

# DAILY REPORT

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## Cobb jury acquits student who shot man in home

Man entered grad student's home and they struggled over gun before shooting, defense says

### KATHERYN HAYES TUCKER

A Cobb County jury acquitted a graduate student charged in the shooting of a man he said was an intruder in his apartment.

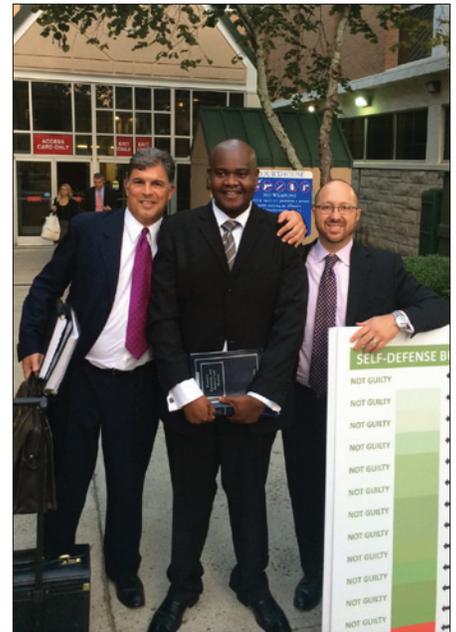
After hearing testimony for a week, the jury deliberated for three hours and 20 minutes before finding Maxwell Osaghae not guilty of all counts: aggravated assault, aggravated battery and possession of a firearm during commission of a crime, according to the defense attorneys.

“For my client, it meant the difference between prison and a Ph.D. program, which he started this week,” defense attorney Steven Berne said on Thursday after the Aug. 22 verdict. Berne tried the case with Lawrence Zimmerman. They said their

client claimed self-defense and defense of habitation.

Assistant District Attorney Lauryn Perry handled the trial for the state. She couldn't be reached for comment. District Attorney Vic Reynolds said his team decided to prosecute the case because the injuries were serious. “But the reality was, it was a defensible case,” Reynolds said. “It was a case that a jury needed to decide. The jury spoke and we live with the jury's verdict.” Reynolds added that he tells prosecutors, “We're not in the belt-notching business. We're here to serve justice.”

Zimmerman said the trial was “pretty wild,” with Cobb County Superior Court Judge A. Gregory Poole admonishing the alleged victim, Babs Kuku, several times to remain quiet.



JOHN DISNEY/DAILY REPORT

Lawrence Zimmerman was one of the defense attorneys for the graduate student.

The bailiff had to order Kuku to sit back down in the witness chair while he was on cross-examination by Berne.

Kuku's courtroom demeanor was crucial to the defense

because the trial came down to one man's word against another. Both men are from Nigeria. They met after moving here and had sold a car together by shipping it to Africa. They had a dispute over the profits, with Kuku alleging that Osaghae owned him more money, according to the defense attorneys.

Kuku testified that he entered Osaghae's apartment through an open door to talk when suddenly Osaghae gunned him down unprovoked.

Osaghae's account, according to Berne and Zimmerman, was that Kuku was outside his apartment yelling, "Maxwell, let me in. Give me my money."

The defense attorneys said their client testified that he opened the blinds to show he had a semi-automatic handgun, called a MAC 10 for Military Armament Corp. Model 10. Osaghae said he yelled, "Get away or I'll blast."

They said Osaghae thought Kuku had gone away, but then another visitor left the apartment without locking the door behind. Osaghae was in his kitchen cooking when he turned to see Kuku in the apartment. Osaghae said Kuku was charging at him, demanding money. Both reached for the gun,

which discharged in the struggle without hitting anyone. Then Osaghae wrestled the gun away from Kuku and shot him in the stomach.

Kuku ran out of the apartment and fell in the parking lot, the defense attorneys said. The defendant called 911 and reported he shot a man trying to rob him in his apartment. Police arrested Osaghae on the scene. He spent five months in jail before he was able to bond out.

Kuku required surgery and lost his spleen and part of his intestines, according to the indictment and the DA.

For the trial, Berne said he designed his cross-examination of the alleged victim to highlight Kuku's volatility, showing the jury how the defendant could have felt threatened.

"I knew his personality type," Berne said of Kuku.

Berne said he started by questioning Kuku about his criminal record involving bad checks. Kuku became defensive and stood up to face Berne while arguing back at him.

In closing, Zimmerman said he told the jury that if Kuku could be that threatening in a courtroom, where respect is demanded, imagine how much more threatening he would have

been when he entered Osaghae's apartment on the day of the shooting in August 2012.

While there were no witnesses to the shooting, several neighbors testified to hearing yelling before the gunshots, the defense attorneys said. One neighbor testified to seeing Kuku outside the apartment before the shooting and asking him to be quiet. Berne added, "They couldn't understand what was being said because it was in another language."

The defense lawyers said in voir dire, they asked potential jurors if they believed in the right to own guns and defend property. The jurors said yes. That became the theme of the trial.

The case is *State v. Osaghae*, No. 13-9-135-52.