

STAGE OF TRIAL	OBJECTION	NOTES
Jury Selection (Felonies - Article 270) (Misd – Article 360)	Asking the juror for an opinion on the law Asking about votes in prior cases Attempting to commit juror to a specific verdict <i>Batson</i> Burden shifting Denigrating the defense Discussing matters that were precluded/suppressed Inflammatory/Prejudicial Misstating the law Questions not relating to juror qualifications	Reminder – always try to include state and federal constitutional grounds in your objection – due process, confrontation and cross-examination, right to remain silent, burden on prosecution
Opening Statements	Arguing the law Burden shifting Commenting on defendant's Denigrating the defense Discussing matters that were precluded/suppressed Duplicity of counts of indictment Expressing personal beliefs Improper comment on defendant's silence Improper reference to defendant's invocation of right to counsel Inflammatory/Prejudicial Misstating the facts Misstating the law Vouching for credibility of a witness	Reminder – always try to include state and federal constitutional grounds in your objection – due process, confrontation and cross-examination, right to remain silent, burden on prosecution
Direct Examination	Accrediting witness prior to impeachment Allow witness to finish answer Ambiguous question Argumentative Asked and answered Assumes facts not in evidence Bolstering Calls for conclusion Calls for narrative answer Calls for speculation Calls for state of mind of another Calls for witness to say another witness is lying Compound question Confusing Cumulative Failure to serve 710.30 before using ID or statement Failure to provide <i>Brady</i> Failure to provide <i>Rosario</i> Form of the question Hearsay (Rt to confront & cross, <i>Crawford</i>) Immaterial Improper refreshing of recollection Impeaching own witness	Reminder – always try to include state and federal constitutional grounds in your objection – due process, confrontation and cross-examination, right to remain silent, burden on prosecution Hearsay – remember to examine whether offered for the truth of the matter or whether offered testimony falls within an exception. Hearsay exceptions include admissions, declaration against penal interest, state of mind, business records (CPLR 4518(a), Res gestae, present sense impression, excited utterance, prompt complaint (with limitations), dying declaration, statements in medical records used for diagnosis and treatment.

Direct exam, cont'd	<ul style="list-style-type: none"> Improper character evidence Improper or insufficient foundation Improper opinion Improper impeachment Improper rehabilitation after impeachment Improper rebuttal Improper use of prior consistent statement Improper use of reputation evidence Improper limit on direct examination (Rt to present a defense, D.P.) Incompetent to testify about subject Inferential Hearsay Invades the province of the jury Inflammatory Leading Mischaracterizing witness's testimony Misstatement of testimony/evidence No good faith basis for question Non-responsive Opinion from unqualified witness Offering extrinsic evidence on a collateral matter Privileged information Prejudicial effect outweighs probative value Reading from document not in evidence Relevance Unduly prejudicial (prejudicial effect outweighs probative value) (D.P.) Violates <i>Crawford</i>/right to confrontation Violates best evidence rule Vouching for credibility of another witness Witness not competent to give opinion 	
Introduction of evidence	<ul style="list-style-type: none"> Displaying evidence before received Extrinsic evidence on a collateral matter Failure to authenticate Failure to establish chain of custody Failure to establish scientific evidence meets <i>Frye</i> Test Failure to offer complete document Lack of proof conditions are the same Improper/insufficient foundation Improper use of demonstrative evidence Inflammatory/Unduly prejudicial Violates best evidence rule 	Reminder – always try to include state and federal constitutional grounds in your objection – due process, confrontation and cross-examination, right to remain silent, burden on prosecution
Cross-Examination	<ul style="list-style-type: none"> Allow witness to finish answer Ambiguous question Argumentative Asked and answered Assumes facts not in evidence Beyond the scope of direct (but see <i>Peo. v. Kennedy</i> 70 AD2d 181) Beyond scope of <i>Sandoval/Molineux</i> Bolstering 	Reminder – always try to include state and federal constitutional grounds in your objection – due process, confrontation and cross-examination, right to remain silent, burden on prosecution Hearsay – remember to examine whether offered for the truth of the matter or whether offered testimony falls within an exception.

Cross, cont'd	<p> Calls for conclusion Calls for narrative answer Calls for speculation Calls for state of mind of another Calls for witness to say another witness is lying Compound question Confusing Cumulative Failure to serve 710.30 before using ID or statement Failure to provide <i>Brady</i> Failure to provide <i>Rosario</i> Forcing defendant to assert 5th in front of jury Form of the question Hearsay (Violates rt. to confront, cross) Opinion from unqualified witness Immaterial Improper refreshing of recollection Incompetent to testify on subject Inferential hearsay Invades the province of the jury Improper impeachment Improper limit on cross-examination (Rt. to confront, cross) Improper or insufficient foundation Improper opinion Improper use of reputation evidence Inflammatory Mischaracterizing witness's testimony Misstatement of testimony/evidence No good faith basis for question Nonresponsive Offering extrinsic evidence on a collateral matter Prejudicial effect outweighs probative value Privileged information Reading from document not in evidence Questioning about defendant's choice not to speak to police (5th) Relevance Unduly prejudicial (prejudicial effect outweighs probative value)(D.P.) Relevance Violates best evidence rule </p>	
Experts	<p> Exceeding scope of permissible testimony Failure to establish scientific evidence meets <i>Frye</i> test Insufficient/improper foundation for opinion Insufficient expertise Invades the province of the jury (opinion on ultimate issue) Not beyond the ken of the average juror </p>	
Redirect Examination	<p>Beyond the scope of cross</p>	

Re-cross	Beyond the scope of re-cross	
Objections	Improper argument before jury during counsel's objection	
Summation Summation, cont'd	<p>Arguing the law Arguing propensity to commit crime (instead of proper use of <i>Sandoval/Molineux</i>) Burden shifting Claiming witness is lying Duplicity of counts of indictment Expressing personal beliefs Improper comment on defendant's silence Improper reference to defendant's invocation of right to counsel Denigrating the defense Discussing matters that were precluded/suppressed Inflammatory/Prejudicial Misstatement burden of proof Misstatement of facts Misstating the law Seeking sympathy of jury Vouching for credibility of a witness</p>	Reminder – always try to include state and federal constitutional grounds in your objection – due process, confrontation and cross-examination, right to remain silent, burden on prosecution
Jury instructions	<p>Confusing/ambiguous Court failed to respond adequately to jury note Denigrates the defense Incomplete Judge is invading the province of the jury (finding facts) Misstatement burden of proof Misstates the facts Misstates the law Marshalling Omitted instruction discussed</p>	Reminder – always try to include state and federal constitutional grounds in your objection – due process, confrontation and cross-examination, right to remain silent, burden on prosecution
Readbacks	<p>Fails to include all aspects of the witness's testimony Incomplete</p>	Reminder – always try to include state and federal constitutional grounds in your objection – due process, confrontation and cross-examination, right to remain silent, burden on prosecution
Verdict	<p>Denial of right to poll jury Repugnant verdict</p>	
Court proceedings	<p>Failure to adequately translate testimony Improper closure of courtroom Improper photography of witnesses by press Violation of order of trial procedures Violation of defendant's right to be present during critical stage (including discussions with jurors post-verdict)</p>	Reminder – always try to include state and federal constitutional grounds in your objection – due process, confrontation and cross-examination, right to remain silent, burden on prosecution