



Ineffective Assistance of Counsel Trial Errors (New York)

INTRODUCTION

The Ineffective Assistance of Counsel Trial Errors resource guide is a starting point to assist defense counsel working on New York CPL 440 motions and direct appeals that involve the issue of ineffective assistance of counsel. This guide, which includes a model statement of law and an index of cases of common defense counsel errors at trial, should be used as a tool for counsel to conduct their own independent legal and factual research.

Please note that this resource guide does not delve into case law relevant to ineffectiveness during guilty pleas, due to conflicts of interest, or at sentencing proceedings.

In most instances, claims of ineffective assistance of counsel must be brought by way of a CPL 440 motion. Because the defense has the ultimate burden of showing the absence of trial counsel's strategic or legitimate reasons for their decisions or failures in lower court proceedings, the defense should generally include an affirmation from trial counsel with counsel's explanations for trial decisions and strategies or an affirmation from post-conviction counsel relaying conversations with trial counsel. When ineffective assistance is raised on direct appeal, appellate courts often conclude that, without such an explanation from trial counsel, the record is insufficient to support the defense's burden. For instructions on investigating and filing post-conviction motions, sample motions, templates, and CPL 440 statutory overview, please explore [ILS's Post-Conviction Litigation Resources](#).

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STATEMENT OF LAW

Both the United States and New York Constitutions guarantee every person accused of a crime the right to the effective assistance of counsel (see US Const, Amends VI, XIV; NY Const art I, § 6; *Strickland v Washington*, 466 US 668, 686 [1984]; *People v Benevento*, 91 NY2d 708, 711 [1998]; *People v Baldi*, 54 NY2d 137, 146 [1981]). Under the federal standard, accused people must show that (1) the “identified” attorney error(s) fell below an “objective standard of reasonableness,” and (2) the error(s) prejudiced the case so as to “undermine confidence in the outcome,” meaning “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different” (*Strickland*, 466 US at 688, 694). Thus, to prevail, the person “must identify the acts or omissions of counsel” that are alleged to be objectively unreasonable, and the “court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” (*id.* at 690; see *Kimmelman v Morrison*, 477 US 365, 386 [1986] [finding that conduct beyond the “identified acts or omissions” is only relevant where it sheds light on whether the identified errors were reasonable]).

While New York’s deficient-performance test tracks the federal standard (see *People v Turner*, 5 NY3d 476, 480 [2005]), the state’s prejudice standard—which focuses on meaningful representation—“is more protective than the Federal standard because even in the absence of a reasonable probability of a different outcome, inadequacy of counsel will still warrant reversal whenever a defendant is deprived of a fair trial” (*People v Debellis*, 40 NY3d 431, 436 [2023] [internal quotation marks omitted]). The burden rests on the defense

to show the absence of defense counsel's strategic rationale (*see People v Lopez-Mendoza*, 33 NY3d 565, 572 [2019]).

Where counsel's singular error or multiple errors constitute prejudicial deficient performance, it is constitutionally irrelevant whether counsel may have performed competently during other stages of the proceeding. Thus, under both the state and federal standards, even "[a] substantial, single 'blunder' could, of course, qualify" as sufficiently prejudicial (*People v Flores*, 84 NY2d 184, 188 [1994]); *see also Debellis*, 40 NY3d at 439-440 ["[W]e reject the suggestion that our standard of meaningful representation 'viewed in totality' allows us to justify ineffective performance on a core issue at trial via effective performance on ancillary pretrial issues"]; *Rosario v Ercole*, 601 F3d 118, 125-126 [2d Cir 2010], *cert denied* 563 US 1016 [2011] [discussing the "danger that some courts might misunderstand the New York standard and look past a prejudicial error as long as counsel conducted himself in a way that bespoke of general competency throughout the trial"]).

Moreover, "where counsel's errors individually may not constitute ineffective assistance, the cumulative effect...can deprive defendant of meaningful representation" (*People v Wright*, 25 NY3d 769, 779 [2015] [internal quotation marks, brackets, and citations omitted]; *see People v Oathout*, 21 NY3d 127, 132 [2013]).

