

Police 'on notice' after sentencing of Const. James Forcillo

A judge sent a message to police Thursday while sentencing Const. James Forcillo: police officers must only use lethal force as a last resort.



Defence lawyer Peter Brauti and Sammy Yatim's parents react to Const. James Forcillo's six year sentence in the fatal streetcar shooting of the 18-year-old.

By **WENDY GILLIS** News reporter
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Toronto police Const. James Forcillo “failed to follow his training.” The shots he fired after Sammy Yatim was already on the ground were “unreasonable, unnecessary and excessive.” The officer misused his firearm — despite “crystal clear” training.

With his strongly worded denunciation of the conduct that led to Forcillo's conviction for attempted murder in Yatim's death, Ontario Court Justice Edward Then sent a crystal clear message of his own in a Toronto courtroom Thursday: police officers must only use lethal force as a last resort.

It is a point that has been made ad nauseam, over decades, in countless coroner's inquests, presentations to police boards and reviews of use of force. But legal and policing experts say the comments made in Then's sentencing decision — which criticized Forcillo for incorrectly assessing the threat Yatim posed, failing to attempt to verbally de-escalate, and more — send a powerful signal.

“All police services in Canada are on notice that there will be real consequences in the criminal justice system for inadequate training or failing to follow training,” said David Tanovich, a professor of law at the University of Windsor. “It is no longer business as usual in our criminal justice system for police officers.”

The timing of Then's sentencing decision — the judge sent Forcillo to jail for six years, a ruling now being appealed by Forcillo's lawyers — also gives it power, coming at a time when public trust in policing is low, said Akwasi Owusu-Bempah, an associate professor at the University of Toronto who studies policing and criminal justice.

“It was a strong decision, and that's exactly what's needed right now,” he said. “To ensure trust in the system, officers have to be held accountable.”



Const. James Forcillo is taken into custody Thursday. (MARIANNE BOUCHER COURTESY CITYNEWS)

Forcillo, 33, shot and killed Sammy Yatim while the 18-year-old was alone on a Toronto streetcar, armed with a small knife. The officer fired his gun in two distinct bursts: in the first round he shot three times, then five seconds later he shot six more times, as Yatim lay on the floor of the streetcar.

In January, a jury acquitted Forcillo of second-degree murder for the first volley — when the fatal shot was fired, the autopsy showed — but convicted Forcillo of attempted murder for the second set of shots.

During the four-month trial, court heard from Toronto police Deputy Chief Mike Federico, who detailed what officers are taught when encountering people armed with weapons, particularly those in mental or emotional distress.

Federico said officers learn the “guiding principle is the preservation of life,” and that in order for use of lethal force to be justified, the threat posed must be imminent, not potential.

In his lengthy decision, Then detailed the ways Forcillo failed to follow his training — including by misinterpreting the threat Yatim posed. Forcillo testified that he shot the second volley because Yatim was still armed with a knife, but Then ruled that, according to the training Forcillo received, the mere presence of the knife constitutes only a potential threat.

Then also criticized Forcillo for failing to communicate with Yatim before he shot the second volley.

“There was ample opportunity for officer Forcillo to communicate with Mr. Yatim by engaging in verbal de-escalation or to issue commands in accordance with his training in order to allow Mr. Yatim to relinquish the knife. No such opportunity was afforded to Mr. Yatim.”

Calls for police to use verbal de-escalation — attempts to calm an agitated person by speaking calmly to them — have been made at repeated coroner’s inquests for decades. Mental health advocates say the tactic can be particularly effective when the person is experiencing a mental health crisis.



Warning: Graphic content. Toronto police officer James Forcillo found not guilty of second-degree murder and manslaughter after firing two volleys of shots at knife-wielding 18-year-old Sammy Yatim in empty streetcar.

Terry Coleman, a police training expert and a former Moose Jaw police chief, said he hopes the message about the importance of police officers using alternatives to lethal force whenever possible resonates even more coming from a judge.

"What I think, and I hope, it will do is get the attention of police officers — not just across this country but farther yet — that you've got to be careful," Coleman said.

But he added that major changes are already being made by police services across Canada, including in Toronto, which now provides additional training on verbal de-escalation and alternatives to use of force.

Those changes were made as a result of a report by former Supreme Court Justice Frank Iacobucci, who was commissioned to review Toronto police interactions with people in crisis following Yatim's death.

Once the appeal process is done, Coleman said its possible police services may create a training scenario that is similar to the circumstances surrounding Yatim's death — specifically, where a scenario where someone is armed with a knife, but injured and lying on their back. He has yet to see a police force use this scenario.

Peter Rosenthal, a Toronto criminal lawyer who has represented many families of people killed by police, said he hopes Then's sentencing decision leads to more officers making attempts to de-escalate.

But he also believes the conviction sends a mixed message, because he doesn't believe Forcillo was justified in firing at Yatim at all.

"I hope (Then's message) will be powerful, but it's undercut by the fact that it should have applied to the first three shots, too," he said.

Five powerful quotes from Justice Then's sentencing decision

1. Ontario Court Justice Edward Then: "In my view, the precipitous shooting of Mr. Yatim contrary to Officer Forcillo's training constitutes a fundamental failure to understand his duty to preserve all life and not just his own."

"For this judge to remind us all of the role of the police in protecting the public, not just themselves, is . . . a breakthrough," said Pat Capponi, chair of the Toronto police board's mental health committee.

2. Then: "When a police officer has committed a serious crime of violence by breaking the law which the officer is sworn to uphold it is the duty of the court to firmly denounce that conduct in an effort to repair and to affirm the trust that must exist between the community and the police to whom we entrust the use of lethal weapons within the limits prescribed by the criminal law."

"The judge is saying that because of the trust given (to police officers) and the power allowed them by our society, police must be held to a high standard. And that this case is important to deter this from happening again," Jennifer Chambers, the co-ordinator of a mental health advocacy group, the Centre for Addiction and Mental Health's Empowerment Council.

3. Then: "His training was crystal clear that the firearm be used only as a last resort to repel an imminent threat."

"It's profoundly important that a justice has commented on this," said Neil Price, a Toronto community educator and author of a recent report on Toronto police carding in the Jane and Finch area. "What he said is that, in essence, the right training is there, but we have a failure to comply with that training."

4. Then: "He failed to follow his training in adopting available alternatives to lethal force such as de-escalation or engaging in communication so as to prompt Mr. Yatim to surrender his weapon."

This "is a personal indictment of his failings as an officer," said Price, in that Forcillo's ultimate duty is to do whatever he could to avoid using lethal force, including an alternative such as verbal communication. "This is a comment on Forcillo in that instance failing to adequately measure the threat, to measure his alternatives."

5. Then: "Officer Forcillo knew from his training that he was not allowed to shoot in circumstances of a potential threat. It follows that in my view the shooting of Mr. Yatim was unnecessary and unreasonable and excessive from the outset of the second volley."

Price said it's powerful that Then makes this proclamation, because the view of many in the general public what that the six additional shots were unjustified. "With that second volley, you had such woeful disregard for Yatim's humanity."

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Sammy Yatim-James Forcillo timeline

July 27, 2013



Shooting

Just after midnight, Sammy Yatim, 18, is shot dead on an empty Dundas St. streetcar by Const. James Forcillo. Police arrived moments after Yatim exposed himself and brandished a small knife, sending passengers fleeing. In a bystander video shot after police arrived, Forcillo can be seen firing his gun; nine shots are heard. A second officer then Tasers Yatim. The Special Investigation Unit steps in to probe Yatim's death.