannot conclude the trial court abused its discretion by denying appellant's motion to dismiss. We overrule appellant's first issue.

INEFFECTIVE ASSISTANCE OF COUNSEL

In her second issue, appellant argues she suffered ineffective assistance of counsel. The United States and Texas Constitutions guarantee a criminal defendant the right to reasonably effective assistance of counsel. U.S. CONST. amend. VI; TEX. CONST. art. I, § 10; *see also* TEX. CODE CRIM. PROC. ANN. art. 1.051. An ineffective-assistance-of-counsel claim may be brought for the first time on appeal. *Robinson v. State*, 16 S.W.3d 808, 810 (Tex. Crim. App. 2000).

To prevail on an ineffective-assistance-of-counsel claim, a defendant must show that: (1) counsel's performance was deficient, and (2) a reasonable probability exists that, but for counsel's deficient performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984); *State v. Morales*, 253 S.W.3d 686, 696 (Tex. Crim. App. 2008). An appellant's failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *See Andrews v. State*, 159 S.W.3d 98, 101 (Tex. Crim. App. 2005). The defendant bears the burden of proving both parts of the *Strickland* analysis by a preponderance of the evidence. *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999).

Counsel's performance is deficient if it falls below an objective standard of reasonableness. *Strickland*, 466 U.S. at 688; *Johnson v. State*, 624 S.W.3d 579, 585 (Tex. Crim. App. 2021). It is not sufficient that the appellant show, with the benefit of hindsight, that his counsel's actions or omissions during trial were merely of questionable competence. *Johnson*, 624 S.W.3d at 585. The right to effective assistance of counsel does not entitle a defendant to errorless or perfect counsel. See *Robertson v. State*, 187 S.W.3d 475, 483 (Tex. Crim. App. 2006).

On appeal, there is a strong presumption that the trial counsel's conduct fell within the wide range of reasonable professional assistance and that counsel's conduct constituted a sound trial strategy. *Johnson*, 624 S.W.3d at 586. To defeat the presumption, ineffective-assistance-of-counsel claims must be firmly founded in the record; an appellate court will not speculate in its review. *Bone v. State*, 77 S.W.3d 828, 835 (Tex. Crim. App. 2002). Trial counsel should be given an opportunity to explain his actions before being found ineffective. *Johnson v. State*, 624 S.W.3d 579, 586 (Tex. Crim. App. 2021). In the face of an undeveloped record, counsel should be found ineffective only if his conduct was so outrageous that no competent attorney would have engaged in it. *Prine v. State*, 537 S.W.3d 113, 117 (Tex. Crim. App. 2017). The record on direct appeal is generally insufficient to show that trial counsel's performance was deficient. *Id.*

Appellant complains that her trial counsel's performance was ineffective because counsel failed to introduce Sergeant Robby Carney's affidavit of non-

service and evidence of Sergeant Carney’s alleged knowledge about her mental health history, both of which she asserts are exculpatory evidence. No record was developed in the trial court regarding appellant’s ineffective assistance of counsel complaint. Because there was no evidentiary hearing about the counsel’s alleged failure to provide adequate representation, the record is silent as to the trial counsel’s actions and any reasons behind them. *See, e.g., Montoya v. State*, No. 05-22-00621-CR, 2024 WL 3897468, at *5 (Tex. App.—Dallas Aug. 22, 2024, no pet.) (mem. op., not designated for publication). Further, the undeveloped record does not reflect that trial counsel’s conduct was so outrageous that no competent attorney would have engaged in it. *See id.* Based on the record, we cannot conclude that there was no plausible professional reason for trial counsel’s alleged conduct. *See id.* Accordingly, we cannot conclude that the record firmly demonstrates that trial counsel’s performance fell below an objective standard of reasonableness. *See id.* We overrule appellant’s second issue.

CONCLUSION

We affirm the trial court’s judgment.

Do Not Publish
TEX. R. APP. P. 47.2(b)

/Cynthia M. Barbare/
CYNTHIA BARBARE
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

KATY ELIZABETH KABHA,
Appellant

No. 05-24-00008-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 59th Judicial
District Court, Grayson County,
Texas

Trial Court Cause No. 071657.

Opinion delivered by Justice Barbare.
Justices Miskel and Breedlove
participating.

Based on the Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

Judgment entered this 24th day of February, 2025.