

# No video, no conviction

## Man cleared after cops toss evidence

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Sun Media

Pasquale Monaco's nightmare began nearly 2½ years ago when he was pulled over in the driveway of his Markham home for allegedly speeding and running a red light.

He suddenly found himself handcuffed in the backseat of a York police car facing charges of impaired driving and other offences.

Since that night, the 46-year-old tow-truck driver lived with the uncertainty of not knowing how he would provide for his wife and son should he be found guilty, lose his driver's licence and no longer be able to work at the job he has done for 23 years.

But finally, after countless court appearances, Monaco's bad dream ended last week when a judge in Newmarket threw out all of the charges against him — in large part because police had long ago destroyed video evidence that theoretically may have helped him clear his name.

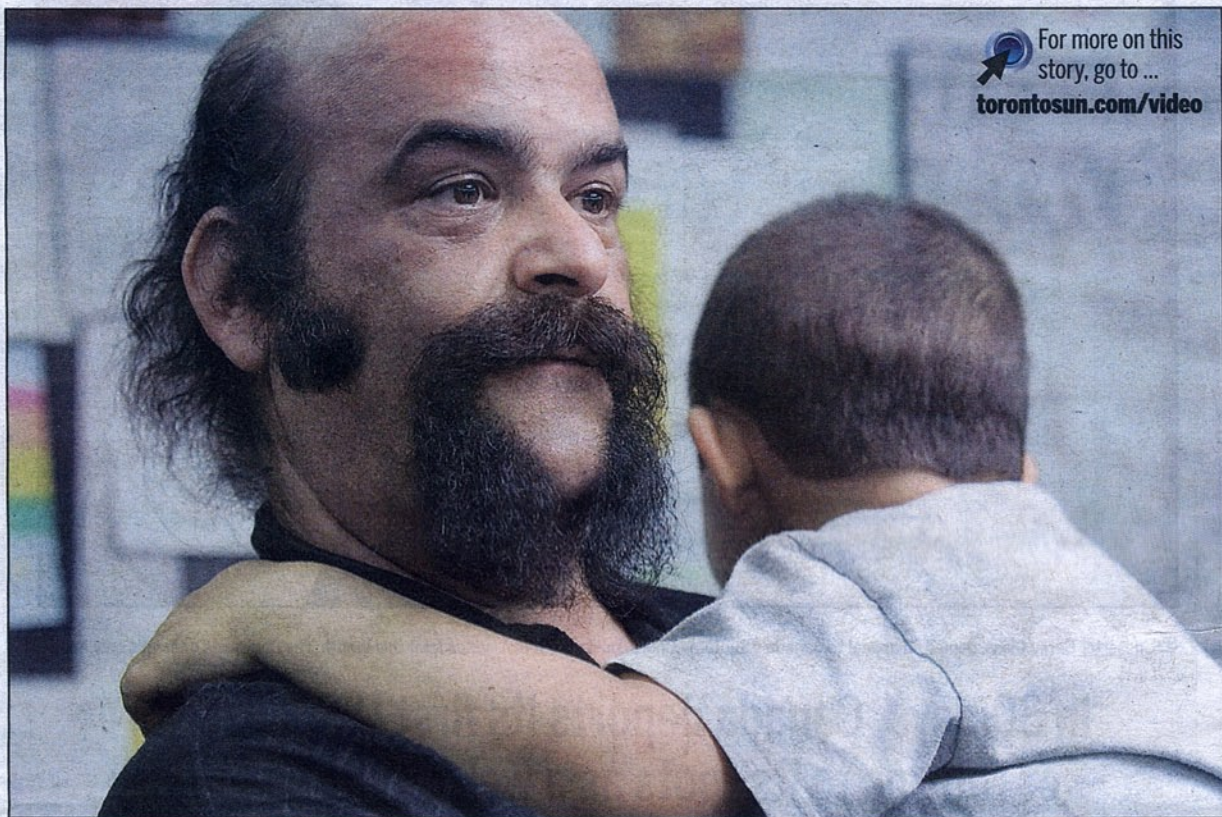
"I just want to get on with my life," an extremely relieved Monaco told the *Sun* after being exonerated. "I just hope this doesn't happen to anybody else."

