

[Crime](#)LONG ISLAND

Court orders new trial in case over shooting of Kevin Callahan



Suffolk police Officer Thomas Wilson, who shot Kevin Callahan, leaves federal court in Central Islip in August 2014.

Photo Credit: James Carbone

A federal appeals court on Wednesday ordered a new trial in the civil suit over the controversial 2011 Suffolk police shooting of Kevin Callahan, an unarmed Selden man fatally shot three times in his home.

Officer Thomas Wilson, responding to a call about a person with a gun in Callahan's home, testified at trial that he became wedged in a door frame when

entering Callahan's bedroom and opened fire because he feared someone inside was grabbing his gun or was armed.

A divided 2nd U.S. Circuit Court of Appeals panel ruled that Central Islip U.S. District Judge Leonard Wexler erred by failing to tell jurors that deadly force was excessive unless the officer had probable cause to believe Callahan posed a significant threat of death.

Wexler, the panel said, told jurors that deadly force "may" be used if there was probable cause to fear death, but did not make it clear that probable cause was required rather than a jury's judgment that the officer's action was reasonable.

"Even though the jury was told that Officer Wilson would have been permitted to use deadly force if he had probable cause to believe that Callahan posed a significant threat of death or serious injury, our required charge is more demanding," wrote Judge Christopher Droney.

"Such probable cause," Droney added, "is the only situation in which Wilson was permitted to use deadly force, and the jury must be so instructed."

Droney and Judge Barrington Parker voted to order a new trial. Judge Reena Raggi, the third member of the panel, dissented, arguing that Wexler's instruction was adequate.

After the shooting Callahan's brother and mother sued, claiming that police used excessive force and were too slow to respond after the shooting. The jury found for the county on both claims, and the finding that officers were too slow to respond after the shooting wasn't challenged on appeal.



Kevin Callahan, who was unarmed, was killed inside his Selden home in 2011 after police responded to a call about a man with a gun. Photo Credit: File photo

Wilson said he started firing while he was wedged in the door, and then continued firing through the door as he fell backward. Callahan was shot twice in the back, and once in his chest area.

The 2nd Circuit did uphold Wexler on another controversial issue in the trial — his decision to exclude evidence that Wilson had twice previously fired his weapon on duty at dogs he perceived to be threatening him.

Callahan family lawyer Amy Marion said his brother, Christopher — who made the call that led police to come to the family’s home — cried when he got the news of the order for a new trial.

“He’s crying because he was moved, because this case is about the loss of a brother who is still dead,” she said. “He’s crying because he’s happy the Second Circuit saw fit to give us a new trial, and because the family will have another chance to achieve justice.”

Marion also said Wexler's instruction, which was debated at the time, had been critical to the outcome. "I feel that if that jury would have gotten the correct charge, it really would have made a difference in this case," she said.

Suffolk County Attorney Dennis Brown said the ruling was still under review, but the office is "leaning toward" seeking review of the 2d Circuit decision in the Supreme Court.