

THE DEATH OF SAMMY YATIM AND THE TRIAL OF JAMES FORCILLO

Introduction

In this resource you will learn about the death of Sammy Yatim and the criminal trial of Constable James Forcillo, the police officer who killed him. At trial, a jury found Constable Forcillo guilty of attempted murder, but not guilty of second-degree murder. These materials will help you to understand this unusual verdict.

Facts

These events were captured by on-board cameras on the streetcar, and by a passerby who recorded the interaction between police and Mr. Yatim with his cell phone camera.

A little before midnight on July 26, 2013, 18-year-old Sammy Yatim boarded a streetcar heading westbound on Dundas Street West in Toronto. He sat in the back of the streetcar. Blood tests would later show that he had significant levels of

ecstasy (MMDA) as well as trace levels of cocaine and THC (the active ingredient in cannabis) in his system.

Shortly thereafter, Mr. Yatim unzipped his pants and exposed his genitals. He also lunged at a female passenger sitting nearby with a small knife. She was not hurt, but was very scared, and screamed. Her screams set off a state of panic in the other passengers, who surged forward trying to exit the streetcar. As the group moved toward the front of the vehicle, Mr. Yatim followed slowly, still holding the knife in one hand and his genitals in the other.

The streetcar driver stopped the vehicle, opened the doors, and the passengers exited. None were hurt. The driver remained on the streetcar until everyone else was off and then left. He returned shortly after to try to de-escalate the situation. He and Mr. Yatim exchanged words calmly, but ultimately the driver

also feared for his safety and abandoned the streetcar.

In the meantime, police had responded to a 911 report of the incident and were on the scene. The officers did not know at this time what specifically had happened, nor that Mr. Yatim was intoxicated. They only knew that a man on a streetcar had threatened passengers with a knife. They did not know if there was anyone else remaining on the streetcar.

Several officers confronted Mr. Yatim at the front doors of the streetcar, where he was standing with the knife. There was a tense verbal exchange between Mr. Yatim and Constable James Forcillo, who had his gun drawn and aimed at Mr. Yatim. Constable Forcillo repeatedly ordered Mr. Yatim to drop the knife and each time, he said that he would not. Constable Forcillo also told Mr. Yatim that if he moved forward, he would shoot.

Less than a minute later, Mr. Yatim moved backward, further into the streetcar, and then forward again to where he had been previously. From this position, he made a slight movement forward, and

Constable Forcillo shot him three times. These shots struck Mr. Yatim in the spine, heart, and arm and instantly knocked him to the floor of the streetcar. After a pause of about five seconds, Constable Forcillo shot six more times. Five of these shots hit Mr. Yatim in his abdomen and groin, and the sixth hit the streetcar stairs. A few moments later, another police officer used his Taser on Mr. Yatim as he lay on the floor of the streetcar.

Mr. Yatim was transported by ambulance to a nearby hospital where he was pronounced dead due to multiple gunshots.

Many Torontonians were outraged and demonstrated in public against excessive use of force by police. On August 19, 2013, Constable Forcillo was charged with second-degree murder. In June 2014, the Attorney General's office added a second charge of attempted murder against him. Many commentators were confused about how a person could be charged with attempting to kill someone who had, in fact, died. The brief explanation is that the second-degree murder charge

was related to the first three shots that were fired while the charge of attempted murder was related to the six shots that came afterward.

The Law

The *Criminal Code of Canada* sets out the legal definition of murder in Canada. It states that killing a person is murder when a person who causes the death of a human being:

1. meant to cause the death of the other person; or
2. meant to cause injury that s/he knows is likely to cause death, and is reckless as to whether death will result¹

This is true whether the charge is first-degree or second-degree murder. However, there is a significant difference between the punishments for these offences. While both carry a minimum sentence of life imprisonment, people convicted of first-degree murder are only eligible for parole after twenty-five years, while people convicted of second-degree

murder may be eligible for parole after serving ten years of their sentence.²

In the *Criminal Code* the charge of attempted murder uses the same definition of murder as is used for first and second-degree murder. In other words, a person is guilty of attempted murder if their actions, by any means, are found to have tried to murder a person but have failed to do so.³ If found guilty of attempted murder using a firearm, the minimum sentence is four years in prison.⁴

For all of these offences, the minimum sentences are mandatory. This means that by law, they cannot be sentenced to a punishment that is less severe than what the law specifies.

Because they may be required to use deadly force in order to do their job, the law makes some exceptions for police officers. The *Criminal Code* clarifies that a police officer may be justified in using deadly force in while making an arrest, if that officer has a reasonable belief that this amount of force is necessary for

¹ *Criminal Code of Canada*, RSC 1985, c C-45, s 229(a). ² *Ibid*, s 745 (c). ³ *Ibid*, s 239(1) ⁴ *Ibid*, s 239(1)(a1). ⁵ *Ibid*, s 25(4).

protecting themselves or another person from serious injury or death.⁵

Trial and Verdict

Constable Forcillo's trial was held at the Superior Court of Justice in Toronto during the fall of 2015 and the early winter of 2016. At trial, Constable Forcillo plead not guilty to all the charges and argued that he was justified in his shooting of Mr. Yatim because he had a reasonable belief that Mr. Yatim posed a serious and immediate threat to either himself or another person. In the evidence put forward by the prosecution, the jury heard that Mr. Yatim was killed by the first three shots fired by Constable Forcillo. The second volley of shots did not cause or contribute to his death.

On January 26, 2016 a jury of eleven people found Constable Forcillo guilty of the attempted murder of Sammy Yatim. They found him not guilty of second degree murder and not guilty of manslaughter.⁶ Juries in Canada do not publish reasons for their decisions,

but given the wording of the law, it can be inferred that the jury found that Constable Forcillo's use of force was justified with respect to the first three shots, but not justified with respect to the second round of shots. In other words, even though Mr. Yatim was dead during the second shots, Constable Forcillo could not have known this and so should not have perceived him as an imminent threat to anyone. Therefore, with the second round of shots, Constable Forcillo was attempting to kill Mr. Yatim unlawfully.

What Happens Next?

Constable Forcillo is scheduled to be sentenced in May 2016. His lawyer, Peter Brauti, has stated that he intends to appeal the sentence on the grounds that the mandatory minimum sentence of four years jail time infringes Mr. Forcillo's constitutional right not to be subjected to any cruel and unusual punishment under s. 12 of the *Canadian Charter of Rights and Freedoms*.

⁶ Manslaughter is a separate offence from murder under the *Criminal Code of Canada*. Under some circumstances, judges and juries can find persons accused of murder guilty of this lesser offence without the accused being formally charged with it: see *Ibid*, s 232(1).

The family of Sammy Yatim has launched two civil law suits against Mr. Forcillo, the Toronto Police Service, and the former Chief of Toronto Police, Bill Blair. The family is seeking nearly \$15 million in damages for the wrongful death of their son, and is claiming damages for negligence, assault, battery, mental distress, malfeasance in public office legal costs, and other special and punitive damages.