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# Recent Prosecutorial Misconduct in New York State

## 2010 - 2017

### A Case Study

## Prepared by: It Could Happen to You

## May 3, 2017

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## Introduction

It Could Happen To You is a coalition that spreads awareness about the rate of wrongful prosecutions, prosecutorial misconduct and its many impacts to society. The organization recommends and advocates for common sense criminal justice policy reforms to prevent prosecutorial misconduct and promote uniform best practices for prosecutors.

This report summarizes recent cases of prosecutorial misconduct in which New York State Appellate Courts have either ordered new trials as a result of the misconduct of prosecutors and/ or verbally reprimanded the prosecutor for violating the prosecutors own rules of conduct.

The report highlights the various forms of prosecutorial misconduct, illustrates how misconduct has in fact increased in recent years, and how this professional misconduct takes place in every sector of New York State.

While the duty of a prosecutor is to enforce rules of conduct in society and establish just consequences for individuals who break those rules, when prosecutors break their own rules, there are no consequences.

Indeed, every other profession judges, police, doctors, religious leaders, bankers, insurance agents, teachers, tradesmen, athletes, chefs and even hair dressers have enforceable codes of conduct and systems of improvements or discipline when these codes are violated.

Since 2013 It Could Happen To You has advocated for the establishment of a Statewide Commission on Prosecutorial Misconduct modeled after the longstanding Commission on Judicial Conduct. This investigation lays new evidence to support the growing grassroots demand for the nation's first Commission on Prosecutorial Conduct and a New Era of Accountability for Prosecutors.

A note of appreciation to Albany N.Y. civil rights attorney Kathy Manley and the State University of New York at Albany Students of criminal justice Kara Gibson and Sean Houlihan for their assistance in preparing this report.



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## **Pervasive Misconduct:** **10 Cases in the Past 15 Months**

*People v. Garry*; March 27, 2017  
*People v. James*; February 23, 2017  
*People v. Collins*; December 23, 2016  
*People v. Rozier*; October 7, 2016  
*People v. Holiday*; August 17, 2016  
*People v. Redd*; July 6, 2016  
*People v. Melendez*; June 7, 2016  
*People v. Rupnarine*; June 2, 2016  
*People v. Kocsis*; March 31, 2016  
*People v. Porter*; February 5, 2016

**“...the judgment of conviction must be reversed and a new trial ordered as a result of pervasive prosecutorial misconduct...” - *People v. Redd***



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**People v. Garry, 269 A.D.2d 158, 703 N.Y.S.2d 437**

**County:** Bronx County.

**Date of Ruling:** March 27, 2017.

**Criminal Charge:** Murder in the second degree and two counts of robbery in the first degree.

**Summary of Prosecutorial Misconduct:**

**Outcome:** Reverse; conviction vacated.

**Comments\*:**

“Two eyewitnesses picked Garry out of a photo array. But in 1996, an informant told a detective investigating a different homicide that another man, Steven Martinez, admitted to being the shooter, according to court papers. That information was not disclosed to Garry's attorney.”

“Several years later, Lawrence Broussard, who was facing a federal weapons charge, told investigators that he took part in the bodega robbery and picked Martinez out of a photo array as the shooter.”

“In a decision provided to defense attorneys on Wednesday, Bronx Supreme Court Justice Michael Gross granted Garry's 440 motion to vacate his conviction. The judge said failing to disclose the statements Martinez made to the informant constituted a Brady violation.”

\*Comments taken from a report by *The New York Law Journal* and not the Court of Appeals.



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**People v. James, 147 A.D.3d 1211, 48 N.Y.S.3d 524, 2017**

**County:** Albany County.

**Date of Ruling:** February 23, 2017.

**Criminal Charge:** Robbery in the first degree and criminal possession of a weapon in the second degree.

**Summary of Prosecutorial Misconduct:** Supreme Court was required to grant defendant's request for circumstantial evidence charge; Supreme Court's failure to grant defendant's request for circumstantial evidence charge was not harmless error; Supreme Court's hybrid or modified circumstantial evidence charge was insufficient; and prosecutor's statement to jury in summation exceeded bounds of permissible commentary.

**Outcome:** Reversed; remitted for new trial.

**Comments from the Court of Appeals:**

“While there indeed is no question—based upon the victim's testimony and the photographic evidence contained in the record—that the charged crimes did in fact occur, the record makes clear—and the People readily concede—that there was no direct evidence identifying defendant as the perpetrator.”

“As the People's proof relative to the identity of the perpetrator here was entirely circumstantial, Supreme Court should have granted defendant's request to charge the jury accordingly; moreover, as the proof against defendant was less than overwhelming, we cannot deem the court's failure to grant the requested charge to be harmless error.”

“we note in passing that while the bulk of the prosecutor's comments relative to the blood found on the victim's vehicle and the import of the resulting DNA match to defendant constituted fair comment upon the evidence, the prosecutor exceeded the bounds of permissible commentary when, during the course of his summation, he told the jury, “[Y]ou know that the blood [on the victim's car] belongs to the robber.”



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**People v. Collins, 145 A.D.3d 1479**

**County:** Ontario County.

**Date of Ruling:** December 23, 2016.

**Criminal Charge:** Sexual abuse in the first degree.

**Summary of Prosecutorial Misconduct:** Prospective juror should have been excused for cause based on his relationship to county's district attorney; testimony, which had been excluded, from defense witness that victim had said that she did not “think [defendant] did this” was admissible.

**Outcome:** Reversed and new trial granted.

**Comments from the Court of Appeals:**

“We agree with defendant that the conviction must be reversed because County Court erroneously denied his challenge for cause to a prospective juror whose son is married to the daughter of the District Attorney of Ontario County, R. Michael Tantillo, and who has a grandchild in common with the District Attorney.”

“We also agree with defendant that reversal is required because the court erred in excluding testimony from a defense witness that the victim had said that she did not “think [defendant] did this,” meaning that defendant did not commit the alleged crime. We conclude that, on cross-examination of the victim, defense counsel had laid an adequate foundation for the admission of that prior inconsistent statement by eliciting testimony that the victim had never discussed the matter with the defense witness and had never told the defense witness that the alleged occurrence “between [her] and [defendant] might not have happened”





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**People v. Rozier, 143 A.D.3d 1258, 39 N.Y.S.3d 340, 2016**

**County:** Erie County.

**Date of Ruling:** October 7, 2016.

**Criminal Charge:** Criminal possession of a weapon in the second degree.

**Summary of Prosecutorial Misconduct:** Prosecutor's flagrant distortion of DNA evidence on summation violated defendant's due process rights.

**Outcome:** Reversed, new trial granted.

**Comments from the Court of Appeals:**

“At trial, the People presented testimony of a forensic expert to discuss DNA evidence collected from the gun, but the testimony was not conclusive. The expert testified that she analyzed the DNA mixture and determined that defendant was among 1 in 15 Americans who could not be excluded as a contributor. Nevertheless, on summation, the prosecutor grossly exaggerated the DNA evidence as “overwhelming” proof establishing defendant's “guilt beyond all doubt” and posited: “If the defendant had not possessed the gun, wouldn't science have excluded him?” In our view, the prosecutor's flagrant distortion of the DNA evidence caused defendant such substantial prejudice that he was denied due process of law, particularly in light of the circumstantial nature of the People's case.”



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**People v. Holiday, 142 A.D.3d 625, 36 N.Y.S.3d 520, 2016**

**County:** Kings County

**Date of Ruling:** August 17, 2016

**Criminal Charge:** Murder in the second degree and criminal possession of a weapon in the second degree.

**Summary of Prosecutorial Misconduct:** Prosecutor improperly appealed to jury's sympathy; and prosecutor committed misconduct when she identified certain barely visible figures in surveillance video as the victim and the defendant.