INDEX OF CASES ON DEFENSE COUNSEL ERRORS

Appellate courts have held that a variety of defense counsel errors, both singularly and cumulatively, amount to prejudicial deficient performance or less than meaningful representation. Several of these types of errors are listed below.

I. Failure to Investigate the Facts and the Law

a. Generally

Supreme Court of the United States:

- *Hinton v Alabama*, 571 US 263, 274 (2014) (“An attorney’s ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance”).
- *Wiggins v Smith*, 539 US 510, 524-526, 534-536 (2003) (holding that counsels’ decision to not expand their investigation of their client’s life history for mitigating evidence beyond the presentence investigation report and department of social services records was unreasonable and that this inadequate investigation prejudiced the client).
- *Williams v Taylor*, 529 US 362, 395 (2000) (finding deficient performance where defense counsel “failed to conduct an investigation that would have uncovered extensive records [that could be used for death penalty mitigation purposes], not because of any strategic calculation but because they incorrectly thought that state law barred access to such records”).
- *Strickland v Washington*, 466 US 668, 690-691 (1984) (To be certain, “strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable,” but decisions cannot be strategic, and thereby insulated from challenge, if they are made after an unjustifiable failure to investigate).

Court of Appeals:

- *People v Oliveras*, 21 NY3d 339, 348 (2013) (“It simply cannot be said that a total failure to investigate the facts of a case, or review pertinent records, constitutes a trial strategy resulting in meaningful representation. There is simply no legitimate explanation for this purported strategy”).

- *People v Droz*, 39 NY2d 457, 462 (1976) (“[I]t is elementary that the right to effective representation includes the right to assistance by an attorney who has taken the time to review and prepare both the law and the facts relevant to the defense”).
- *People v Bennett*, 29 NY2d 462, 466 (1972) (An individual’s “right to representation does entitle him to have counsel conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed”) (internal citations and quotations omitted).

b. Failure to Investigate Potentially Helpful Witnesses and Evidence

Court of Appeals

- *People v Oliveras*, 21 NY3d 339, 348 (2013) (affirming the grant of a new trial where counsel failed to obtain and review the client’s psychiatric records to assist in developing the defense theory that the client’s inculpatory statements were made involuntarily in a murder case where these statements were the only direct evidence).
- *People v Jenkins*, 68 NY2d 896, 898 (1986) (finding a lack of meaningful representation where, without tactical reason, counsel failed to make use of helpful police reports with evidence of prior misidentifications).
- *People v Droz*, 39 NY2d 457, 462 (1976) (reversing conviction where counsel made no meaningful attempts, beyond mailing two letters, to contact potentially helpful witnesses).

First Department

- *People v Barnes*, 106 AD3d 600, 606 (1st Dept 2013) (finding counsel ineffective in drug case for failing to investigate physical evidence prior to trial, resulting in counsel advancing an unsupported theory of defense).
- *People v Cyrus*, 48 AD3d 150, 154 (1st Dept 2007) (finding ineffective assistance where counsel failed to investigate the contents of a store’s videotape showing the client leaving the scene and, thus, inadvertently opened the door to damaging police testimony about the tape’s contents).
- *People v Rojas*, 213 AD2d 56, 67-70 (1st Dept 1995) (finding ineffectiveness where counsel failed to investigate an alibi, failed to interview an eyewitness who gave a description of the murderer that varied from the client’s appearance, and failed to investigate serious flaws in police identification procedures).
- *People v Echavarria*, 167 AD2d 138, 139 (1st Dept 1990) (reversing the conviction and remitting for a *Wade* hearing where defense counsel failed to investigate or take

further action with respect to identification information disclosed in the prosecution's VDF, among other errors).

