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Abernathy to remain jailed without bond

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CHARLESTON — Jason A. Abernathy will continue to be jailed without bond as he awaits trial on a charge accusing him of beating a woman, a judge decided Tuesday.

A jury recently acquitted Abernathy of a separate drug offense, and that was the case in which he had been jailed without bond, Circuit Judge Gary Jacobs noted. However, the judge also said there was evidence in the case charging Abernathy with aggravated domestic battery that justified keeping him jailed.

"That finding does not change," Jacobs said.

Abernathy, 34, is accused of beating Gina Giberson at her home at 211 Fourth St. in Charleston on Oct. 16 to the point that she was comatose in an area hospital for about two weeks. In November, Jacobs revoked his bond in the then-pending drug case because he allegedly committed the new offense while out of jail on bond.

After a jury on April 28 found Abernathy not guilty of a methamphetamine possession charge, his attorneys filed motions asking that the no-bond requirement be lifted. On Tuesday, defense attorney Mark Wykoff argued that the acquittal "restored" Abernathy's eligibility to post bond in the domestic battery case.

"That put the defendant back in the position he was before," Wykoff said.

State's Attorney Steve Ferguson filed his own motion asking that the domestic battery case, in which \$7,500 had been needed for release, have no bond or that the amount be increased. He noted the evidence mentioned at earlier hearings, including that doctors said Giberson's injuries were too extensive to have been caused by a fall against a table, as Abernathy claimed.

In addition, Ferguson said newly received test results showed that Giberson's blood was on a baseball bat found in the car Abernathy used to take her to Sarah Bush Lincoln Health Center. Also, according to Ferguson, Giberson's father related that she's "very much afraid of (Abernathy) coming after her" if he were released.

Ferguson also mentioned that a prison sentence would be required for Abernathy if he's convicted because of his earlier criminal record, which included armed robbery and aggravated battery convictions, that sometimes involved attacks on others and the use of firearms.

In response, Wykoff said Ferguson's contentions were "noticeably absent" of any argument that Abernathy wouldn't appear in court when required, which he said courts have consistently said is the reason behind requiring someone to post bond.

Jacobs agreed that the drug case acquittal was a "change in the circumstances" but added that it "does not negate" the reasons behind his earlier revoking of Abernathy's bond. He also said keeping Abernathy jailed was the only way to ensure Giberson's safety.

After reaching his decision, Jacobs scheduled a hearing for May 29 to review the status of the case and said he'd set a trial date at that time. The aggravated domestic battery charge would normally carry a possible sentence of three to seven years if there's a conviction, but a prison sentence of six to 30 years would be required for Abernathy because of his criminal record.

Giberson's house was destroyed by two fires shortly after the reported time of the alleged attack, and Charleston police have said the fire was apparently caused by arson.

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