**Outcome:** Reversed.

**Comments from the Court of Appeals:**

“The prosecutor improperly appealed to the jury's sympathy by eliciting testimony from the victim's mother that the victim's wife was expecting a child and expressing sympathy for her loss by stating on the record, “Thank you, ma-am. I'm sorry for your loss”...Here, the testimony in question was calculated to appeal to the passion and sympathy of the jury and unduly prejudiced the defendant.”

“The prosecutor committed misconduct of a different sort during summation when, while playing a surveillance video introduced into evidence at trial, she identified certain barely visible figures on the screen as the victim and the defendant. Throughout the course of these comments, the Supreme Court repeatedly instructed the jury that it alone should assess the video and not rely on the prosecutor's comments, but the prosecutor persisted in her characterization of the figures on the screen.”



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**People v. Redd, 141 A.D. 3d 546, 35 N.Y.S. 3d 402, 2016**

**County:** Queens County

**Date of Ruling:** July 6<sup>th</sup>, 2016

**Criminal Charge:** Murder in the second degree, abortion in the second degree, and criminal possession of a weapon in the fourth degree.

**Summary of Prosecutorial Misconduct:** Pervasive prosecutorial misconduct required reversal of defendant's convictions for second degree murder, second degree abortion, and fourth degree criminal possession of weapon and retrial, where prosecutor repeatedly engaged in improper conduct during opening statements and on summation, including misstating evidence, vouching for credibility of witnesses with regard to significant aspects of People's case, calling for speculation by jury, seeking to inflame jury and arouse its sympathy, and improperly denigrating defense.

**Outcome:** The Supreme Court, Appellate Division, held that pervasive prosecutorial misconduct required reversal of defendant's convictions and retrial. Reversed.

**Comments from the Court of Appeals:**

“...the judgment of conviction must be reversed and a new trial ordered as a result of pervasive prosecutorial misconduct. During opening statements as well as on summation, the prosecutor repeatedly engaged in improper conduct, including misstating the evidence, vouching for the credibility of witnesses with regard to significant aspects of the People's case, calling for speculation by the jury, seeking to inflame the jury and arouse its sympathy, and improperly denigrating the defense...”

“...over defense counsel's objection, the prosecutor brought up, during opening statement, irrelevant and prejudicial evidence...”

“During summation, the prosecutor flatly misstated the medical examiner's testimony regarding the estimated time of death, quoting her as saying “I found nothing in my autopsy that would be inconsistent with the time of death of six A.M.” and asking, rhetorically, “Can we get more clear than this ladies and gentlemen?” In fact, the medical examiner's testimony was, “I found nothing in my autopsy that would be consistent with the time of death of six a.m. the previous day.” While defense counsel objected to the



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prosecutor's misstatement, the trial court's only response was to say “[t]hat is the jury's determination.”

“As a new trial must be ordered, we further note that the trial court erred in permitting the prosecutor to elicit extensive evidence of the victim's personal and family life...”



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**People v. Melendez, 140 A.D. 2d 421 2d 421**

**County:** New York County

**Date of Ruling:** June 7<sup>th</sup>, 2016

**Criminal Charge:** Two counts of attempted murder in the first degree, two counts of attempted aggravated assault on a police officer or peace officer, and criminal possession of a weapon in the second degree.

**Summary of Prosecutorial Misconduct:** Assistant district attorney's testimony about circumstances under which police officers would be justified in using deadly force was improper; assistant district attorney's testimony about composition and function of a grand jury and how a witness either obtains or waives immunity before that body was improper; and prosecutor's demonstrations and comments in summation were improper.

**Outcome:** Reversed and remanded.

**Comments from the Court of Appeals:**

“...this testimony “was totally irrelevant to any legitimate issue presented at the trial,” and as such was improper.”

“The prosecutor must “stay within the four corners of the evidence,” may not refer to matters not in evidence,” should not “call upon the jury to draw conclusions which are not fairly inferable from the evidence,” or make arguments that “have no bearing on any legitimate issue in the case.”...Here, on two separate occasions during his summation, the prosecutor did exactly that.”

“These comments were based upon facts not in evidence, something defense counsel specifically noted in at least two objections that were overruled. Moreover, they tended to lead the jury away from the issues before them in this case. As a result, they were improper.”

“The cumulative effect of these multiple improprieties during the People's direct case and summation caused defendant substantial prejudice and denied him a fair trial.”



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**People v. Rupnarine, 140 A.D.3d 1204, 33 N.Y.S.3d 494, 2016**

**County:** Schenectady County

**Date of Ruling:** June 2<sup>nd</sup>, 2016

**Criminal Charge:** Robbery in the second degree, unlawful imprisonment in the first degree, menacing in the second degree and criminal mischief in the fourth degree.

**Summary of Prosecutorial Misconduct:** Defendant was prejudiced by prosecutor's comments in summation.

**Outcome:** New trial ordered.

**Comments from the Court of Appeals:**

“During his summation, the prosecutor remarked that defendant failed to provide an “innocent explanation” for his actions or that it was necessary for him to do so. Indeed, a recurring and substantial theme in the prosecutor's summation was defendant's inability to provide an innocent explanation for his conduct following the incident giving rise to the charges against him or for the presence of incriminating evidence at the crime scene. We agree with defendant that these comments improperly shifted the burden of proof from the People to defendant.”

“We also cannot say that any error as a result of these statements was harmless. The prosecutor's “innocent explanation” comments were neither isolated nor fleeting but were repeated pervasively throughout the summation.”

“...during the jury's deliberation, the jury sent a note requesting that Supreme Court read back the prosecutor's summation, but only that portion of the summation “that refer[red] to innocent explanations and lack of innocent explanations.” Even though Supreme Court declined to reread the summation and reminded the jury that summations did not constitute evidence, given the jury's focus on the “innocent explanation” remarks, under the circumstances of this case, the lack of a further instruction reminding the jury of the People's burden of proof in response to the jury's request only compounded the error of the prosecutor's comments.”



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**People v. Kocsis, 137 A.D.3d 1476, 28 N.Y.S.3d 466, 2016**

**County:** St. Lawrence County.

**Date of Ruling:** March 31, 2016.

**Criminal Charge:** Criminal possession of a forged instrument in the second degree.

**Summary of Prosecutorial Misconduct:** Accomplice jury instruction was not warranted;  
defendant was deprived of a fair trial by guidance and instructions provided by trial court to prosecutor regarding rules of evidence.

**Outcome:** Judgement reversed and matter remitted for a new trial; order affirmed.

**Comments from the Court of Appeals:**

“We do...find merit to defendant's argument that he was deprived of a fair trial based upon the guidance and instructions provided by County Court to the ADA presenting the case relative to the rules of evidence. To be sure, a trial judge plays a “vital role in clarifying confusing testimony and facilitating the orderly and expeditious progress of the trial.”

“...in attempting to “explain some of the law” and in an effort to avoid portraying defense counsel as “obstructionist,” it “explained one thing too many, in all fairness.” As County Court's assistance in this regard—although well-intentioned—arguably created the perception that the People were receiving an unfair tactical advantage, we are persuaded that this matter should be remitted for a new trial.”



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*People v. Porter*, 136 A.D.3d 1344, 1346 (N.Y. App. Div. 4th Dep't 2016).

**County:** Monroe County.

**Date of Ruling:** February 5, 2016.

**Type of Criminal Charge:** Criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree.

**Summary of Prosecutorial Misconduct:** Various instances of prosecutorial misconduct deprived defendant of his right to a fair trial.

**Outcome:** Reversal and new trial ordered

**Comments of Appellate Court:**

"The prosecutor improperly denigrated defendant's case by referring to certain contentions as "[a]ll this nonsense," made repeated non sequiturs distinguishing the case from the John F. Kennedy assassination, and asserted that the defense was "twisting things" and employing "tricks" (see *People v Morgan*, 111 AD3d 1254, 1255, 974 N.Y.S.2d 687). The prosecutor compounded those statements by consistently commenting on witness credibility, calling the defense witnesses "a cast of characters," "people com[ing] out of the woodwork," and specifically referring to one witness as "a piece of work." The prosecutor accused the defense witnesses of lying, and also argued that one could not believe a certain witness who had a lawyer advising her while testifying, stating that he "couldn't tell if those were her words or her lawyer's words when she was talking." Not only did the prosecutor state his belief that witnesses had lied, he also alleged that the witnesses must have met secretly in order to plan and collude regarding their testimony. That was patently improper (see *Bailey*, 58 NY2d at 277).