Second Department

- *People v Davis*, 193 AD3d 967, 970-971 (2d Dept 2021) (vacating the judgment and remitting for a new trial where counsel's failure to contact and interview potential witnesses could not be characterized as a legitimate strategic decision).
- *People v Green*, 37 AD3d 615, 615 (2d Dept 2007) (affirming grant of CPL 440 motion in murder case where "trial counsel, without a reasonable strategic reason, failed to interview or even contact potential witnesses known to counsel prior to trial, including an eyewitness to the crime, who could have offered exculpatory testimony").
- *People v Fogle*, 10 AD3d 618, 618-619 (2d Dept 2004) (vacating the conviction where counsel failed to investigate the crime scene and search for other eyewitnesses who could have offered exculpatory evidence).
- *People v Bussey*, 6 AD3d 621, 623 (2d Dept 2004) (reversing the judgment and finding ineffective assistance where counsel failed to investigate the alibi or call any alibi witnesses to testify).
- *People v Sullivan*, 209 AD2d 558, 558-559 (2d Dept 1994) (reversing the judgment where counsel was ineffective for failing to properly prepare the alibi defense by not serving timely notice and not subpoenaing hospital witnesses and records, in addition to other errors).
- *People v Simmons*, 110 AD2d 666, 666 (2d Dept 1985) (finding there was less than meaningful representation where counsel failed to interview available witnesses, properly interview the client, and conduct any legal research).

Third Department

- *People v Lanier*, 191 AD3d 1094, 1095-1096 (3d Dept 2021) (finding ineffective assistance where counsel failed to investigate an alibi witness and witnesses who would have cast doubt on the eyewitness's identification testimony).

Fourth Department

- *People v Everson*, 213 AD3d 1294, 1296-1297 (4th Dept 2023) (finding there was less than meaningful representation where counsel had no tactical reason not to investigate a complainant as a defense witness).

- *People v Williams*, 206 AD3d 1625, 1627-1628 (4th Dept 2022) (vacating conviction where counsel failed to interview witness present during the shooting who could have provided potentially exculpatory evidence).
- *People v Borcyk*, 184 AD3d 1183, 1183-1184 (4th Dept 2020) (granting a new trial where defense counsel was ineffective for failing to secure the presence of a witness with potentially exculpatory information).

c. *Failure to Investigate Medical and Mental Health Records and Consult with or Present Expert Testimony*

Court of Appeals

- *People v Caldavado*, 26 NY3d 1034, 1036-1037 (2015) (remitting for CPL 440 hearing where defense counsel did not make “a legitimate or reasonable tactical choice” when determining “it would be futile to call an expert based *solely* on the volume of expert testimony presented” by the prosecution in a case “where casting doubt on the prosecution’s medical proof [was] the crux of the defense”).
- *People v Oliveras*, 21 NY3d 339, 348 (2013) (affirming the grant of CPL 440 motion where defense counsel was ineffective for failing to secure and review the client’s psychiatric records to challenge the voluntariness of his inculpatory statements—the only direct evidence in the murder case).
- *People v Bennett*, 29 NY2d 462, 466 (1972) (ordering a new trial where counsel was ineffective for failing to read his client’s hospital records and speak to his client’s doctors to prepare for an insanity defense).

Second Department

- *People v Graham*, 129 AD3d 860, 862-863 (2d Dept 2015) (granting CPL 440 motion where counsel provided less than meaningful representation by failing to obtain psychiatric information or have his client evaluated by an expert in a murder case where the prosecution’s theory hinged on proving the client’s state of mind).
- *People v Baba-Ali*, 179 AD2d 725, 729 (2d Dept 1992) (reversing the judgment where counsel failed to secure “independent expert medical testimony” and follow up on his demand for medical records, which resulted in him receiving the records on the day of trial in a child sex abuse case where the outcome was determined by credibility).
- *People v Wilson*, 133 AD2d 179, 180-181 (2d Dept 1987) (reversing the judgment in a case involving the death of a young child where counsel failed to have his client examined by a psychiatrist to reach an informed decision as to the viability of a mental disease or defect defense).

Third Department

- *People v Cassala*, 130 AD3d 1252, 1254-1255 (3d Dept 2015) (ordering a new trial where counsel failed to investigate the alleged victim's bleeding disorder and conducted a cross-examination of the sexual assault nurse examiner that was prejudicial to the client).

