

THE DEATH OF SAMMY YATIM AND THE TRIAL OF JAMES FORCILLO

Learning Objectives

- To raise students' awareness about the circumstances leading to the police shooting death of 18-year old Sammy Yatim.
- To clarify the legal issues and the verdict in the trial of the Toronto police officer who killed him, Constable James Forcillo.

- To provoke discussion about how police and the public should interact in stressful and dangerous situations.

WARNING: *The teaching and learning strategies for this resource involve watching raw videos of Mr. Yatim's death. Language and images are graphic.*

Teaching and Learning Strategies

1. Tell students that they will be learning about the Sammy Yatim case and the legal trial of the police officer who killed him. Many students may be familiar with elements of this story but others may not. Ask how many students have heard of this case and what they know about it. Focus student discussion on the events that took place on the streetcar, then ask how many students have seen video footage of the shooting. Summarize the key points from the discussion on a blackboard or smart board.

Suggested teacher prompts:

- Do you think the police often use force when making arrests?
- When is this ok? When is it not ok?
- What are some things that we know for sure about this case?

Materials

- Copies of the Student Handout portion of the resource (one per student)
- Smartboard or blackboard and appropriate writing tools
- Computer and data projector
- Preloaded videos (see below)
- Printed copies of news and web articles or hyperlinks (optional)
- Poster paper or Bristol board and markers or other materials suitable for creating a visual timeline (optional)



- How many people have seen videos from the night of the shooting?
- What did you think when you saw the video footage?

2. Ask students to move into pairs or small groups. Explain that they will be watching two videos: one taken from the sidewalk by a pedestrian who happened to be at the scene that night and one taken from inside the streetcar by a Toronto Transit Commission on-board camera.

Show the first video.

Video 1: <https://www.youtube.com/watch?v=IG6OTyJzAgg>.

Clarify that the voices heard are those of Sammy Yatim and Officer Forcillo. When it has finished, allow students a few minutes to think, discuss, and write down some responses in their pairs or small groups. Ask some students to share their reactions with the class.

Suggested teacher prompts:

- What is your initial reaction to this?
- How would you describe the situation before shots were fired?
- What is your impression of Sammy Yatim's demeanor?
- What is your impression of Officer Forcillo's demeanor?

Show the second and third videos.

Video 2: <http://www.theglobeandmail.com/news/news-video/video-toronto-officers-trial-sees-video-of-sammy-yatim-shooting/article26922407/>

Video 3: <https://www.youtube.com/watch?v=dx2iQnYMQfM>

Hold an open discussion, checking for understanding throughout. Clarify that a medical examination found that Mr. Yatim had the drugs ecstasy, cocaine, and THC, the active ingredient in cannabis, in his blood.

Suggested teacher prompts:

- Does what you have just seen change your impression of the events?
- Do you think the drugs in Mr. Yatim's system were influencing his behaviour?
- Was Mr. Yatim a threat to the people on the streetcar?
- Was Mr. Yatim a threat to the police officers or anyone else during the confrontation?
- What strategies did the police use to try to keep the situation calm?
- What other strategies could the police have used to keep the situation calm?
- Was any use of force necessary?
- Was this much force necessary?
- Do you think police are trained to deal with



people whose mental state is affected by drugs?

3. Distribute the *Student Handout*. Ask students to read Part A independently or have them take turns reading aloud to the group, pausing as necessary for questions and comments.

- Project Part B (The Law) on a screen or white board and read it together. Check for understanding. Highlight and explain the following: why there are exceptions for police officers; the role of the police officer's perception of a threat as justification; and the difference between the mandatory minimum sentences for each of the offences with which Constable Forcillo was charged. Clarify that at trial, Constable Forcillo plead not guilty by reason of justification. This meant that the prosecution had to prove that he was not justified in his use of deadly force with respect to either of the charges and either round of shots fired.

4. Many students may be aware of the verdict, but for the benefit of others who are not, clarify the jury's findings. At trial, the jury found Constable Forcillo guilty of attempted murder. It found him not guilty of second-degree murder or manslaughter.

Show the fourth video, in which defence lawyer James Miglin explains the verdict. Discuss the verdict and the legal explanation as a class.

Video 4: <https://www.youtube.com/watch?v=rJcd6hBdwKA>

Suggested teacher prompts:

- Do you agree that the first and second rounds of gunshots were two different events, or do you see them as a single event? Why?
- The charge on which Mr. Forcillo was ultimately found guilty was added by the Attorney General nearly a year after the initial murder charge was laid. Why do you think this charge was added? Do you think it was a wise strategy for the prosecution?
- The mandatory minimum sentence for second-degree murder is life imprisonment with a chance of parole after 10 years. The mandatory minimum sentence for attempted murder with a firearm is four years imprisonment. How might this gap in sentences have impacted the jury's thinking?
- Do you think the jury reached the right conclusion? Why? Can you think of one good argument against your opinion?
- Did the videos help you to understand what happened?
- How important was it that these videos were available? What do you think would have happened if there were no videos in this case?
- What could police have done differently that night?

Extension

- Have students work in small groups to create a timeline of events on chart paper or Bristol board. Ask them to identify at least seven crucial points in this story, mark them on the timeline, and share the reasons for their choices with the class.
- Follow the civil suits launched by Sammy Yatim's family, emphasizing the lower burden of proof in civil matters as opposed to criminal prosecutions.
- As of February 2016, Toronto Police Service is conducting a pilot project in which officers record significant interactions with the public using cameras mounted on their uniforms. Hold a class debate centred on whether the added transparency and accountability they offer outweighs the risks to privacy posed by having police film the public.
- These events prompted the Toronto Police Service to commission former Supreme Court Justice Frank Iacobucci to review and make recommendations for police interactions with the public. Investigate these recommendations and have students choose one and write a brief response about how it might have changed what happened between Sammy Yatim and the police.

Further/Suggested Reading

OJEN Resource – *Policing and Society* - <http://ojen.ca/resource/4088>

The James Forcillo Trial Verdict Explained - <https://jeffmanishen.wordpress.com/2016/01/26/the-james-forcillo-trial-explained/>

Attempted murder in Sammy Yatim's death? Why the jury may have compromised - <http://www.theglobeandmail.com/opinion/attempted-murder-in-sammy-yatims-death-why-the-jury-may-have-compromised/article28386171/>

At the heart of the Forcillo trial, a brave and thoughtful jury - <http://www.theglobeandmail.com/opinion/at-the-heart-of-the-forcillo-trial-a-brave-and-thoughtful-jury/article28401478>

Details of Iacobucci report implementation revealed by Toronto Police - <http://www.thestar.com/news/crime/2015/09/16/details-of-iacobucci-report-implementation-revealed-by-toronto-police.html>

Police Encounters with People in Crisis: An Independent Review Conducted by The Honourable Frank Iacobucci for Chief of Police William Blair, Toronto Police Service - https://www.torontopolice.on.ca/publications/files/reports/police_encounters_with_people_in_crisis_2014.pdf

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.