"In addition to criticizing defendant's case and witnesses, the prosecutor also engaged in misconduct on summation by suggesting that an acquittal would require the jury to find a conspiracy by law enforcement (see *People v Morgan*, 75 AD3d 1050, 1053-1054, 903 N.Y.S.2d 851, lv denied 15 NY3d 894, 938 N.E.2d 1017, 912 N.Y.S.2d 582), by improperly suggesting that defendant bore a burden of proof (see *People v Griffin*, 125 AD3d 1509, 1510, 4 N.Y.S.3d 434), and by misstating a key point of law regarding detention incident to a traffic stop (see generally *People v Riback*, 13 NY3d 416, 423, 920 N.E.2d 939, 892 N.Y.S.2d 832). In light of the nature and number of instances of prosecutorial misconduct, we conclude that defendant was deprived of his right to a fair trial."





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**People v. Jones, 134 A.D.3d 1588, 1589 (N.Y. App. Div. 4th Dep't 2015)**

**County:** Monroe County.

**Date of Ruling:** December 31, 2015.

**Summary of Case:** Various instances of prosecutorial misconduct deprived defendant of his right to a fair trial.

**Outcome:** Reversal and new trial ordered

**Comments from the Appellate Court:**

"On summation, the prosecutor repeatedly invoked a 'safe streets' argument, even after Supreme Court sustained defense counsel's objection to the prosecutor's use of that argument; denigrated the defense by calling defense counsel's arguments "garbage," "smoke and mirrors," and "nonsense" intended to distract the juror's focus from the "atrocious acts" that defendant committed against the victim; improperly characterized the defense as being based on a "big conspiracy" against defendant by the prosecutor and the People's witnesses; and denigrated the fact that defendant had elected to invoke his constitutional right to a trial. Perhaps most egregiously, given that "the potential danger posed to defendant when DNA evidence is presented as dispositive of guilt is by now obvious," the prosecutor engaged in misconduct when she mischaracterized and overstated the probative value of the DNA evidence in this case."

We recognize, of course, that "[r]eversal is an ill-suited remedy for prosecutorial misconduct." It is nevertheless mandated when the conduct of the prosecutor "has caused such substantial prejudice to the defendant that he [or she] has been denied due process of law. In measuring whether substantial prejudice has occurred, one must look at the severity and frequency of the conduct, whether the court took appropriate action to dilute the effect of that conduct, and whether review of the evidence indicates that without the conduct the same result would undoubtedly have been reached." In view of the substantial prejudice caused by the prosecutor's misconduct in this case, including the fact that the evidence of guilt is less than overwhelming, we agree with defendant that reversal is required.



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**People v. DeJesus, 2015 App. Div. LEXIS 9049 (1<sup>st</sup> Dep't 2015)**

**County:** Bronx County.

**Date of Ruling:** December 8, 2015.

**Type of Criminal Charge:** Assault in the first degree.

**Summary of Prosecutorial Misconduct:** Improper comments regarding evidence and during summation.

**Outcome:** Reversed and Remanded.

**Comments from the Court of Appeals:**

“The only purpose of the prosecutor’s improper comments was to suggest to the jury, in this one-witness identification case, that the complainant was not the only person who had implicated the defendant”

“These cumulative errors were not harmless, since the evidence of the defendant’s guilt was not overwhelming, and there is a significant probability that defendant would have been acquitted if not for the violation of his right of confrontation, the prosecutor’s improper statements in summation, and the courts improper statements during deliberation.”



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**People v. Ramsey, 2015 NY App. Div LEXIS 8966 (3<sup>rd</sup> Dep't 2015)**

**County:** Chemung County.

**Date of Ruling:** December 3, 2015.

**Type of Criminal Charge:** Assault in the second degree.

**Summary of Prosecutorial Misconduct:** The prosecutor's comments during the trial deprived the defendant of a fair trial.

**Outcome:** Reversed and Remitted. New Trial ordered.

**Comments from the Court of Appeals:**

"The evidence of defendant's guilt was not overwhelming, especially with respect to the element of intent, which 'may be inferred from the surrounding circumstances, including the defendant's conduct and remarks'"

"Given the detrimental effect that discussion of the stricken evidence had on defendant, we determine that the prosecutor's comments were so substantially prejudicial that they deprived the defendant of a fair trial"



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**People v. Jurs, 51 Misc.3d 653, 29 N.Y.S.3d 88, 2015**

**County:** Monroe County.

**Date of Ruling:** September 8, 2015.

**Criminal Charge:** Reckless endangerment in the second degree and endangering the welfare of a child.

**Summary of Prosecutorial Misconduct:** Prosecutor's misconduct during summation substantially prejudiced defendant's fundamental right to a fair trial, and County Court could not say that without prosecutor's misconduct jury would undoubtedly have rendered same verdict.

**Outcome:** Reversed; remitted for a new trial.

**Comments from the Court of Appeals:**

“The record reveals that the prosecutor's misconduct during summation, the various instances of which are exhaustively detailed in defendant's brief, was pervasive and severe. Nor was the misconduct ever diluted by the trial judge.”

“...the prosecutor's summation included various other improper comments and mischaracterizations of critical evidence which, when taken together, “substantially prejudiced defendant's rights”...”

“Inasmuch as the record reveals that the evidence in this case was not overwhelming, the Court cannot say that without the prosecutor's misconduct the jury would have undoubtedly rendered the same verdict, especially given the inflammatory nature of the charges, and thus, a new trial is required.”



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**People v. Nicholas, 2015 NY App. Div. LEXIS 6134 (3<sup>rd</sup> Dep't 2015)**

**County:** Washington County.

**Date of Ruling:** July 23, 2015.

**Type of Criminal Charge:** Criminal sale of a controlled substance in the 3<sup>rd</sup> degree and criminal possession of a controlled substance in the 3<sup>rd</sup> degree

**Summary of Prosecutorial Misconduct:** Improper vouching of a witness.

**Outcome:** HOLDINGS: [1]-The evidence was sufficient to convict defendant of sale and possession of crack cocaine; although the only direct evidence of his presence at a drug sale was the testimony of a confidential informant (CI) with an extensive criminal record, who was paid for conducting the controlled buy and whose trial testimony was inconsistent with his grand jury testimony, such information was presented to the jury, which clearly credited his testimony; [2]-Defendant was prejudiced by the CI's improper other acts testimony regarding defendant's participation in an uncharged drug transaction and his possession of heroin; [3]-The trial court also erred in allowing a detective to vouch for the CI's credibility; [4]-Defendant was deprived of a fair trial due to the cumulative effect of the erroneous admission of evidence of prior uncharged crimes and the detective's improper vouching.

**Comments from the Court of Appeals:**

“This uncharged criminal activity falls squarely within one or more of the recognized *Molineux* exceptions... Although I agree that, under the particular facts of this case, the probative value of such evidence was outweighed by its prejudicial effect, thereby warranting the exclusion thereof, I write separately to make clear that not every casual, off-the-cuff reference to an uncharged crime constitutes reversible error”



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**People v. Cassala, 2015 NY App. Div. (3<sup>rd</sup> Dep't 2015)**

**County:** Albany County.

**Date of Ruling:** July 16, 2015.

**Criminal Charge:** Attempted rape in the first degree, attempted rape in the third degree, criminal sexual act in the first degree (two counts), criminal sexual act in the third degree (two counts) and endangering the welfare of a child (two counts).

