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Why did a Toronto officer get released on bail a day after his sentencing for shooting Sammy Yatim?



LAURA HENSLEY | July 29, 2016 3:55 PM ET
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Const. James Forcillo leaves a Toronto courthouse after a sentencing hearing on Wednesday May 18, 2016. Forcillo was charged with second-degree murder in Sammy Yatim's death

Craig Robertson

A court's decision to grant a disgraced Toronto police officer bail while he appeals his attempted murder conviction may outrage the public, but isn't an unusual move, legal experts say.

Const. James Forcillo, 33, was granted bail Friday after he was sentenced on Thursday to six years in prison for shooting 18-year-old Sammy Yatim on an empty streetcar in 2013. Ontario Court of Appeal Judge Eileen Gillese ruled that Forcillo poses no risk to the public, and there is no risk that he would commit further offences.

Criminal lawyer and Osgoode Hall law professor Boris Bytensky said that if someone isn't believed to be a public threat, bail decisions are made on whether or not the appeal appears to be "frivolous."

"If the appeal has apparent merit...or at least part of the appeal is arguable, then in most cases you're going to get bail pending appeal," Bytensky said. "The test really becomes one of considering the apparent strength of the appeal."



A photo of Sammy Yatim is held by one of the teen's friends at a Toronto courthouse after the sentencing of Const. James Forcillo in Toronto on Thursday, July 28, 2016

Michelle Siu / CP

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Forcillo was charged with second-degree murder for the first volley of three shots he fired at Yatim on July 27, 2013, which caused the Toronto teen's death, and attempted murder for firing another six. In January, Forcillo was acquitted of second-degree murder, but convicted of attempted murder.

At sentencing, Justice Edward Then said that in letting loose a second volley of shots on the teen, Forcillo committed an “egregious breach of trust” and his sentence must serve as notice to other police officers.

In Gillese's bail decision, the judge acknowledged that there has never been a case such as Forcillo's, and took the manner in which he was charged into consideration.

“There is strength to the Appellant's grounds of appeal related to whether the indictment improperly charged a single transaction as two counts and whether the verdicts are inconsistent. Having found this of sufficient weight, I need not express a view on the strength of the other main category of grounds of appeal,” Gillese wrote.



Sammy Yatim's mother Sahar Bahadi stands after speaking to the media at a Toronto courthouse after the sentencing of Const. James Forcillo in Toronto on Thursday, July 28, 2016

Michelle Siu / CP

Echoing this stance, Bytensky said the appeal will likely be based on the Crown's actions of dividing the case into two charges, which

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“They broke it down into murder for the first three shots and attempted for the last six. The whole e whether or not you should be allowed to categorize the first three seconds as one event, and the last pretty important legal question,” he said.

“And I’m not sure that it’s an easy answer.”

Yatim’s death caused public outrage in the city after a cellphone video of the shooting went viral. Th evidence” that what Forcillo said occurred on the streetcar that night did not actually happen.

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Forcillo did not mistakenly believe that Yatim was getting up after being struck with a first volley of bullets, as the officer testified in court, Then found. Instead, Forcillo based his decision to fire again entirely on the fact that Yatim had managed to recover his knife, he said.

Then said that under police training, that rationale alone would not justify shooting a suspect. The judge said that the second volley of shots was “not only contrary to (Forcillo’s) training, but unreasonable, unnecessary and excessive.”

While Forcillo’s status as a police officer may have initially granted him “exceptional treatment” when he was released from custody the same day he was arrested, Bytensky said, his bail “is absolutely not an example of two-tier justice at all.”

“If anything, in my view, the fact that he’s a police officer made this decision tougher,” he said.

“The judge not only had to consider all the other arguments that she did consider, she also had to consider this is in the backdrop of potential public outrage about police violence.”

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