

Const. James Forcillo appealing attempted murder conviction in fatal shooting of Sammy Yatim

Forcillo will stay in jail tonight as judge considers arguments; court reconvenes Friday for bail decision

By Andrew Lupton, [CBC News](#) Posted: Jul 27, 2016 9:20 PM ET Last Updated: Jul 28, 2016 8:38 PM ET

A lawyer for Toronto Const. James Forcillo appeared in a Toronto courtroom Thursday afternoon to outline his case for appealing the officer's conviction for the attempted murder of Sammy Yatim, the 18-year-old shot dead aboard a streetcar in July 2013.

Forcillo was sentenced to six years in prison earlier today.

Arguing before Justice Eileen E. Gillese in the Court of Appeal for Ontario, Michael Lacy described the conviction as "unprecedented."

He also sought bail for Forcillo, describing him as an ideal candidate who poses no risk to the community, while arguing this was not a case of "gratuitous" murder.

Gillese said she did not want to rush a decision and that court will reconvene on Friday at 9 a.m. Forcillo will remain in custody overnight.

- [Const. James Forcillo sentence: Read the full document](#)
- [Yatim family lawyers deny Forcillo had 'trial by YouTube'](#)
- [Sammy Yatim's parents say son received justice after sentencing, but nothing will bring him back](#)

Lacy laid out nine grounds for appeal, including that the trial judge erred in not introducing circumstantial evidence pertaining to Yatim's state of mind at the time of the shooting, and in prohibiting expert evidence on the phenomenon of "suicide by cop."

He also said the court needs to consider the "proverbial elephant in the room" — namely that the proceedings are taking place in a "fishbowl" because of the high level of public interest in the outcome. But this should not in any way affect the proceedings themselves, Lacy said.

6-year sentence

Ontario Superior Court Justice Edward Then opened the officer's sentencing hearing Thursday morning by saying he had "no choice" but to sentence Forcillo to at least the five-year minimum for attempted murder.

Forcillo appeared stone-faced as the judge read his sentence. His wife, Irina, sat with her eyes closed as Forcillo was handcuffed and led away to a holding cell at the University Avenue courthouse.

The decision rejects Forcillo's constitutional challenge of the mandatory minimum five-year sentence. His lawyers had argued the minimum should not apply to a police officer on duty.

In January, a jury acquitted Forcillo of second-degree murder, but he was convicted of attempted murder for continuing to shoot at Yatim while the teenager was lying on the floor of an empty streetcar. Police were called after it was reported Yatim had exposed himself to women on the streetcar and drew a switchblade, which Forcillo repeatedly asked him to drop.

- [James Forcillo guilty of attempted murder in streetcar shooting of Sammy Yatim](#)
- [Forcillo attempted murder verdict explained](#)

Forcillo fired two separate volleys — three shots and then six shots — at Yatim, who had consumed ecstasy before boarding the streetcar.

The acquittal was tied to the first volley of shots, but the conviction on attempted murder was linked to the second volley, fired while Yatim was on the ground. Thursday's sentencing decision means Justice Then effectively believes that Yatim was only a potential threat when the second volley of shots were fired, not an imminent threat.

Moral blameworthiness

The judge said all the shots in the second volley were "unreasonable, unnecessary and excessive," and contrary to Forcillo's police training.

He rejected the defence's arguments that Forcillo was justified in firing the second set of shots because the officer mistakenly believed Yatim was trying to get up. Then ruled that wasn't supported by evidence presented during Forcillo's trial.

Then said the sentence must match the crime, and that attempted murder is "one of the most serious offences known to law." He said Forcillo has a "high level" of moral blameworthiness for firing the second volley.

Forcillo's defence team had asked the court for a sentence of house arrest. The Crown had asked for an eight- to 10-year prison sentence, which Then said was "not reasonable."

'Failed in his duty'

Then said police officers must be held to a higher standard than members of the public and added that Forcillo should have used de-escalation or communication techniques to get Yatim to surrender his weapon. He said Forcillo "failed in his duty to Mr. Yatim" when he fired the second volley of shots.

Outside the court, Yatim's mother Sahar Bahadi thanked the judge for his "consideration in the sentence" and said the family will now focus on "putting the pieces back together."

"I miss my son dearly, but I'm pleased that today he received justice," she said. "Sammy will never be coming back to us, but I want him back."

Bahadi said she's angry Forcillo "didn't show any kind of remorse" for his crime.

Forcillo's lawyer Peter Brauti said the process of appealing the sentencing decision — a separate undertaking from appealing the conviction itself — is already underway.

"We're disappointed that the legislation wasn't struck down and he received a sentence of six years. But the judge called it how he saw it. It's not how we saw the nature of the offence," he said.

Forcillo has also been suspended without pay.

CBC's Michelle Cheung is gathering reaction to the sentencing. Follow her blog for up-to-the minute updates.

You can also follow the blog [here](#).