



When an emergency responder is engaged in an emergency operation, they may run red lights and stop signs and exceed the speed limit, so long as they don't recklessly disregard the safety of others in doing so. That's a high standard, the Court of Appeals held recently, and if it is not satisfied, emergency responders are immune from tort liability for accidents that occur during the emergency operation. 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

### TORTS, VEHICLE AND TRAFFIC LAW § 1104 IMMUNITY

*Granath v Monroe County, 2026 NY Slip Op 01586 (Ct App Mar. 19, 2026)*

**Issue:** When is a "driver of an authorized emergency vehicle . . . involved in an emergency operation" entitled to immunity from tort liability for accidents that may occur during the provision of the emergency services?

**Facts:** After receiving a call to respond to a motor vehicle accident with heavy damage and unknown injuries, three sheriff deputies proceeded in separate cars to the scene. As one of the deputies approached an intersection, which had a red light, she slowed, looked into the intersection to view the oncoming traffic, stopped at least once, and engaged her emergency lights before entering the intersection. As the deputy entered the intersection, she collided with the plaintiffs' vehicle, which was driving through the green light into the intersection.

Plaintiffs then filed this action against the County and the Sheriff's Department seeking to recover for their injuries sustained in the collision. Following discovery, defendants moved for summary judgment, arguing that they were immune from liability under Vehicle and Traffic Law § 1104, which "grants the driver of an authorized emergency vehicle when involved in an emergency operation a certain set of special driving privileges. Those privileges include passing through red lights and stop signs, exceeding the speed limit and disregarding regulations governing the direction of movement or turning in specified directions." The driver of an authorized emergency vehicle can only be held liable if the harm occurs as a result of their "reckless disregard for the safety of others."

"Supreme Court granted defendants' motion for summary judgment and dismissed the Granaths' complaint. The Appellate Division affirmed, holding that defendants established prima facie entitled to summary judgment, and in opposition the Granaths failed to raise a triable issue of fact as to whether Defendant Fong acted recklessly (237 AD3d 1595, 1595 [4th Dept 2025]). The court reasoned that Deputy Fong took several precautions before proceeding into the intersection against the red traffic signal, including bringing her vehicle to a complete stop, looking in all directions, activating her emergency lights, and proceeding slowly through the intersection. Two dissenting Justices concluded that a jury could find based on the facts adduced in defendants' own submission that Fong entered the intersection in disregard of the traffic signal, that she failed to activate[at]e her emergency lights and siren in the presence of an obstructed view, and that her actions were in violation of departmental policy, and consequently, that Fong acted with reckless disregard for the safety of others."

**Holding:** The Court of Appeals affirmed the dismissal of plaintiffs' complaint. The Court held that because plaintiffs did not dispute that the deputy was authorized to exercise the special driving privileges provided in Vehicle and Traffic Law § 1104, the only question was whether her conduct constituted "reckless disregard of the safety of others." The Court explained, "[t]he reckless disregard standard is more demanding than ordinary negligence. More specifically, for liability to be predicated upon a violation of Vehicle and Traffic Law § 1104, there must be evidence that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow and has done so with conscious indifference to the outcome. A momentary judgment lapse does not alone rise to the level of recklessness required of the driver of an emergency vehicle in order for liability to attach."

Here, the Court noted, "before proceeding through the intersection, Deputy Fong slowed down, came to a complete stop at least once, observed northbound traffic, waited for that traffic to yield to her, and turned on her overheard [sic] lights. The Granaths contend that a jury could nonetheless find that Deputy Fong exhibited reckless disregard for the safety of others by failing to activate her air horn or siren; declining to call in a 'Code 77' as required by MCSD policy; and proceeding into the intersection despite having an obstructed view of southbound traffic . . . Even assuming Deputy Fong failed to activate her air horn or siren, call in a 'Code 77,' or observe southbound traffic—either because her view was obstructed or she neglected to look to her right—taken together with the actions she undisputably did take—slowing down, stopping, activating her emergency lights and proceeding only once she observed northbound traffic yield to

her—we cannot conclude that Deputy Fong, with conscious indifference to the outcome, recklessly disregarded a highly probable risk of harm.”

