

Appeal of Forcillo conviction in Yatim death may hinge on pause in shooting: experts **Lawyers say appeal will look at decision by Crown to divide case into two charges**

By Muriel Draaisma, CBC News Posted: Aug 01, 2016 2:11 PM ET Last Updated: Aug 01, 2016 2:11 PM ET



Toronto Police Const. James Forcillo has been granted bail while he appeals his attempted murder conviction in the shooting death of Sammy Yatim. The appeal judge, in making the ruling on bail, said Forcillo poses no threat to the public. (Michelle Siu/Canadian Press)

Legal experts say the appeal of the attempted murder conviction of Toronto Police Const. James Forcillo in the fatal shooting of Sammy Yatim will focus on whether the decision to divide the case into two charges led to an inconsistent verdict.

Toronto criminal defence lawyer Enzo Rondinelli said the appeal is significant legally because the shooting conviction poses complex legal issues that are precedent-setting.

A jury in January convicted Forcillo of attempted murder but acquitted him of second-degree murder. Forcillo, currently out on bail but suspended from the Toronto Police Service without pay, was sentenced last week to six years in prison.



Toronto criminal defence lawyer Enzo Rondinelli says the appeal of the attempted murder conviction of Toronto Police Const. James Forcillo hinges on a decision by the Crown to divide the case into two charges and whether the conviction by the jury amounts to an inconsistent verdict. "Unfortunately, it's not a law school exam," he said. (CBC)

Forcillo fired two separate volleys at Yatim, who was 18, while the teen was on an empty streetcar three years ago. Forcillo fired three shots, waited six seconds, then fired another six shots. 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.

"There are going to be many legal documents prepared and many hours in a courtroom discussing and arguing over six seconds," Rondinelli said.

"When you look at the issue that the Court of Appeal has to deal with, at least in my opinion, it has substantial merit. Not in the sense of that it may mean the officer is going to win the appeal, but the legal issue itself is a really, really complex one."

Officer's actions considered two 'transactions'

Rondinelli said the case is complex because it is high-profile, it includes a video, it involves a police officer on duty, it is about an officer versus a citizen who was killed, and the actions of the officer were considered to be two "transactions," as opposed to one continuous action.

He noted that Forcillo was convicted of attempted murder of Yatim, but Yatim was already dead when Forcillo fired the second set of shots.



Toronto criminal defence lawyer Maija Martin says the appeal of the attempted murder conviction of Toronto Police Const. James Forcillo has implications for police conduct and sanctions officers may face. She says the case is ground-breaking. (CBC)

"The question still is: Can you have a murder charge roped in with an attempted murder charge, and have someone convicted of attempted murder of someone who was already dead seconds before that? Wrap your mind around that. Unfortunately, it's not a law school exam. This is real life. As we have seen, history repeats itself. And this case will happen again," he said.

"This case is very important for trial by video, which is coming."

Implications for future cases

Randinelli said the appeal has implications for future cases in which actions of the accused are divided into two separate transactions.

"The court of appeal will have try to to establish some guidelines, not only for Crowns looking to prosecute these cases, and how the charges are laid or put into an indictment, but also for judges, who will ultimately have to instruct a jury on exactly what this means and the decisions they are going to have to make. That's a pretty tough job in this case. It will be interesting to see how it comes out."

Toronto criminal defence lawyer Maija Martin said the six seconds between the first and second volley of shots will be key to the appeal and the appeal court will have to examine how the actions of Forcillo were broken down: the first three shots, a pause of six seconds, the last six shots. She said the single transaction issue is a legal issue, not an issue of credibility or question of fact. The facts in the case are clear, she said.



Sammy Yatim's mother Sahar Bahadi embraces her daughter Sarah at a Toronto courthouse after the sentencing of Const. James Forcillo in Toronto on Thursday, July 28, 2016. (Michelle Siu/Canadian Press)

"If that's all one single transaction, you can't be acquitted and convicted at the same time. That's essentially what that the ground of appeal is saying," she said.

Martin said the case and the appeal are also significant for police officers in terms of how they govern their conduct and sanctions they could face.

"The case in itself is ground-breaking. It's the first time that a police officer has been convicted of attempted murder and sentenced to six years in jail."

With files from Michelle Cheung