



What must an appellate court do when portions of a criminal trial transcript are lost or unintelligible? The Court of Appeals addressed that question recently, holding that so long as a reconstruction hearing conducted by the trial court reasonably allows the reconstruction of the trial record, a criminal defendant is not prejudiced by the loss of the original trial record and is not entitled to a summary reversal of his convictions. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

## COURT OF APPEALS

### LABOR LAW, VICARIOUS LIABILITY UNDER LABOR LAW § 241(6)

*Mann v Mezuyon, LLC, 2026 NY Slip Op 03257 (Ct App May 26, 2026)*

**Issue:** Is section 23-4.2(k) of the Industrial Code (12 N.Y.C.R.R. § 23-4.2(k)) sufficiently specific to serve as a basis for vicarious liability under Labor Law § 241(6)?

**Facts:** While multiple drilling machines and excavators were operating at a construction site, plaintiff was injured when the back corner one of the excavators rotated into him. Plaintiff then sued defendant, the owner of the site, "asserting claims for common-law negligence and violations of Labor Law §§ 200, 240 (1), and 241 (6)." Although plaintiff did not initially base his section 241(6) claim on a violation of section 23-4.2(k) of the Industrial Code, which provides that "[p]ersons shall not be suffered or permitted to work in any area where they may be struck or endangered by any excavation equipment," the trial court permitted him to amend his bill of particulars to include that violation.

Supreme Court then denied defendant's motion for summary judgment on the section 241(6) claim based on a violation of section 23-4.2(k) of the Industrial Code. Defendant filed a third-party action against the excavation subcontractor in response, and Supreme Court granted the excavation subcontractor's motion for summary judgment dismissing the third-party action against it. The Appellate Division, First Department affirmed.

**Holding:** Resolving a conflict amongst the Appellate Division departments in which the "First, Third, and Fourth Departments have concluded that [section 23-4.2(k) of the Industrial Code] is not sufficiently specific" to support a Labor Law § 241(6) claim, and the Second Department had concluded it was, the Court of Appeals held that section 23-4.2(k) is not "sufficiently specific to serve as a basis for vicarious liability under Labor Law § 241 (6)." The Court explained that the limited vicarious liability imposed under section 241(6) only applies to provisions of the Industrial Code that "mandate compliance with concrete specifications and not [those that] simply declare general safety standards or reiterate common-law principles."

"[T]o be sufficiently specific to support a Labor Law § 241 (6) cause of action, a provision of the Industrial Code must both identify a specific safety concern *and* command a specific action required to address that concern." The Court noted that its prior precedent has "held that 'general regulatory criteria' in the form of words like 'adequate,' 'designated,' 'competent,' 'effective,' 'good,' 'proper,' 'safe,' 'sufficient,' and 'trained' are not sufficient to give rise to a triable claim for damages under Labor Law § 241 (6)." Here, the Court held, section 23-4.2(k) of the Industrial Code "fails to state any action, whatsoever, required to address the safety concerns set forth in the provision. It merely contains a broad prohibition . . . Section 23-4.2 (k) does not include a minimum distance that must be maintained between a worker and any excavation equipment, and its protections are not limited to any specific class of worker. The section also does not identify any protective measures or reasonable precautions that a site owner must take in order to comply with the section. Nor does section 23-4.2 (k) provide clear guidance about how owners and contractors should provide reasonable and adequate protection and safety for workers. It merely states a general prohibition with broad applicability, lacking any specific directions. While the safety of workers is a critical concern, the language of section 23-4.2 (k) does not meet the legal standard for specificity required to hold site owners vicariously liable under the Labor Law."

## CRIMINAL LAW, INACCURATE OR MISSING TRIAL TRANSCRIPT

*People v Meyers*, 2026 NY Slip Op 03261 (Ct App May 26, 2026)

**Issue:** May the Appellate Division order a reconstruction hearing instead of summarily reversing a defendant's criminal convictions and ordering a new trial where a substantial portion of the trial transcript is unintelligible?

**Facts:** "During the trial of Joseph A. Meyers, the primary stenographer failed to capture substantial portions of the proceedings and frequently recorded 'blah blah blah,' 'blah blah,' 'omitted,' 'untranscribable' or undecipherable characters instead of the words actually spoken. Those transgressions by the court reporter were first discovered during the pendency of Mr. Meyers's appeal. The Appellate Division ordered a reconstruction hearing, at which Supreme Court took testimony from the trial judge who heard the case, the attorneys who tried it and court clerks who helped administer it, and also supplemented the record with the extensive notes the judge took during the trial. Although Supreme Court did not, at the conclusion of the reconstruction hearing, identify the contents of the reconstructed record, the Appellate Division affirmed Mr. Meyers's convictions based on the original trial record as supplemented by the proof established at the reconstruction hearing."

**Holding:** The Court of Appeals, although noting the inexcusable nature of the court reporter's actions, affirmed Mr. Meyers' conviction based on the reconstructed record. The Court noted, "[w]e begin every case with a presumption of regularity, which requires us to presume that judicial proceedings were conducted in accordance with law. The loss of a stenographic record, standing by itself, will not rebut that presumption so long as the defendant is not prejudiced. No prejudice results if the record can be accurately reconstructed. To obtain summary reversal based on a record defect, a defendant bears the burden to establish that a reconstruction hearing would be futile. That is, a defendant must demonstrate that alternative methods to provide an adequate record will not avail to satisfactorily demonstrate whether genuine appealable and reviewable issues do or do not exist . . . An important element of the prejudice analysis is whether the judge, lawyers and court staff from the trial are willing and capable of aiding in the reconstruction of a substitute record."

Here, the Court held, Mr. Meyers did not demonstrate that the reconstruction hearing was futile. The Court reasoned, "[t]he relatively short time between the trial and the reconstruction hearing, coupled with the full participation of the relevant actors from the original trial—including his own defense attorneys—indicates the contrary was true. No trial exhibits, including the video and cell phone records showing, inter alia, Mr. and Mrs. Meyers making several trips to Mr. O'Dell's home immediately before the fire and removing bags of materials from his home, followed by video showing Mrs. Meyers carrying a torch into his home immediately before the fire started, were lost."

Unlike a case where the entire trial record is lost and unrecoverable, which would warrant a summary reversal, the Court held here, "most of the trial was transcribed and available, and the reconstruction hearing included testimony from the trial judge and his confidential law clerk, two court clerks, the trial prosecutors and the defense attorneys at trial for Mr. Meyers. The reconstruction court admitted 124 pages of detailed notes taken by the judge during the course of the criminal trial, the challenge sheet from trial, the prosecutor's jury charge notes, jury selection notes by the prosecutor and the verdict sheet. Even if those sources did not precisely duplicate the missing minutes, what matters is that Mr. Meyers failed to show those sources could not satisfactorily demonstrate whether genuine appealable and reviewable issues do or do not exist." Thus, the Court held, summary reversal was not warranted, and the Appellate Division had an adequate record and basis to affirm Mr. Meyers's convictions.

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