# State of New York
# Court of Appeals

**Summaries are prepared based on the parties' briefs and are for background purposes only.**

To be argued Tuesday, February 10, 2026

**Matter of Claim of Gonzalez** (232 AD3d 1011 [AD3])
Court PASS Docket No. APL-2025-00056

Wilfredo Gonzalez sustained a work-related back injury and was awarded temporary disability benefits. His attorney was awarded counsel fees. In March 2023, his attorney sought a penalty against the carrier because the carrier failed to timely pay Mr. Gonzalez's award. A Workers' Compensation Law Judge assessed late payment and installment penalties pursuant to Workers Compensation Law § 25 (3) (f) and 25 (1) (e). The Workers' Compensation Law Judge denied the attorney's request for additional fees based on the penalties. The Workers' Compensation Board upheld the denial of the additional counsel fees.

On appeal, claimant's attorney and the Board disputed whether WCL § 24 permits counsel fees based on penalty awards. Before 2023, WCL § 24 gave the Board broad discretion to award counsel fees, including fees based on penalties. Amendments effective January 1, 2023, replaced that discretion with a fixed schedule covering a continuation or increase of weekly benefits, schedule loss of use or permanent facial disfigurement, permanent disability, death benefits, and settlements under WCL § 32. As amended, the statute does not include a catch-all provision.

Claimant's attorney argued penalties qualify as "compensation" under WCL § 2(6) and increase prior awards, fitting within WCL § 24(2)(b). Legislative history and precedent, it claimed, support fee awards from penalties. The Board countered that WCL § 24(2) limits fees to listed categories and excludes penalties.

The Appellate Division affirmed, reasoning that if the Legislature intended to allow fees from penalties, it would have expressly included them in the statutory schedule.

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To be argued Tuesday, February 10, 2026

**People v Bender (Donald)** (236 AD3d 1184 [AD3d])
Court PASS Docket No. APL-2025-00087

On June 27, 2018, Donald Bender was driving an SUV and weaving between lanes of traffic on a four-lane road in the Town of Colonie, Albany County. In short succession, he turned sharply out of his lane, hitting a car being towed by a tow truck; rear-ended a minivan; and struck another car twice, forcing it onto the curb, where it crashed into a fire hydrant and flipped over. Mr. Bender then drove into a motel parking lot, through trees, and ultimately crashed into a house.

Mr. Bender was indicted for reckless endangerment in the first degree. Before trial, County Court ruled that he could not present psychiatric evidence because he failed to timely file the required CPL 250.10(2) notice. Although the court could have excused the late filing, it found no good cause to do so. A jury convicted Mr. Bender of reckless endangerment.

On appeal, Mr. Bender argued that the evidence was legally insufficient to prove the mental state of "depraved indifference to human life," asserting that while his conduct was reckless, it did not rise to that level. He also challenged the preclusion of psychiatric evidence.

A majority of the Appellate Division, Third Department, affirmed the conviction. The court explained that a person is guilty of first-degree reckless endangerment when, under circumstances evincing depraved indifference, they recklessly create a grave risk of death. Citing *People v Suarez* (6 NY3d 202), the court described depraved indifference as an utter disregard for human life—conduct so wanton and morally deficient as to render the actor as culpable as one intending to kill. The majority concluded the evidence was sufficient, likening Mr. Bender's actions to driving along a crowded sidewalk, a "quintessential" example of depraved indifference. It also held that County Court did not abuse its discretion in precluding psychiatric evidence.

Two dissenting justices disagreed, finding this case did not present one of the rare circumstances where depraved indifference is established by risky behavior alone and noting the lack of evidence of Mr. Bender's state of mind.

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To be argued on Tuesday, February 10, 2026

**Granath v Monroe County** (237 AD3d 1594 [AD4])
Court PASS Docket No. APL-2025-00098

Gary and Lorraine Granath sued Monroe County and a Monroe County Deputy Sheriff after a November 24, 2019 collision at the intersection of Ayrault Road and Turk Hill Road in the Town of Perinton. The Granaths were traveling southbound on a green light when the Deputy Sheriff, responding to an emergency call, entered the intersection against a red light and struck their vehicle.

The trial court granted judgment to the County and Deputy Sheriff. Drivers of authorized emergency vehicles may disregard certain traffic laws during emergency operations but are liable if they act with "reckless disregard for the safety of others." Under New York Vehicle and Traffic Law § 1104, the driver of an emergency vehicle who is engaged in an emergency operation may proceed through a steady red light but only after slowing down as may be necessary for safe operation. The court held the Deputy Sheriff's actions here did not meet the "reckless disregard" standard because she did not act with a "conscious disregard for others."

The Appellate Division, Fourth Department, with two Justices dissenting, affirmed. The majority held that the Deputy Sherrif's actions—stopping at the intersection, looking in all directions, activating emergency lights, and proceeding slowly—did not satisfy the reckless disregard standard. The dissent said factual disputes regarding visibility, timing of emergency light activation, and compliance with departmental policy required a trial.

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To be argued Tuesday, February 10, 2026

**People v Luke J. Gaffney** (232 AD3d 1228 [AD4])
Court PASS Docket No. APL-2025-00077

Luke Gaffney stabbed a Cayuga County Deputy Sheriff in the leg, near the femoral artery, during an encounter at Mr. Gaffney's home. Mr. Gaffney was arrested and charged with attempted murder in the second degree and aggravated assault upon a police officer. County Court instructed the jury on the elements of both offenses and submitted the lesser-included offense of attempted assault in the second degree.

The jury acquitted Mr. Gaffney of attempted murder and attempted assault in the second degree but convicted him of aggravated assault upon a police officer.

On appeal, Mr. Gaffney argued that the verdict was repugnant because the acquittal on the lesser assault offense of attempted assault in the second degree precluded conviction on the greater assault offense of aggravated assault upon a police officer. Both crimes share the same elements—intent to cause serious physical injury and causing such injury—with aggravated assault adding the element that the victim is a police officer. Mr. Gaffney also claimed his trial counsel was ineffective for failing to object to the verdict before the jury was discharged.

The Appellate Division, Fourth Department, held that the repugnancy claim was unpreserved because counsel did not object at trial. It further rejected the ineffective assistance claim, reasoning that counsel may have made a strategic choice: objecting would have required resubmission of all counts to the jury.