Fourth Department

- *People v Jackson*, 202 AD3d 1483, 1485 (4th Dept 2022) (finding no strategic explanation for counsel's lapses in not presenting available proof regarding PTSD and failing to offer expert testimony where pursuing an EED defense was the best trial strategy).
- *People v Okongwu*, 71 AD3d 1393, 1395-1396 (4th Dept 2010) (vacating conviction where, in a child sex abuse case, counsel failed to introduce evidence of medical records of one of the alleged victims; obtain experts to refute the prosecution experts; and adequately cross-examine the prosecution experts).

Federal—Persuasive

- *Gersten v Senkowski*, 426 F3d 588, 612-614 (2d Cir 2005) (holding that in a child sexual abuse case, where the prosecution's case rested on the credibility of the alleged victim, it was prejudicial error for counsel to not "consult with or call an expert" and sufficiently educate himself on the relevant scientific issues to enhance his ability to mount an effective cross-examination on CSAAS and to offer "a potentially persuasive affirmative argument that the alleged victim's condition was not indicative of or consistent with forced sexual penetration").

d. Lack of Familiarity with the Relevant Law

Court of Appeals

- *People v Oliveras*, 21 NY3d 339, 348 (2013) (finding that the defense strategy "could only be fully developed after counsel's investigation of the facts and law," which was deficient).
- *People v Oathout*, 21 NY3d 127, 132 (2013) (finding ineffective assistance where "counsel's actions throughout this case showed an unfamiliarity with or disregard for basic criminal procedural and evidentiary law").
- *People v Droz*, 39 NY2d 457, 459 (1976) (finding counsel ineffective due to his lack of preparation for trial and "ignorance of basic principles of criminal law").

- *People v Bennett*, 29 NY2d 462, 466-467 (1972) (ordering a new trial where counsel failed to understand the law and was completely unprepared to go forward with an insanity defense, “the only possible defense available”).

First Department

- *People v McCray*, 213 AD3d 423, 423-425 (1st Dept 2023) (finding ineffective assistance where counsel waived preclusion of unnoticed identification made by the sole eyewitness to the shooting, among other errors).
- *People v Coulibaly*, 172 AD3d 647, 647-648 (1st Dept 2019) (finding ineffective assistance where counsel miscalculated the relevant time on a speedy trial motion).
- *People v Holland*, 115 AD3d 492, 493 (1st Dept 2014) (remanding for a new trial where “[c]ounsel demonstrated a lack of familiarity with the applicable criminal law,” prejudicing his client).
- *People v Fleming*, 58 AD3d 527, 527 (1st Dept 2009) (finding ineffective assistance where “[c]ounsel demonstrated her lack of basic comprehension of criminal law and procedure through her persistent frivolous conduct at multiple stages of the proceeding”).
- *People v Raosto*, 50 AD3d 508, 509 (1st Dept 2008) (Defense counsel “displayed general carelessness and inattention throughout the trial”).
- *People v Mason*, 263 AD2d 73, 78-79 (1st Dept 2000) (reversing the judgment where counsel’s basic misunderstanding of a client’s constitutional right to testify “led to [the client’s] prejudice”).

Second Department

- *People v Yagudayev*, 91 AD3d 888, 889-890 (2d Dept 2012) (reversing the judgment where counsel failed to properly research his theory of the case and elicited what amounted to an admission of guilt from his client).
- *People v Brown*, 300 AD2d 314, 315 (2d Dept 2002) (finding less than meaningful representation where counsel failed to prepare for a trial involving allegations of child abuse, ineffectively cross examined the 10-year-old complainant, and was not familiar with the law regarding admissibility of prompt outcry hearsay testimony).

II. Lack of Reasonable Defense

Court of Appeals

- *People v Nesbitt*, 20 NY3d 1080, 1081-1082 (2013) (ordering a new trial because counsel was ineffective for failing to request second-degree assault as a lesser included offense or make any serious effort to persuade the jury not to convict on first-degree assault where counsel was mistaken that his client was without a colorable defense to first-degree assault).
- *People v Turner*, 5 NY3d 476, 478 (2005) (affirming grant of a writ of error coram nobis where trial and appellate counsel “failed to perceive that a statute of limitations defense would have prevented their client’s manslaughter conviction”); *see also* *People v Harris*, 26 NY3d 321, 326 (2015) (determining that counsel “could have no strategic purpose for failing to raise the statute of limitations as against the time-barred charge”).