**Summary of Prosecutorial Misconduct:**

Overview: Defendant was entitled to vacate the judgment convicting him of sexual offenses involving a fifteen-year-old victim on grounds of ineffective assistance of counsel, CPL 440.10(1)(h), because at crucial stages of the representation, counsel inexplicably failed to investigate the victim's bleeding disorder, consult with and be prepared to call a medical expert on the subject, raise the issue during cross-examination of the People's medical expert, and object to the testimony of defendant's former spouse regarding defendant's sexual preferences during their marriage.

**Outcome:** Judgment and order reversed and matter remitted for new trial.

**Comments from the Court of Appeals**

“...at crucial stages of the representation, counsel inexplicably failed to investigate...”

“...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...”

“Had counsel sought to inform himself about the victim's VWD diagnosis, he likely would have become aware of medical experts...”

“People's only direct evidence of defendant's guilt was the victim's testimony...”

“Finally, we note with disapproval certain remarks made by the prosecutor during summation, to which counsel did not object. The prosecutor improperly attempted to appeal to the jury's sympathy by asking the jurors to consider how they would have felt if they "were in [the victim's] shoes"”



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“The prosecutor also exhorted the jurors to advocate for the victim during deliberations by using the phrase "you fight for her" While counsel's failure to object to these remarks does not, in and of itself, amount to ineffective assistance of counsel, it further illustrates counsel's representation, the cumulative effect of which deprived defendant of meaningful representation, especially "where, as here, the determination of guilt . . . hinged on sharp issues of credibility"”



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**People v. Wright, 2015 NY LEXIS 1528 (2015)**

**County:** Monroe County.

**Date of Ruling:** July 1, 2015.

**Type of Criminal Charge:** Murder in the 2<sup>nd</sup> degree.

**Summary of Prosecutorial Misconduct:** Misrepresentation of critical DNA evidence to the jury and misconduct committed during closing argument.

**Outcome:** Order reversed and a new trial ordered.

**Comments from the Court of Appeals:**

“The prosecutor ‘aggressively argued’ that the defendant’s DNA matched that found at the crime scene and on the victim, when in reality, the DNA was a mixture and based on ‘partial profile matches’”

“Defense counsel’s failure to object to the prosecutorial misconduct made during closing argument is the same as other trial errors. Where the defense fails to object for no apparent reason, the defendant has been deprived of meaningful representation and the right to a fair trial”

“The critical error that defense made, according to the majority and the defendant, is that he did not object to certain statements that the prosecutor made during summation”





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**People v. Martinez, 2015 NY App. Div. LEXIS 3530 (2<sup>nd</sup> Dep’t 2015)**

**County:** Richmond County.

**Date of Ruling:** April 29<sup>th</sup>, 2015.

**Criminal Charge:** Murder in the second degree and criminal possession of a weapon in the second degree.

**Summary of Prosecutorial Misconduct:** Various instances of prosecutorial misconduct deprived defendant of his right to a fair trial.

**Outcome:** Reversed and a new trial granted.

**Comments from the Court of Appeals:**

“...the prosecutor made numerous improper comments on the voir dire questioning of the defendant's expert, on cross-examination of that expert, on cross-examination of another of the defendant's witnesses, and on summation.”

“...statements that the expert had repeatedly lied to judges...”

“In addition, the prosecutor presented himself as an unsworn witness at the trial...”

“The prosecutor furthermore repeatedly questioned another defense witness about lying.”



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**People v. Rowley; 2011-02878**

**County:** Kings County.

**Date of Ruling:** April 8, 2015.

**Criminal Charge:** Criminal Possession of a Weapon in the Second Degree.

**Summary of Prosecutorial Misconduct:** The cumulative effect of the prosecutor's misconduct during cross-examination of the defendant and on summation deprived the defendant of a fair trial.

**Outcome:** Judgement reversed and a new trial ordered.

**Comments from the Court of Appeals:**

“The prosecutor improperly functioned as an unsworn witness when she cross-examined the defendant regarding the closing time of a restaurant...”

“Further, the prosecutor made improper remarks during summation which suggested that the defendant possessed the weapon with an intent to use it to harm someone, even though this was not an element of the crime...”

“Similarly, the prosecutor's questioning of the defendant about one of his tattoos was improper and led to the inflammatory and unsupported inference that the defendant had previously used the weapon to harm someone. It was also improper for the prosecutor to argue during summation that the defendant had learned certain information during the pretrial hearing even though there was no evidence to support this assertion.”

“...was improper speculation, without any basis in the record...”



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**People v. Shaulov, 25 NY3d 30 (2015)**

**County:** Kings County.

**Date of Ruling:** March 31, 2015.

**Type of Criminal Charge:** Multiple counts of statutory and non-consensual rape and other sex crimes.

**Summary of Prosecutorial Misconduct:** The trial court abused its discretion by refusing to declare a mistrial or strike the surprise prompt outcry testimony of the complainant elicited by the People because the prosecutor made a pre-trial representation to the court and defense counsel that no such testimony would be offered, and defense counsel, who emphasized the absence of any prompt outcry evidence during his opening statement, was deprived of the opportunity to timely and meaningfully revise his trial strategy, and the error occurred early in the proceedings; the complainant's testimony that she told her friend "what happened" conveyed to the jury that she had engaged in sexual intercourse with defendant that evening.

**Outcome:** Appellate Division order reversed and a new trial ordered.

**Comments from the Court of Appeals:**

“At a pre-trial hearing, the People explicitly represented to the court and defense counsel that there would be no prompt outcry testimony, as complainant had not disclosed the sexual assault to anyone until at least six months after it allegedly happened... However, shortly thereafter, complainant testified on direct examination that she called a friend on her way home from the apartment that night, and "told [her friend] what happened . . . [but] didn't tell her the whole story" and "didn't tell her [friend] that [she] didn't want [it] to happen.”

“The People purposefully elicited this testimony and "expected" the complainant to testify that she told her friend she had "engaged in sexual intercourse" with defendant.”

“Based on this record, the trial court abused its discretion when it denied defense counsel's motion for a mistrial or to strike a portion of complainant's testimony.”



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“...the People failed to correct a prior representation to the court and defense counsel, where counsel was deprived of the opportunity to timely and meaningfully revise his trial strategy and emphasized the absence of any prompt outcry evidence during his opening statement, and where the error occurred early in the proceedings — the trial court abused its discretion by denying defendant a remedy for the unfair and prejudicial surprise.”



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**People v. Minus; 14466, 4090/11**

**County:** New York County.

**Date of Ruling:** March 10<sup>th</sup>, 2015.

**Criminal Charge:** Criminal Possession of a Controlled Substance in the Third Degree.

**Summary of Prosecutorial Misconduct:** Various instances of prosecutorial misconduct deprived defendant of his right to a fair trial.

**Outcome:** Reversed and remanded for a new trial.

**Comments from the Court of Appeals:**

“The trial court issued a pretrial Molineux ruling precluding the People from using the testimony about the hand-to-hand exchange for any purpose other than to explain the subsequent actions of the police...”

“The prosecutor "disregard[ed] the court's rulings" by arguing that the jury could consider the exchange and the detective's view that it was a drug transaction as factors relevant to defendant's intent to sell.”

“...we review the issue in the interest of justice and find that the prosecutor's arguments "prejudic[ed] defendant's right to a fair trial.””

“...the prosecutor's arguments rendered the trial as a whole unfair.”

“...regardless of the soundness of the ruling, the prejudice here stems from defendant's detrimental reliance upon it.”

“The unfairness was not mitigated by the fact that the prosecutor obtained the court's permission to contravene the Molineux ruling in summation, again after the close of all evidence. Because of its timing, the court's modification of its prior ruling was itself prejudicial error.”



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**People v. Griffin; 188 KA 10-02154**

**County:** Monroe County.

**Date of Ruling:** February 13, 2015.

**Criminal Charge:** Robbery in the First Degree.

**Summary of Prosecutorial Misconduct:** prosecutorial misconduct that included an impermissible shifting of the burden, improper vouching for the complainant's veracity, and improper appeal to the jury's sympathies resulted in defendant being deprived of a fair trial.