Monaco is just the latest in a long line of people accused of impaired driving in York Region who have had their charges tossed in recent years because of a policy that saw videotapes used in surveillance equipment inside police stations "recycled" unless the defendant requested a copy within 60 days.

The troublesome policy made headlines last fall after several judges had lambasted York Regional Police for not addressing the problem, which has potentially allowed an untold number of drunk drivers to walk.

The judge in this case, Justice Peter Nicholas Bourque, didn't mince words in his decision either.

"I believe that the intentional destruction of evidence which has been found time after time to be of relevance to the issues in impaired driving cases, among others, is a form of prosecutorial negligence," Bourque said.



ERNEST DOROSZUK/SUN MEDIA

Tow-truck driver Pasquale Monaco holds son Sal, 4, while at Monaco's lawyer's office. Monaco's impaired driving charge was tossed because of a police blunder.

In their testimony, the two officers who stopped Monaco on Jan. 22, 2006, alleged they decided to pull Monaco over after they spotted him running a red light in Markham.

Monaco was never charged with speeding or running a red light.

### Police claims

The officers alleged they attempted to pull Monaco over but he refused to stop at first. While they both admitted Monaco slowed down once their marked police car was behind him, they claimed he drove for another 600 metres before eventually pulling into his driveway and getting out of his vehicle.

The officers said Monaco was "wobbling back and forth" and they smelled alcohol on his breath, which led them to take him into custody.

However, the defendant told a starkly different story.

Monaco maintained he was on his way home from work and he had not been drink-

ing that night. He claimed he didn't see the police lights or hear the sirens until after he pulled into his driveway. He also noted he is diabetic, saying his health issue may have accounted for his demeanour.

Monaco alleged the officers were rough with him and almost immediately placed him in handcuffs as his neighbours and distraught 4-year-old son, Sal, looked on. Monaco admitted he became extremely angry after that.

But he denied the officers' claims that he threatened to kill them while sitting in the back of the cruiser, allegations that led to Monaco also being charged with two counts of uttering death threats.

"I was repeating their badge numbers so I would remember them to be able to file a complaint later," Monaco said. "But I never threatened them."

Monaco was then driven to a police station, where he refused to provide a breath test that would have determined his blood-alcohol level.

He claimed he only refused to cooperate because he was upset with how he was being treated and his wrists were bleeding from the handcuffs.

Refusing to provide a breath sample prompted an automatic 90-day suspension of Monaco's driver's licence, which was just the beginning of his financial woes.

That charge was eventually dropped when police could not provide video of Monaco refusing to take a breath test.

In his decision, Bourque repeatedly stated he is more inclined to believe the officers' version of the events over Monaco's, including their recollection of the threats and their description of his state of

impairment.

But in the end, the judge cleared Monaco on the two counts of threatening death because he felt the comments were not meant to intimidate the officers.

The judge also tossed the charge for refusing to stop, explaining that by the officers' own admissions, Monaco slowed down and he drove to his home rather than attempting to flee.

### No evasive action

"These are not the actions of a driver who is trying to evade the police officers," he ruled.

And without the video, Bourque said he had to dismiss the impaired driving charge.

Defence lawyer David Costa applauded the judge's decision and said it's quite obvious by Justice Bourque's comments that he was upset over the waste of court resources the 60-day recycling policy has caused.

"You are warned as you are

walked through the police station that you are being recorded by surveillance cameras, but when the time comes to go to court you are told the tape is unavailable," Costa said. "It makes no sense."

Monaco also paid legal fees; had to take time off work to attend court over and over again; and he claimed he's lost business since being charged.

"It seems like the procedure is punishment," Costa said.

"And there is an understated after-effect when you are acquitted," he added. "There's no sirens, there's no brightly coloured cars around you and there's no ticker-tape parade."

Brendan Crawley, spokesman for the Attorney General's Office, said he could not comment on the case during the appeal period. He would not say if the Crown planned to appeal the decision.

Police Chief Armand La Barge defended the arresting officers, saying they acted appropriately.



LA BARGE  
Defends cops

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Pasquale Monaco

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