Second Department

- *People v Goondall*, 173 AD3d 896, 899 (2d Dept 2019) (“Here, defense counsel’s confused and contradictory actions, effectively conceding the dispositive issue, deprived the defendant of his right to the effective assistance of counsel”).

Federal—Persuasive

- *Henry v Poole*, 409 F3d 48, 66-67 (2d Cir 2005) (finding ineffective assistance warranting habeas relief where defense counsel erred in eliciting, pursuing, and arguing false alibi evidence addressing the wrong time period, which suggested consciousness of guilt, in a case where his client had a strong defense of misidentification based on numerous discrepancies between his appearance and the complainant’s description of the perpetrator).
- *DeLuca v Lord*, 77 F3d 578, 579 (2d Cir 1996) (holding that defense counsel failed to deliver effective representation in abandoning all consideration of extreme emotional disturbance defense at an early stage of the proceedings and for no adequate reason).

III. Failure to Pursue Suppression Claims and Other Pre-Trial Motions

Court of Appeals:

- *People v Bilal*, 27 NY3d 961, 962 (2016) (remitting for a new suppression hearing where counsel failed to seek suppression of the gun recovered during the client’s

encounter with the police, and counsel's affirmation established there was no strategic explanation for this failure).

- *People v Clermont*, 22 NY3d 931, 933-934 (2013) (remitting for further proceedings on a suppression application where defense counsel failed to marshal the facts or offer a legal argument during suppression hearing, among other errors).

First Department

- *People v Kindell*, 135 AD3d 423, 423-424 (1st Dept 2016) (remitting for a reopened suppression hearing where counsel failed to move to reopen the hearing after a trial witness contradicted police testimony).
- *People v Cyrus*, 48 AD3d 150,160-162 (1st Dept 2007) (holding counsel was ineffective during the suppression hearing by failing to adequately introduce the circumstances of the client's confession or make viable arguments based thereon).
- *People v Johnson*, 37 AD3d 363, 364 (1st Dept 2007) (finding that the failure to raise colorable suppression arguments and instead "simply conceded[ing] all of the points raised" after a suppression hearing constitutes ineffective assistance of counsel).
- *People v Miller*, 11 AD3d 729, 730 (1st Dept 2004) (finding ineffectiveness where counsel failed to move for *Huntley* and *Sandoval* hearings, among other errors).
- *People v Donovan*, 184 AD2d 654, 654-655 (1st Dept 1992) (finding ineffectiveness where counsel failed to move to suppress drugs recovered from the client that were disclosed on the VDF, thereby "destroy[ing] a viable defense").
- *People v Echavarría*, 167 AD2d 138, 139 (1st Dept 1990) (finding ineffectiveness for, among other errors, failure to move for a *Wade* hearing despite VDF disclosure of lineups and photo viewings and where a misidentification defense was pursued at trial).
- *People v Ferguson*, 114 AD2d 226, 230-231 (1st Dept 1986) (determining counsel was ineffective for failing to timely move for a suppression hearing where the propriety of the search was an essential defense issue).

Second Department

- *People v Corchado*, 175 AD3d 705, 708 (2d Dept 2019) (finding counsel ineffective for making an inappropriate argument in support of a belated suppression motion and failing to challenge admissibility of evidence seized from the client's home).

- *People v Wagner*, 104 AD2d 457, 458 (2d Dept 1984) (finding ineffectiveness where, among other errors, defense counsel failed to seek a *Mapp* hearing despite facts warranting one).
- *People v Moore*, 102 AD2d 898, 898 (2d Dept 1984) (reversing the judgment and ordering a new trial where defense counsel failed to seek either a *Wade* or a *Mapp* hearing despite facts potentially warranting them, among other errors).
- *People v Sims*, 55 AD2d 629, 629 (2d Dept 1976) (finding ineffectiveness where counsel failed to timely file motion to suppress identification and then forfeited the suppression hearing after it was granted).