## CRIMINAL LAW, CONSECUTIVE SENTENCING

### *People v Sabb*, 2026 NY Slip Op 01590 (Ct App Mar. 19, 2026)

**Issue:** What is the scope of appellate review of a judgment imposing consecutive sentences upon defendant’s guilty plea?

**Facts:** “Defendant Jhajuan Sabb was indicted on two counts of murder in the second degree, four counts of attempted assault in the first degree, and one count of criminal possession of a weapon in the second degree. The charges arose from a drive-by shooting that defendant and two others participated in, which injured four men gathered on the street, including A.T., and killed passerby S.A., who was standing 10 feet away from the group, waiting to cross the street. In satisfaction of the indictment, defendant pleaded guilty to one count of manslaughter in the first degree, as a lesser included offense to one of the murder counts, for causing the death of S.A., and to one count of attempted assault in the first degree with respect to A.T. As agreed to by the parties, Supreme Court sentenced defendant consecutively to 25 years’ incarceration and 5 years’ post-release supervision (PRS) on the manslaughter count and 10 years’ incarceration and 5 years’ PRS on the attempted assault count, for an aggregate term of 35 years’ incarceration.”

On appeal, defendant argued that the trial court improperly sentenced him consecutively. “In a 3-2 decision, the Appellate Division modified Supreme Court’s judgment to run the sentences concurrently, concluding that neither the allegations in the indictment nor defendant’s admissions during his guilty plea allocutions established that the death and attempted assault arose from a separate and distinct pull of the firearm’s trigger by defendant.”

**Holding:** The Court of Appeals affirmed, holding that “Penal Law § 70.25 (2) mandates concurrent sentences for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other. The Court has explained this binary requirement as prohibiting consecutive sentences where a single act constitutes two offenses, or a single act constitutes one of the offenses and a material element of the other. Where consecutive sentences are permissible, a trial court nonetheless retains discretion to impose concurrent sentences.”

The Court explained that on appeal from a judgment that imposed consecutive sentences, it is the People’s burden to demonstrate the legality of the sentences. “An appellate court reviewing the legality of consecutive sentencing must first examine the statutory definitions of the crimes for which the defendant has been convicted and compare the actus reus elements of each to determine if they are, by definition, the same for both offenses, or if the actus reus for one offense is a material element of the second offense. If the statutory elements do overlap under either prong of Penal Law § 70.25 (2), the prosecution may yet establish the legality of consecutive sentencing by showing that the acts or omissions committed by the defendant were separate and distinct acts.” Because the trial court has “limited authority to sentence a defendant only upon a factual finding of guilt by the trier of fact after trial or upon a defendant’s admissions during a guilty plea allocution,” the People may only rely on the allegations of the counts of the indictment to which the defendant has pled guilty, as well as the facts adduced at the plea allocutions, to support the imposition of consecutive sentences.

Here, the Court held, “[t]he prosecution failed to meet its burden of establishing the legality of the consecutive sentences in this case, because defendant did not admit any facts during his guilty plea allocutions, nor were there any allegations in the attempted assault count of the indictment pertaining to A.T., that support the prosecution’s claim that he fired separate shots at each victim, causing separate injuries to each.” “As the statutory *actus reus* for each crime overlaps, because causing or attempting to cause serious physical injury or death by use of a firearm is required for each, the prosecution was required to establish that defendant’s use of a firearm caused the injuries to S.A. and A.T. by separate and distinct acts. Given the court’s questions and defendant’s responses, the prosecution could have demonstrated the legality of consecutive sentencing by asking defendant to admit that he separately shot at the two victims, or that separate bullets from his firearm injured each victim. However, neither the plea allocutions nor the allegations supporting the attempted assault count of the indictment pertaining to A.T. contain a factual assertion that defendant separately shot at the two victims, or that each victim’s injuries were caused by separate and distinct acts of defendant’s use of the firearm.”

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