

# Court of Appeal upholds conviction for Toronto cop who shot Sammy Yatim

The panel of judges unanimously dismissed Const. James Forcillo's appeal of both his conviction in the 2013 shooting death and his six-year prison sentence.

Const. James Forcillo, left, never made an "expression of remorse" after he fatally shot Sammy Yatim, right, the appeal court judges noted in their ruling. (THE CANADIAN PRESS/FACEBOOK)

By [WENDY GILLIS](#) Crime Reporter  
Mon., April 30, 2018

Nearly five years after Sammy Yatim was shot and killed on a streetcar by Toronto police Const. James Forcillo, Ontario's highest court has upheld his [2016 conviction of attempted murder](#).

In a unanimous decision released Monday, the panel of Chief Justice of Ontario George Strathy, Justice David Doherty and Justice Gary Trotter dismissed Forcillo's appeal of both his conviction in the 2013 shooting death and [the six-year jail sentence](#) handed down by trial judge Justice Edward Then.

The sentence — which is one year more than the mandatory minimum jail sentence for attempted murder with a firearm — "was fit," the panel ruled, noting that Forcillo never made an "expression of remorse."

His lawyers now have the option to appeal the decision to the Supreme Court of Canada, but would have to show the issue is of national importance.

Yatim, 18, died in a hail of Forcillo's bullets on July 27, 2013, moments after exposing himself and wielding a small knife on the busy Dundas West streetcar. Within [less than a minute](#) of arriving on scene, Forcillo fired nine shots at Yatim in two distinct volleys.

The officer fired three bullets in the first, including the fatal shot to Yatim's heart. He then fired six more, as Yatim lay on the floor near the streetcar's front doors, paralyzed and dying.

The separation of the two volleys was vital to Forcillo's conviction and formed the central basis for his appeal. A jury found Forcillo not guilty of second-degree murder in connection to the first volley, but convicted him of attempted murder for the second.

Forcillo's appeal lawyers argued the shooting should have [never been divided into distinct charges](#), because the shooting was one continuous event.

But the panel judges — two of whom, Doherty and Trotter, are considered to be the top criminal law judges on the of Court of Appeal — disagreed, while noting that the “combination of verdicts returned by the jury presents an unusual, if not unique, result.”

“In effect, (Forcillo) has been convicted of attempting to murder the very same person he was found to have justifiably shot just 5.5 seconds earlier.”

But that conviction was rightly open to the jury to make, the panel ruled. There were “obvious differences” between the circumstances of when Forcillo fired the first volley of shots and when he unleashed the second — including that, by the second, Yatim had been hit and was laying prone on his back.

“Those differences could reasonably have led the jury to come to different conclusions as to what (Forcillo) perceived when he opened fire,” reads the decision.

When Yatim lay on his back, Forcillo said “absolutely nothing” to him before the second volley, the panel said.

“(Forcillo) knew from his training that Mr. Yatim did not pose an imminent threat to anyone merely by re-arming himself with a knife. He knew that he was not entitled to kill Mr. Yatim in these circumstances, yet he proceeded to fire six additional rounds fixed with that lethal intent,” the decision states.

Forcillo’s lawyers had also made a series of other arguments before the Court of Appeal, including that Forcillo’s six-year sentence was unconstitutional. The argument was made on the basis that mandatory minimum sentence of five years for attempted murder with a firearm was never intended to be applied to a police officer who was armed by virtue of his employment.

The Court of Appeal called that argument “faulty,” saying, in part, that a police officers obligation to carry firearms “does not preclude their criminal misuse in excessive force scenarios.”

Forcillo’s lawyers also requested that the court consider [allowing fresh evidence](#) to be heard at a new trial, citing a recent study examining Toronto police officers’ stress response in dangerous situations. The lawyers said the study may have helped the jury better understand Forcillo’s perception that Yatim was re-arming himself and rising up from the floor immediately before he shot the second volley of bullets.

The fresh evidence application was considered by the court but dismissed, because it couldn’t have reasonably affected the verdict.

Forcillo had been granted [bail pending today’s appeal](#) decision, but is behind bars after being charged late last year with breaching his bail conditions. He was taken into custody after being found at his new fiancée’s apartment, when he should have been at home.

His bail was revoked and he has since been [charged with perjury](#) and attempting to obstruct justice. He is currently suspended without pay from the Toronto police.