Third Department

- *People v Milazo*, 18 AD3d 1068, 1070 (3d Dept 2005) (concluding that the failure to timely file a notice of alibi may be considered ineffective assistance if it precludes the presentation of an alibi defense that could have changed the outcome of the case).
- *People v Kirk*, 290 AD2d 805, 807-808 (3d Dept 2002) (finding ineffectiveness where, among other errors, counsel failed to file pretrial motions seeking a severance of the sex charges and failed to pursue *Wade* and *Huntley* hearings, which the court had granted).
- *People v Ellsworth*, 131 AD2d 109, 112-113 (3d Dept 1987) (finding ineffectiveness where counsel failed to pursue *Mapp* hearing, despite client's right to flee from police stop, absent probable cause).

Fourth Department

- *People v Rumble*, 184 AD2d 1040, 1040-1041 (4th Dept 1992) (finding ineffective assistance in a DUI case where pre-*Mirandized* statement was only evidence client had been driving, because counsel failed to seek *Huntley* and *Sandoval* hearings, in addition to other errors).
- *People v Peterson*, 97 AD2d 967, 967-968 (4th Dept 1987) (determining that, where the defense depended on the client's credibility, counsel was ineffective for failing to request a *Sandoval* ruling, in addition to other errors).
- *People v Sanin*, 84 AD2d 681, 682 (4th Dept 1981) (reversing the judgment and granting a new trial where defense counsel never sought to suppress statements made or contraband seized, even though "the critical nature of that seizure and the evidence which flowed therefrom clearly required that it be challenged").

- *People v Roff*, 67 AD2d 805, 806 (4th Dept 1979) (finding ineffective assistance where counsel failed to move to suppress identification testimony, investigate the search warrant, or move to suppress physical evidence).

IV. Failure to Request Jury Instructions Supporting Defense Theory

Court of Appeals

- *People v Debellis*, 40 NY3d 431, 433 (2023) (reversing and remitting for a new trial where counsel failed to request a jury charge on voluntary surrender of a weapon, the only defense supported by the evidence).
- *People v Nesbitt*, 20 NY3d 1080, 1081-1082 (2013) (ordering a new trial where counsel failed to request the lesser included offense of second-degree assault or make any serious effort to persuade the jury not to convict on first-degree assault based on counsel's mistaken belief that his client was without a colorable defense to first-degree assault).
- ***People v Watkins*, 2024 WL 2331854, *1, *5 (2024) (concluding that in a case that was tried prior to the 2017 *Boone* decision requiring trial courts to give a cross-racial jury instruction upon request where identity is at issue and the identifying witness and the defendant appear to be of different races, defense counsel's failure to request the cross-racial instruction does not constitute an egregious single error rising to the level of ineffective assistance, but leaving open the question of whether, after the *Boone* decision, a similar ineffective assistance of counsel claim premised on this same singular failure would be viable).

First Department

- *People v Camacho*, 178 AD3d 515, 516 (1st Dept 2019) (finding counsel ineffective on direct appeal for failing to timely request the lesser included offense of petit larceny, where counsel conceded the mistake on the record, and that charge clearly supported the defense theory).
- *People v Jones*, 167 AD3d 443, 444 (1st Dept 2018) (finding ineffective assistance where defense counsel requested submission of a misdemeanor charge that was not a lesser included offense of the felony count, a choice that was prejudicial and "not strategic").
- *People v Douglas*, 160 AD3d 436, 436 (1st Dept 2018) (holding that "counsel's admittedly nonstrategic failure to request the [accomplice corroboration] instruction constituted ineffective assistance").

Second Department

- *People v Davydov*, 144 AD3d 1170, 1170, 1172-1173 (2d Dept 2016) (remitting for a new trial where counsel failed to seek severance from a codefendant where they were pursuing antagonistic and irreconcilable defenses and did not request a missing witness charge).
- *People v Collins*, 119 AD3d 956, 957 (2d Dept 2014) (reducing first-degree robbery to second-degree robbery, on consent of the prosecution, in lieu of remanding for a new trial, where counsel failed to request an affirmative defense charge that the object that appeared to be a gun was not, in fact, an operable weapon).
- *People v Fredericks*, 48 AD3d 827, 828-829 (2d Dept 2008) (finding ineffective assistance for failing to request or join in the prosecutor's request for submission of an affirmative defense).
- *People v Donovan*, 184 AD2d 654, 655-656 (2d Dept 1992) (reversing the judgment where counsel failed to, among other errors, request a missing witness charge where only one of three arresting officers testified, and the officer's testimony was inconsistent with that of defense witnesses).