**Outcome:** Judgment reversed; new trial granted.

**Comments from the Court of Appeals:**

“The prosecutor began her summation by improperly characterizing the People's case as “the truth” and denigrating the defense as a diversion...”

“...the prosecutor implied that defendant bore the burden of proving that the complainant had a motive to lie...”

“Perhaps most egregiously in this one-witness case where credibility was paramount, the prosecutor repeatedly and improperly vouched for the veracity of the complainant...”

“The prosecutor also improperly appealed to the sympathies of the jury by extolling the complainant's “bravery”...”

“...prosecutor argued that the neighborhood where the crime occurred and where the complainant's family worked “is an anti-police atmosphere.””

“...the prosecutor protested that “it was a statement in evidence” when, in fact, that testimony had been stricken from the record, and County Court had specifically warned the prosecutor not “to go into what this area is like.””

“...one must look at the severity and frequency of the conduct, whether the court took appropriate action...”



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“Here, misconduct permeated the trial and was at times severe. In addition to the misconduct on summation, the prosecutor asked improper questions and attempted to elicit irrelevant and inflammatory statements during her direct examination of the People's witnesses.”

“Although the court sustained many of defense counsel's objections, "other improper remarks passed without objection or admonishment, and few curative instructions were given" (Casanova, 119 AD3d at 979). We therefore "cannot say that any resulting prejudice was alleviated" (id.; see *People v Clark*, 195 AD2d 988, 991, 600 N.Y.S.2d 553). In any event, even where the trial court repeatedly sustains a defendant's objections and instructs the jury to disregard certain remarks by the prosecutor, "[a]fter a certain point, . . . the cumulative effect of a prosecutor's improper comments . . . may overwhelm a defendant's right to a fair trial" . . .”

**Direct Quotes of Prosecutor:**

“I submit to you the (complainant's statements) are truthful.”

"So please tell [the complainant] he did the right thing by calling 911 and telling them one man's word is enough. Tell them that he is brave to report this."



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**People v. Scheidelman; 1405 KA 14-00815**

**County:** Oneida County.

**Date of Ruling:** February 6<sup>th</sup>, 2015.

**Criminal Charge:** Sexual Abuse in the First Degree.

**Summary of Prosecutorial Misconduct:** Defendant was deprived of a fair trial, such that a new trial was warranted, based on the cumulative effect of multiple instances of prosecutorial misconduct that included eliciting inadmissible evidence, conducting an improper cross-examination of defendant, and making improper comments during summation.

**Outcome:** Judgment reversed; new trial granted.

**Comments from the Court of Appeals:**

“...prosecutorial misconduct, including eliciting inadmissible evidence, conducting an improper cross-examination of defendant, and making improper comments during summation.”

“...we exercise our power to review them as a matter of discretion in the interest of justice...”

“...the prosecutor's comment that there was "a very sexually charged atmosphere there on the second floor of [defendant's] house”

“She also commented that wrestling with the victim "[c]ould be a form of foreplay," without any evidence supporting that suggestive and emotionally charged statement.”

“[w]e conclude that the cumulative effect of the prosecutor's cross-examination and summation errors deprived defendant of a fair trial”





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**People v. Benitez, 2014 WL 4085919 (2<sup>nd</sup> Dep’t 2014)**

**County:** Queens County.

**Date of Ruling:** August 20, 2014.

**Type of Criminal Charge:** Robbery in the first degree and robbery in the second degree.

**Summary of Prosecutorial Misconduct:** Prosecutor engaged in misconduct by making comments during summation that insinuated that more than one witness had identified the defendant, and defendant was deprived of fair trial as result of prosecutor's improper statements during summation.

**Outcome:** Reversed.

**Comments from the Court of Appeals:**

“The only purpose of the prosecutor's improper comments was to suggest to the jury, in this one-witness identification case, that the complainant was not the only person who had implicated the defendant in the commission of the robbery.”

“Moreover, in overruling defense counsel's objections, the Supreme Court “legitimized” the prosecutor's improper remarks.”

“The defendant, of course, was given no opportunity to cross-examine the unnamed witness who had allegedly provided the tip.”

“The evidence against the defendant was not overwhelming, so there is no basis for the application of harmless error analysis.”



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**People v. Walker, 119 AD3d 1402 (4<sup>th</sup> Dep’t 2014)**

**County:** Onondaga County.

**Date of Ruling:** July 11, 2014.

**Type of Criminal Charge:** Burglary in the second degree, grand larceny in the fourth degree, petit larceny, and criminal possession of stolen property in the fifth degree.

**Summary of Prosecutorial Misconduct:** Trial court improperly allowed the People to introduce evidence concerning an uncharged burglary to prove defendant's identity; trial court should not have admitted testimony of witness who identified defendant in an out-of-court photo array; and trial court's evidentiary errors were not harmless.

**Outcome:** Reversed.

**Comments from the Court of Appeals:**

“...County Court erred in allowing the **People** to introduce evidence concerning an uncharged burglary to prove his identity as the perpetrator of the burglary and petit larceny charged in the indictment.”

“The instant crime is “not so unique as to allow admission of evidence of the [uncharged burglary] on the theory of the similarity of the *modus operandi*.”

“The People failed to satisfy their obligation pursuant to CPL 710.30 inasmuch as no statutory notice was given by the People with respect to their intent to offer “testimony regarding an observation of the defendant at the time or place of the commission of the offense or upon some other occasion relevant to the case, to be given by a witness who has previously identified him as such...”

“The errors in admitting evidence of the uncharged burglary and the identification of defendant are not harmless, considered singularly or in combination, inasmuch as the proof of defendant's guilt is not overwhelming, and there is a significant probability that the jury would have acquitted defendant had it not been for either of the errors.”



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“We nevertheless note our disapproval of the prosecutor's pervasive misconduct during summation. The prosecutor inappropriately and repeatedly vouched for the credibility of prosecution witnesses,...suggested that defendant was a liar,... characterized defendant's testimony as “smoke and mirrors”,... and otherwise improperly denigrated the defense...”



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**People v. Casanova, 119 AD3d 976 (3<sup>rd</sup> Dep’t 2014)**

**County:** Albany County.

**Date of Ruling:** July 3, 2014.

**Type of Criminal Charge:** Criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree.

**Summary of Prosecutorial Misconduct:** Prosecutor's comments that impermissibly shifted burden of proof and vouched for credibility of witnesses denied defendant a fair trial, and a *Wade* hearing had to be conducted into confidential informant's identification of defendant from photo array.

**Outcome:** Reversed and Remitted.

**Comments from the Court of Appeals:**

“...the prosecutor strayed beyond those parameters by, among other things, repeatedly making remarks that impermissibly shifted the burden of proof from the People to defendant...”

“...not only denigrating the theory of defense, but suggesting that it was defendant's affirmative burden to present such an excuse.”

“...Supreme Court intervened sua sponte, admonishing the prosecutor that he was improperly shifting the burden of proof and that defendant had no obligation to present evidence proving his innocence. Undeterred, the prosecutor went on to suggest that defendant had been unable to establish that the male CI had a motive to lie, thereby improperly suggesting to the jury that defendant had an obligation to do so.”

“The prosecutor also repeatedly and improperly expressed his personal opinion in an effort to vouch for the credibility of witnesses.”

“These errors were compounded by other improprieties, such as the prosecutor's disparaging statement that, if the CIs were as “filthy and disgusting and grimy” as the defense suggested—although, as Supreme Court later noted, defendant had not characterized the CIs that way—“then what are you supposed to think of the person who



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has made it his job to keep them addicted to these drugs, the person that's supplying them?"

“The cumulative effect of the multiple improprieties was to cause such substantial prejudice to defendant that he was denied a fair trial.”



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**People v. Mehmood, 112 AD3d 850 (2<sup>nd</sup> Dep’t 2013)**

**County:** Kings County.

**Date of Ruling:** December 18, 2013.

**Type of Criminal Charge:** Sexual conduct against a child in the first degree, course of sexual conduct against a child in the second degree, criminal sexual act in the second degree, and endangering the welfare of a child.

