

Appeal rests on driver's fear of police

Lawyer says man reminded of blacks killed by officers

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When Derek Thomas stole a car and killed an innocent motorist in the ensuing police chase, a unique defence that could have kept him out of jail wasn't heard by the jury that convicted him.

That's the contention of Thomas' lawyer, David Midanik, who yesterday filed a motion with the Ontario Court of Appeal seeking to overturn the guilty verdict of criminal negligence causing death.

Midanik's chief reason for the appeal centres on what is

called the defence of duress. Thomas is a black man who said he feared for his life from his police pursuers and was ever mindful that more than 20 people of colour have been shot and killed, or seriously wounded, by officers from the Toronto, York and Peel police forces during the past two decades.

Midanik had originally planned to subpoena each of the officers who have been involved in police shootings dating back to 1978, and had prepared a list of such incidents.

But he later dropped that strategy, deciding he wanted to subpoena expert witnesses who would testify about the fears of police that prey on the minds of some black people, including Thomas.

The arguments were heard

in the absence of the jury, but Mr. Justice Peter Jarvis rejected the bid, ruling there was "no evidence of violent intentions" of the officers chasing Thomas along The Queensway in September, 1998.

Thomas had stolen a car in Mississauga and was driving to Toronto to see his girlfriend when a cruiser spotted the vehicle, his trial was told.

He drove east along The Queensway, going through green lights, with a cruiser in close pursuit.

But Peel Region police Constable Michael Trauzzi called off the chase when he spotted a red light ahead at Islington Ave., according to testimony from the Superior Court of Justice trial.

Paul Cabral was heading south on Islington through the

intersection at The Queensway, when Thomas' car rammed his van at about 120 km/h early on Sept. 19.

The van exploded. Cabral was hurled out from the force of the collision and killed.

Last month, Thomas was sentenced to seven years in jail.

Cabral, 36, a father of one who worked in a meat-processing plant, had been out lining up a second job. His wife was pregnant with their second child, born the day after her father's funeral.

Thomas, 38, has been in trouble with the law since he was 16. His record includes robbery, theft, assaulting a police officer, drug-dealing and carrying prohibited weapons.

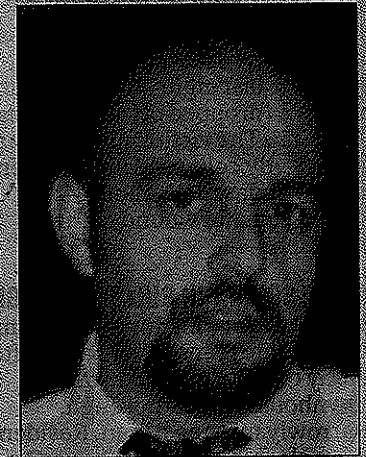
In ruling against Midanik's motion during the trial, Jarvis said, "I am not satisfied that

the wrongful act was the only alternative open to the individual. There was nothing to indicate that his life was in danger."

The judge went on to say, "Mr. Thomas did, in fact, have a choice. He could have stopped and surrendered to the police. Mr. Cabral was an innocent victim of circumstances beyond his control."

Before a person can be excused for committing a crime while fearing for his life, "the threats must be real," Jarvis said, adding, "A mere fear does not constitute duress."

"It is clear from the evidence that at no time during the events was there a threat of death (against Thomas) or serious bodily injury. It is clear a safe alternative was pulling over and surrendering to the



VICTIM PAUL CABRAL

police." In his notice, Midanik states, "The learned trial judge erred in law in not allowing the appellant to call his defence of duress."