Third Department

- *People v Taylor*, 156 AD3d 86, 96 (3d Dept 2017) (reversing summary denial of a CPL 440 motion, granting the motion, and remitting for a new trial, where counsel failed to request the specific justification charge supported by the evidence, among other errors).
- *People v Forbes*, 203 AD2d 609, 610-611 (3d Dept 1994) (finding that counsel's failure to request limiting instructions related to evidence of uncharged crimes was reversible error).

Fourth Department

- *People v McClendon*, 2024 WL 2986559, *1 (4th Dept 2024) (reversing and granting a new trial on burglary charge where defense counsel failed to object to the general burglary charge and to request a charge tailored to the theory alleged by the prosecution in the indictment).

Federal—Persuasive

- *Henry v Scully*, 78 F3d 51, 53 (2d Cir 1996) (finding counsel's failure to request a missing witness charge regarding a confidential informant, along with counsel's other

errors, including failing to object to the codefendant's confession as evidence against his client and to hearsay testimony, constituted ineffective assistance of counsel).

V. Failure to Make Proper Objections to Prosecutorial Misconduct on Summation and Otherwise

Court of Appeals

- *People v Wright*, 25 NY3d 769, 771, 782 (2015) (Defense counsel was ineffective for “fail[ing] to object, time and again, when the prosecutor repeatedly misrepresented to the jury critical DNA evidence as proof of defendant’s guilt, in contradiction of the People’s expert testimony” and “contrary to the evidence and the science”).
- *People v Fisher*, 18 NY3d 964, 967 (2012) (ordering a new trial where defense counsel failed to object to “highly prejudicial instances of prosecutorial abuse” during summation that deprived the client of a fair trial).

Second Department

- *People v Powell*, 165 AD3d 842, 843 (2d Dept 2018) (holding that defense counsel was ineffective for failing to object to the prosecutor’s “improper comments” that his client’s DNA was on the weapon and that the “science finds him guilty,” which misrepresented the analyst’s testimony).
- *People v McCray*, 140 AD3d 794, 797-798 (2d Dept 2016) (holding that counsel was ineffective for several prejudicial errors, including failing to object to multiple improper summation statements by the prosecutor that denigrated the client and impugned the reasonable doubt standard).
- *People v Mehmood*, 112 AD3d 850, 855 (2d Dept 2013) (reversing the judgment where the cumulative effect of defense counsel’s errors, including his failure to object to the prosecutor’s numerous improper remarks during summation, deprived his client of effective assistance).
- *People v Dean*, 50 AD3d 1052, 1053-1054 (2d Dept 2008) (finding ineffectiveness where counsel failed to object to the prosecutor’s improper references to findings in a separate Family Court proceeding in opening statement and to unduly prejudicial testimony, among other errors).
- *People v Lindo*, 167 AD2d 558, 559 (2d Dept 1990) (finding that counsel’s performance was deficient on several fronts, including failing to object to an erroneous jury charge and inflammatory comments made by the prosecutor).

Third Department

- *People v Newman*, 169 AD3d 1157, 1163-1164 (3d Dept 2019) (finding ineffectiveness where counsel failed to object to the prosecutor's pleas to the jury to rely on hearsay information as evidence of guilt, among other errors).

Fourth Department

- *People v Case*, 150 AD3d 1634, 1637-1638 (4th Dept 2017) (reversing where defense counsel failed to object to prosecutor's misconduct during summation, in addition to other errors).
- *People v Rozier*, 143 AD3d 1258, 1260 (4th Dept 2016) (reversing and remanding for a new trial where defense counsel failed to object to the prosecutor's "gross[] exaggerat[ions]" and "flagrant distortion" of the DNA evidence during summation).