**Summary of Prosecutorial Misconduct:** In prosecution for child sex offenses, cumulative effect of prosecutor's improper comments in summation required new trial; prosecutor improperly referred to evidence of defendant's cooperation with law enforcement in drug cases against complainants' mother as an attempt to distract jury from real issues in the case, inaccurately stated that defendant, who testified on his own behalf, needed “a clarification about which child's vagina he did or did not touch,” made irrelevant and inflammatory argument suggesting defendant implicitly admitted abusing the complainants outside time periods listed in indictment, and impugned defendant's right to testify and improperly suggested he lied on the stand.

**Outcome:** Reversed.

**Comments from the Court of Appeals:**

“During summation, the prosecutor improperly referred to such evidence as “an elaborate attempt to distract [the jury] from the real issues in this case”

“The prosecutor also inaccurately stated that the defendant, who had testified on his own behalf, needed “a clarification about which child's vagina he did or did not touch,” when the defendant, in fact, had asked whether the question concerned his paramour, the complainants' mother.”

“In addition, the prosecutor made an irrelevant and inflammatory argument intended to convince the jury that the defendant's denials of the sexual abuse allegations in the indictment were implicit admissions that he had abused the complainants outside the periods of time designated for the charged crimes.”



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“Furthermore, the prosecutor impugned the defendant's right to testify and improperly suggested that he lied on the stand, when she referred to him as “an opportunist” who “took the stand, and ... said what he thought he had to to save himself”

“Finally, the prosecutor impermissibly vouched for the credibility of a witness based on his position as a law enforcement officer...”



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**People v. Morgan, 111 A.D.3d 1254, 1255 (N.Y. App. Div. 4th Dep't 2013)**

**County:** Erie County.

**Date of Ruling:** November 8, 2013.

**Type of Criminal Charge:** burglary, grand larceny, criminal possession of forged instrument, and possession of controlled substance.

**Summary of Prosecutorial Misconduct:** This was the second time this case was reversed on appeal. The first was when the prosecutor improperly used a peremptory challenge to exclude a prospective juror based on race (*People v Morgan*, 75 A.D.3d 1050), the second when the prosecutor made improper comments in summation (despite the court's stern warning in the first appeal that those kinds of comments were improper).

**Outcome:** conviction reversed and new trial ordered.

**Comments from the Appellate Court:**

"On this appeal, defendant again contends that reversal is warranted based upon prosecutorial misconduct on summation, and we agree. Despite our prior admonition on defendant's first appeal, the prosecutor on retrial repeated some of the improper comments from the first summation and made additional comments that we conclude are improper. The prosecutor improperly denigrated the defense and defense counsel, repeatedly characterizing the defense as "noise," "nonsense" and a "distraction[ ]," and arguing that defense counsel was fabricating facts and attempting to mislead the jury (see *People v Miller*, 104 AD3d 1223, 1223-1224, 960 NYS2d 584 [2013], lv denied 21 NY3d 1017, 994 NE2d 396, 971 NYS2d 500 [2013]; *People v Lopez*, 96 AD3d 1621, 1622, 946 NYS2d 780, lv denied 19 NY3d 998, 975 NE2d 920, 951 NYS2d 474; *People v Spann*, 82 AD3d 1013, 1015, 918 NYS2d 588 [2011]). In one of the more troubling passages in her summation, the prosecutor stated, "You are here for the People of the State of New York versus [defendant] . . . It is not about who isn't sitting at the defense table, it is about who is. Are you buying it? Because that's what they're selling. Theories disguised as arguments and posturing as evidence. And I'm not suggesting the defendant has the burden of proving anything because the burden rests with the People, but by the same token, it doesn't give counsel license to make stuff up and pretend that it's evidence. They all have something in common. These theories, they're noise, they're nonsense. They want you to be distracted. Do not be distracted."





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**People v. Huntsman, 96 A.D.3d 1387, 946 N.Y.S.2d 327, 2012**

**County:** Ontario County

**Date of Ruling:** September 8, 2012

**Criminal Charge:** Criminal mischief in the fourth degree (two counts), criminal mischief in the second degree, aggravated harassment in the second degree (four counts), burglary in the second degree, grand larceny in the fourth degree, and criminal contempt in the first degree.

**Summary of Prosecutorial Misconduct:**

**Outcome:** Reversed and remitted.

**Comments from the Court of Appeals:**

“On appeal from a judgment convicting him following a jury trial of 10 separate offenses stemming from multiple incidents, defendant contends, inter alia, that misconduct on the part of the prosecutor, Assistant District Attorney Jeffrey L. Taylor, requires reversal.”

“Although defense counsel failed to object to any of the alleged acts of misconduct and thus failed to preserve defendant's present contention for our review, we are nevertheless compelled to exercise our power to address it as a matter of discretion in the interest of justice.

“This Court has repeatedly admonished Mr. Taylor for various acts of misconduct, yet the record on this appeal establishes that his misconduct has continued. We again admonish Mr. Taylor and remind him that prosecutors have “special responsibilities . . . to safeguard the integrity of criminal proceedings and fairness in the criminal process”



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**People v Fisher, 18 N.Y.3d 964, 966-967 (N.Y. 2012)**

**County:** Monroe County.

**Date of Ruling:** April 3, 2012.

**Type of Criminal Charge:** sexual conduct against a child in the first degree, course of sexual conduct against a child in the second degree, and endangering the welfare of a child.

**Summary of Prosecutorial Misconduct:** Although reversed on the basis of ineffective counsel, the reason counsel was found ineffective was his failure to object to numerous instances of prosecutorial misconduct.

**Outcome:** Reversal and new trial ordered.

**Comments from the Appellate Court:**

"Here, the prosecutor improperly encouraged inferences of guilt based on facts not in evidence. Without record basis for referring to prior consistent statements by the complainants, no such statements having been admitted in evidence--likely for the very good reason that there had been no claim of recent fabrication (see *People v McClean*, 69 NY2d 426, 428[1987])--the prosecutor bolstered her young witnesses' credibility by describing in extended fashion the "long road" they had traveled in advance of their trial appearances in the course of which "they said the exact same thing over and over and over again" to the police, social workers, doctors and the grand jury. Continuing, the prosecutor, essentially testifying, improperly, advised the jury that it could view evidence of the complainants' contemporaneous misbehavior at school as proof that the crimes occurred.

"Hazard of an improperly founded, erroneous conviction was further heightened by the prosecutor's less than frank minimization of the consideration Burse was to receive in exchange for his potentially pivotal testimony as to defendant's jailhouse admissions. While it was literally true that the prosecutor, as she asserted in her summation, was not the Parole Board and did not "control what happen[ed] to Ray [Burse]," the none too subtle suggestion that the prosecutor's letter to the Board on Burse's behalf was merely a courtesy and conferred no real benefit to be weighed in assessing Burse's credibility was materially misleading; the prosecutor was plainly in a position, if not to control, at least



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to influence the outcome of Burse's parole violation hearing."

"Finally, in her peroration, the prosecutor exhorted, "[t]he voice of a child is evidence, the testimony of two children is evidence. The day that the voice of a child is not evidence is the day that those doors [the doors to the courtroom] should be locked forever." Obviously, it was not permissible for the prosecutor, an officer of the court, to admonish the jury that their acceptance of the testimony of the child witnesses was essential to the administration of justice.



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**People v. Spence, 92 AD3d 905 (2<sup>nd</sup> Dep't 2012)**

**County:** Nassau County.

**Date of Ruling:** February 21, 2012.

**Type of Criminal Charge:** Criminal possession of a weapon in the 2<sup>nd</sup> degree and criminal possession of a weapon in the 3<sup>rd</sup> degree.

