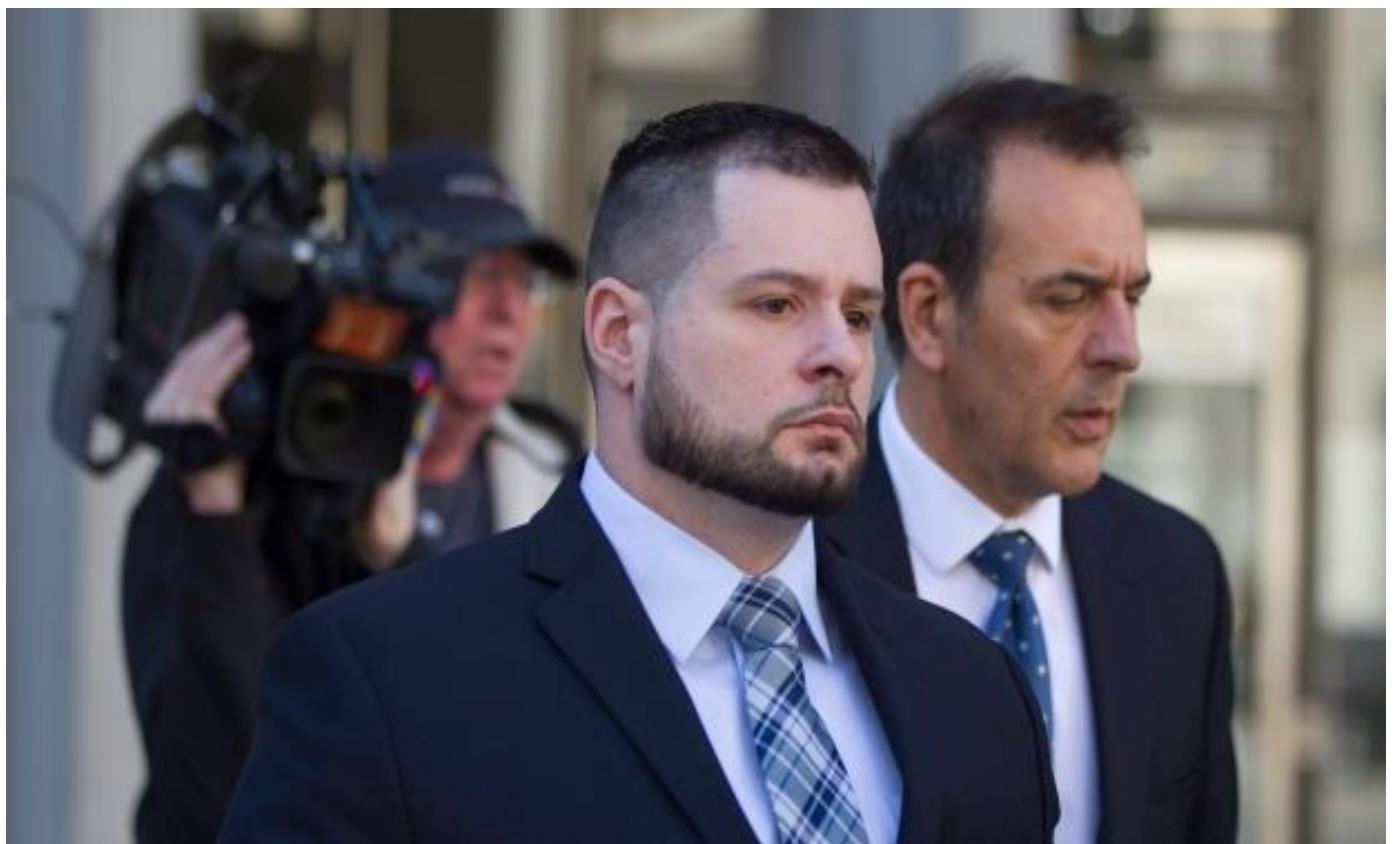


# Toronto police Const. James Forcillo's appeal set to begin, new evidence may be coming

Appeal will be held in two phases, with the first hearing this week

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Const. James Forcillo was found guilty of attempted murder in the death of Sammy Yatim on an empty street car in July 2013. (Chris Young/The Canadian Press)

Toronto police Const. James Forcillo's appeal begins Monday, a process that will include a hearing to discuss new evidence that Forcillo's lawyers argue could undermine testimony from his trial.

Forcillo, convicted of attempted murder for the 2013 shooting of 18-year-old Sammy Yatim on a Toronto streetcar, had his bail extended last week just days before he was set to turn himself in. He will remain out of prison, with strict conditions, until April 2018 or until his lawyers present the new evidence.

That could come early next year, as the appeal is broken into two stages. According to documents filed in court, stage one will see Forcillo's appeal lawyers push for an acquittal, new trial or a suspended sentence. Forcillo was sentenced to a six-year prison term by the trial judge in 2016.

The second portion of the appeal will examine the fresh evidence that, according to his legal team, shows Forcillo was under so much stress during the interaction that he sincerely perceived a greater threat than video evidence suggests.

Key here is that Forcillo fired on Yatim nine times, in two spates separated by 5.5 seconds. The fatal shot was among the first three bullets and caused Yatim to fall to the floor of the streetcar. Then, Forcillo testified, he stopped to assess the situation as his training taught him.

Within those 5.5 seconds of assessment, Forcillo said he thought Yatim raised his torso as if to signal he was trying to get up, and so Forcillo fired six more bullets. The trial judge concluded that video evidence suggested Yatim made no such movement.

In fact, the trial heard, Yatim was paralyzed and dying after the first volley.

Former Toronto police deputy chief Mike Federico testified for the Crown that the training Forcillo underwent as a police officer should have acted as "stress inoculation." Meanwhile, a psychologist called by the defence suggested that extremely high stress situations can affect a person's perceptions moment to moment.

## **High bar for fresh evidence**

Forcillo's appeal lawyers Michael Lacy and Joseph Wilkinson said the new evidence "assists in resolving the issue of the extent to which the training provided by the Toronto Police Service can mitigate the effects of stress (including perceptual distortions), which was contentious."

Part of this evidence includes a study on the physiological effects of high-stress situations on members of Toronto police's Emergency Task Force.

Fresh evidence is not commonly presented during the appeal process. For this to happen, the evidence could not have been available at the time of trial and would have possibly influenced the verdict.

Forcillo remains suspended without pay until the conclusion of his legal proceedings.