VI. General Poor Performance

First Department

- *People v Ugweches*, 116 AD3d 440, 440-442 (1st Dept 2014) (Defense counsel was ineffective for cumulative errors, including failing to object to highly prejudicial hearsay testimony, subpoena police medical records, or call a medical expert, and failing to impeach the complainant's testimony with prior inconsistent statement).
- *People v Raosto*, 50 AD3d 508, 509 (1st Dept 2008) (Defense counsel "displayed general carelessness and inattention throughout the trial").

Second Department

- *People v Ramos*, 194 AD3d 964, 965-66 (2d Dept 2021) (holding that defense counsel's cumulative errors of failing to investigate an alibi defense, impeach the complainant, and object to precluded testimony constituted ineffective assistance).
- *People v McArthur*, 101 AD3d 752, 754 (2d Dept 2012) (Defense counsel was ineffective for purposefully eliciting damaging testimony about a prior incident suggesting a propensity for gun violence, failing to request a limiting instruction, and failing to raise proper objections, including during the prosecutor's summation).
- *People v Bodden*, 82 AD3d 781, 783-784 (2d Dept 2011) (finding that the cumulative effect of defense counsel's conduct violated his client's constitutional right to meaningful representation where counsel failed to adequately cross-examine witnesses and examine defense witnesses; allowed the prosecution to introduce evidence he had not reviewed; interrupted the court numerous times, for which he

was admonished; made an untimely request for a missing witness charge; made a poor closing statement; and failed to object to prejudicial comments during the prosecutor's summation).

- *People v Winston*, 134 AD2d 546, 546-547 (2d Dept 1987) (finding defense counsel's performance "woefully inadequate" where counsel failed to impeach the complainant, failed to object to improper testimony, and presented an implausible theory of the case).

Third Department

- *People v Taylor*, 156 AD3d 86, 93-97 (3d Dept 2017) (finding less than meaningful representation where defense counsel failed to impeach the eyewitness who made contradictory prior statements and failed to clearly articulate and support his request for a justification defense charge).

Fourth Department

- *People v Trait*, 139 AD2d 937, 938-939 (4th Dept 1988) (holding that defense counsel failed to provide meaningful representation where he delivered an "ill-conceived" opening statement; elicited 21 sustained objections due to his engagement in argument only appropriate for summation; inadequately prepared for trial; ineffectively rendered direct and cross-examination of witnesses, which was especially evident in his examination of defense psychiatrists, providing minimal support for the insanity defense; and alienated the jurors with his inappropriate behavior).

VII. Eliciting Damaging Testimony

Court of Appeals

- *People v Zaborski*, 59 NY2d 863, 865 (1983) (remitting for a new trial where counsel repeatedly elicited damaging evidence when cross-examining prosecution witnesses, among other errors, including introducing a defense at odds with his client's explanation of the offense).

Second Department

- *People v Stephans*, 168 AD3d 990, 998-999 (2d Dept 2019) (finding counsel ineffective where he stipulated to the admission of the entire police-client interview and did not object to officer's testimony about the interview).

- *People v Mehmood*, 112 AD3d 850, 855 (2d Dept 2013) (“[D]efense counsel intentionally elicited inadmissible and unduly prejudicial testimony during cross-examination” and failed to object to prosecution’s improper summation remarks).
- *People v McArthur*, 101 AD3d 752, 754 (2d Dept 2012) (finding ineffectiveness where counsel purposefully elicited damaging testimony about a prior incident suggesting a propensity for gun violence and compounded the prejudice of the testimony by failing to request a limiting instruction, among other errors).

Third Department

- *People v Schelling*, 92 AD2d 694, 694-695 (3d Dept 1983) (finding counsel ineffective for highlighting damaging information on cross-examination from three witnesses).

Fourth Department

- *People v Felder*, 186 AD2d 1050, 1050 (4th Dept 1992) (finding counsel ineffective for eliciting testimony of uncharged crimes and pending charges where the court gave favorable *Sandoval* and *Ventimiglia* rulings, among other errors).

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