**Summary of Prosecutorial Misconduct:** Improper remarks by the prosecutor during summation deprived the defendant of a fair trial. The prosecutor improperly vouched for a witness and implied that the witness faced retribution from the defendant when he stated, over objection, that the witness testified “not knowing what the ramifications would be for herself and her family”. The prosecutor also made improper remarks relating to the defendant’s tattoos and crossed the bounds of permissible rhetoric.

**Outcome:** Reversed and Remitted.

**Comments from the Court of Appeals:**

“The prosecutor’s comments violated the rule that a prosecutor may not ‘try to convey to the jury, by insinuation, suggestion, or speculation, the impression that the defendant is guilty of other crimes not in issue at the trial’”

“Since there was no evidence from any eyewitnesses that the person seen at the crime scene had tattoos, the only possible purpose of these comments would have been to improperly argue that it was more likely that the defendant had committed the crime because of his bad character, which the prosecutor constructed for the jury from the violent nature of the defendant’s tattoos”

“Under the circumstances of this case, since it cannot be said that there is no significant probability that the verdict would have been different absent the cumulative, prejudicial effect of these errors, we cannot deem them harmless”



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**People v. Wildrick, 83 AD3d 1455 (4<sup>th</sup> Dep't 2011)**

**County:** Ontario County.

**Date of Ruling:** April 1, 2011.

**Type of Criminal Charge:** Sexual assault in the 1<sup>st</sup> degree , sexual abuse in the 2<sup>nd</sup> degree, and endangering the welfare of a child (two counts).

**Summary of Prosecutorial Misconduct:** Misconduct on summation, which exceeded the bounds of proper advocacy.

**Outcome:** Reversed.

**Comments from the Court of Appeals:**

“Although we are granting a new trial on other grounds and thus need not address defendant’s contention that reversal is required based on prosecutorial misconduct on summation, we nevertheless express our disapproval of several of the prosecutor’s comments on summation”

“The prosecutor argued that ‘in the defendant’s mind, he hadn’t hurt the victims. He has given them a gift of his sexual encounter with them’ ... There is no basis in the record for such comments by the prosecutor, who thereby improperly inflamed the jury with those unsubstantiated comments”



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**People v. Spann, (2<sup>nd</sup> Dep't 2011)**

**County:** Monroe County.

**Date of Ruling:** March 15, 2011.

**Type of Criminal Charge:** Criminal possession of a weapon in the second degree.

**Summary of Prosecutorial Misconduct:** Cumulative effect of the prosecutor's improper comments during summation deprived defendant of fair trial.

**Outcome:** Reversed.

**Comments from the Court of Appeals:**

“At trial, the arresting officer testified that he observed the defendant “sweating very profusely” and his heart beating rapidly during the traffic stop. The defendant presented medical evidence to establish that his perspiration and rapid heart rate were the result of hypertension. During summation, the prosecutor improperly commented on the defendant's medical evidence by repeatedly referring to it as a “distraction,” a “smokescreen,” and “smoke and mirrors,” while at the same time arguing in support of the People's case that the defendant's physical condition was evidence of consciousness of guilt...”

“The prosecutor also impermissibly shifted the burden of proof to the defendant by informing the jurors that if they did not find the defendant's testimony “reasonable,” they could not “form the basis of reasonable doubt.”

“Finally, the evidence presented at trial established that the arresting officer recovered the handgun from beneath the “front seat” of the car. As there was no evidence to establish that the handgun was found beneath the front passenger seat as opposed to the front driver's seat, the prosecutor misstated the evidence during summation when he told the jury on 14 occasions that the handgun had been found beneath the front passenger seat where the defendant was sitting”



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**People v. Anderson, 83 AD3d 854 (2<sup>nd</sup> Dep't 2011)**

**County:** Queens County.

**Date of Ruling:** April 12, 2011.

**Type of Criminal Charge:** Murder in the 2<sup>nd</sup> degree and criminal possession of a weapon in the 2<sup>nd</sup> degree.

**Summary of Prosecutorial Misconduct:** The defendant was deprived of a fair trial by both his cross-examination by the prosecutor and by certain improper and prejudicial comments made by the prosecutor during summation.

**Outcome:** Reversed.

**Comments from the Court of Appeals:**

“Rather than confining his inquiry to the facts relevant to show that the defendant placed his own interest above that of society by selling narcotics to an undercover police officer in 2002... the prosecutor asked a series of irrelevant and prejudicial questions”

“In the course of cross-examining him... the prosecutor repeatedly demanded that the defendant acknowledge choosing to do ‘what’s best for the defendant instead of choosing to abide by the law’”

“Although a prosecutor should not support his or her case or her own or anyone else’s ‘veracity and position’, the prosecutor did so here by effectively vouching on summation for the conduct and credibility of two witnesses based upon their positions”

“Since it cannot be said that there is no significant probability that the verdict would have been different absent the cumulative prejudicial effect of these errors, we cannot deem them harmless



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**People v. Mohammed, 81 AD3d 983 (2<sup>nd</sup> Dep't 2011)**

**County:** Bronx County.

**Date of Ruling:** February 22, 2011.

**Type of Criminal Charge:** Burglary in the 1<sup>st</sup> degree.

**Summary of Prosecutorial Misconduct:** The prosecutor's improper remarks and statements during summation regarding the letters compounded the prejudicial effect of the trial court's failure to provide limiting instructions."

**Outcome:** Reversed and Remanded.

**Comments from the Court of Appeals:**

"We agree with the defendants that the admission into evidence of the subject letters, and the failure to instruct the jury concerning the limited purposes for which this evidence was originally offered and ultimately admitted, deprived the defendants of a fair trial"

"Although it is improper to appeal to the sympathy of the jury, the prosecutor nonetheless stated that there were '100 Pakistani men who were supporters of the defendants' and that these men were glaring at the complainant while he gave his testimony"

"The prosecutor's reference to her unsuccessful attempt to admit a detective's report into evidence also constituted an improper remark, as it implied that there was additional evidence supporting the verdict of guilt, despite the fact that this evidence was not admitted at trial"





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**People v. Slide, 76 AD3d 1106 (2<sup>nd</sup> Dep’t 2010)**

**County:** Suffolk County.

**Date of Ruling:** October 27, 2010.

**Type of Criminal Charge:** Murder in the 2<sup>nd</sup> degree, burglary in the 1<sup>st</sup> degree, and criminal possession of a weapon in the 2<sup>nd</sup> degree.

**Summary of Prosecutorial Misconduct:** Defendant was deprived of a fair trial through admission of evidence of his prior bad acts; trial court's jury instruction with respect to voluntariness of defendant's confession was incomplete; and prosecutor's inappropriate remarks during summation deprived defendant of a fair trial.

**Outcome:** Reversed and remitted.

**Comments from the Court of Appeals:**

“The prosecutor’s questions alluding to his mother’s incarceration were highly prejudicial as they implied that he had a genetic propensity for committing crimes”

“The prosecutor made certain inappropriate remarks during summation which conveyed to the jury that there may have been additional evidence, not admitted at trial, which would further support a guilty verdict”



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## **Assistant District Attorney Jeffrey L Taylor** **Canandaigua, NY (Ontario County)**

**“This Court has repeatedly admonished Mr. Taylor for various acts of misconduct, yet the record on this appeal establishes that his misconduct has continued.” – NYS Court of Appeals**

In our researching cases of prosecutorial misconduct, ITCHY found that a particular name stood out more so than others. That is the name of Assistant District Attorney Jeffrey L. Taylor of Canandaigua City in Ontario County. Through our research, we found that Mr. Taylor has been accused of prosecutorial misconduct numerous times. In three cases, *People v Huntsman* (2012); *People v Wildrick* (2011); and *People v Carter* (2006), Taylor’s actions were enough to warrant a reversal. Not once during the course of these three appeals and subsequent reversals did Taylor receive a punishment that went further than a scolding by the bench. Furthermore, ITCHY found that Taylor has been accused of misconduct in eight additional cases. Although in these cases the court ruled that these accusations were unfounded, those of us at ITCHY believe it demonstrates a pattern. Among those eight cases, we find two that are particularly troubling. *People v Leeson* (2008) features a dissenting opinion that poignantly scolds Mr. Taylor, stating “we cannot say that the error is harmless,” and in *People v Morrice* (2010) the court stated that Mr. Taylor’s actions were improper, but did not hold enough weight to warrant a reversal.

The above quote by the NYS Court of Appeals in *People v Collins* (2012) demonstrates perfectly the issues that arise when there is no commission on prosecutorial conduct with the power to hand down punishments to prosecutors who overstep their boundaries. The court admonishes Mr. Taylor, as it had in previous cases that the court subsequently cited, hoping that his behavior would stop. Without a system in place to keep such misconduct in check, there is no reason to believe it won’t continue.

The cases in which Mr. Taylor’s misconduct caused a reversal are briefed below, along with the two in which Mr. Taylor was scolded despite his behavior not being labeled prosecutorial misconduct. The remaining six cases in which the accusations levied against Mr. Taylor were said to be unfounded are listed, but not briefed.



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**People v. Huntsman, 96 A.D.3d 1387, 946 N.Y.S.2d 327, 2012**

**County:** Ontario County

**Date of Ruling:** September 8, 2012

**Criminal Charge:** Criminal mischief in the fourth degree (two counts), criminal mischief in the second degree, aggravated harassment in the second degree (four counts), burglary in the second degree, grand larceny in the fourth degree, and criminal contempt in the first degree.

**Summary of Prosecutorial Misconduct:**

**Outcome:** Reversed and remitted.

**Comments from the Court of Appeals:**

“On appeal from a judgment convicting him following a jury trial of 10 separate offenses stemming from multiple incidents, defendant contends, inter alia, that misconduct on the part of the prosecutor, Assistant District Attorney Jeffrey L. Taylor, requires reversal.”

“Although defense counsel failed to object to any of the alleged acts of misconduct and thus failed to preserve defendant's present contention for our review, we are nevertheless compelled to exercise our power to address it as a matter of discretion in the interest of justice.

“This Court has repeatedly admonished Mr. Taylor for various acts of misconduct, yet the record on this appeal establishes that his misconduct has continued. We again admonish Mr. Taylor and remind him that prosecutors have “special responsibilities . . . to safeguard the integrity of criminal proceedings and fairness in the criminal process”



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**People v. Wildrick, 83 AD3d 1455 (4<sup>th</sup> Dep't 2011)**

**County:** Ontario County.

**Date of Ruling:** April 1, 2011.

**Type of Criminal Charge:** Sexual assault in the 1<sup>st</sup> degree , sexual abuse in the 2<sup>nd</sup> degree, and endangering the welfare of a child (two counts).

**Summary of Prosecutorial Misconduct:** Misconduct on summation, which exceeded the bounds of proper advocacy.

**Outcome:** Reversed.

**Comments from the Court of Appeals:**

“Although we are granting a new trial on other grounds and thus need not address defendant’s contention that reversal is required based on prosecutorial misconduct on summation, we nevertheless express our disapproval of several of the prosecutor’s comments on summation”

“The prosecutor argued that ‘in the defendant’s mind, he hadn’t hurt the victims. He has given them a gift of his sexual encounter with them’ ... There is no basis in the record for such comments by the prosecutor, who thereby improperly inflamed the jury with those unsubstantiated comments”



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**People v. Carter, 31 A.D.3d 1167, 818 N.Y.S.2d 380, 2006**

**County:** Ontario County.

**Date of Ruling:** July 6, 2006.

**Criminal Charge:** Sodomy in the first and third degree, second-degree unlawful imprisonment, and first-degree unlawfully dealing with a child.

**Summary of Prosecutorial Misconduct:** Defendant was entitled to present testimony concerning reputation of victim; precluding defendant from presenting testimony concerning victim's reputation was reversible error; testimony of witness concerning his consensual sexual acts with defendant was not relevant to any issue in case; and trial court committed reversible error in permitting prosecution to present irrelevant testimony of witness concerning his consensual sexual acts with defendant.

**Outcome:** Reversed and new trial granted on counts 2 through 6 of indictment.

**Comments from the Court of Appeals:**

“We note in addition that the prosecutor engaged in misconduct in his opening and closing statements and in his cross-examination of defense witnesses.”

“We note in particular the prosecutor's misconduct in emphasizing the age difference between defendant and the victim without clarifying that the age difference was relevant with respect to only one charge, i.e., unlawfully dealing with a child in the first degree.”

“We note in addition the prosecutor's numerous inflammatory references to defendant as a dangerous sexual predator. We conclude that the prosecutor's inflammatory comments, along with the comments concerning the age difference that were relevant only with respect to one of the crimes charged, “had ‘a decided tendency to prejudice the jury’.”



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**People v. Morrice, 78 A.D.3d 1534, 910 N.Y.S.2d 786, 2010**

**County:** Ontario County.

**Date of Ruling:** November 12, 2010.

**Criminal Charge:** Burglary.

**Summary of Prosecutorial Misconduct:** Prosecutor was not found to have committed misconduct.

**Outcome:** Affirmed.

**Comments from the Court of Appeals:**

“Defendant again contends that he was deprived of a fair trial based on prosecutorial misconduct on summation. Defendant preserved that contention for our review only with respect to two of the prosecutor's comments on summation and, in any event, “we conclude that ... ‘[a]ny improprieties were not so pervasive or egregious as to deprive defendant of a fair trial’.”



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**People v. Leeson, 48 A.D.3d 1294, 850 N.Y.S.2d 815, 2008**

**County:** Ontario County.

**Date of Ruling:** February 8, 2008.

**Criminal Charge:** Sodomy in the second degree, sexual abuse in the second degree, and endangering the welfare of a child.

**Summary of Prosecutorial Misconduct:** Prosecutor was not found to have committed misconduct.

**Outcome:** Affirmed.

**Comments from the Court of Appeals:**

From dissenting opinion:

“All concur except Centra and Lunn, JJ., who dissent and vote to reverse in accordance with the following Memorandum: We respectfully dissent because we cannot agree with the majority that defendant was not denied a fair trial by the admission of testimony at trial that, during the same time frame in which he allegedly sodomized and sexually abused the victim in Ontario County, he committed similar but uncharged acts in Yates County.”

“Contrary to the conclusion of the majority, that testimony was improperly admitted because its sole relevance was ‘to demonstrate defendant’s propensities and to enhance the credibility of the complainant’.”

“Nor can we agree with the majority that the testimony concerning those two incidents, which were separated both by time and proximity from the numerous events charged in the indictment, served to complete any narrative of the events charged in the indictment. The evidence in question was neither “inextricably interwoven” with the charged crimes nor necessary to the jury’s understanding of the People’s case.”

“We cannot say that the error is harmless. The evidence of defendant’s guilt is not overwhelming without the testimony concerning the uncharged crimes and, in our view, there is a significant probability that the jury, which acquitted defendant of 28 charges



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out of 32, would have also acquitted defendant of counts 1 through 3 and 32 had it not been for the error.”

“We therefore would reverse the judgment and grant a new trial on counts 1 through 3 and 32 of the indictment.”





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## **Other Cases in Which ADA Taylor was Accused of Misconduct**

- *People v Tyler* 147 A.D.3d 1441, 47 N.Y.S.3d 187, 2017. (February 3, 2017)
- *People v Haynes* 104 A.D.3d 1142, 960 N.Y.S.2d 572, 2013. (March 15, 2013)
- *People v Tuszinski* 71 A.D.3d 1407, 895 N.Y.S.2d 896 (Mem), 2010. (March 19, 2010)
- *People v Ray* 63 A.D.3d 1705, 880 N.Y.S.2d 837, 2009. (June 12, 2009)
- *People v Vasquez* 28 A.D.3d 1100, 813 N.Y.S.2d 613, 2006. (April 26, 2006)
- *People v Brinson* 265 A.D.2d 879, 697 N.Y.S.2d 221, 1999. (October 1, 1999)