

<http://www.jg-tc.com/articles/2008/09/05/news/doc48c09dbd3146a443548249.txt>

Judge Delays Motion for Change of Venue in Abernathy Beating Case

By DAVE FOPAY, Staff Writer
dfopay@jg-tc.com

CHARLESTON — A judge Thursday delayed ruling on a motion for a change of venue for the trial of a man accused of severely beating a woman, the same approach he took with other defense motions.

Any decision on moving Jason A. Abernathy's trial for allegedly beating Gina Giberson with a baseball bat should wait until jury selection begins, Circuit Judge Gary Jacobs said. If it ends up that pretrial publicity means Abernathy can't get a fair trial, his attorneys can argue for moving the trial then, the judge concluded.

Defense attorney Mark Wykoff agreed that was how Jacobs should handle the motion for now, saying he wanted the request on record in case jury selection in Coles County isn't possible.

Similarly, Jacobs delayed ruling on a defense motion asking that Giberson's alleged history of violence be allowed as evidence for Abernathy, saying he wanted to know if Abernathy's attorneys plan to argue self defense.

Abernathy, 34, is charged with aggravated domestic violence for allegedly beating Giberson on Oct. 16 to the point that she was comatose in an area hospital for about two weeks. The incident is alleged to have occurred at her home at 211 Fourth St. in Charleston.

Abernathy, who reportedly also had been living there, claimed he knocked her against a table after she first tried to hit him with the bat. Evidence at earlier hearings indicated that Giberson suffered several head injuries that doctors said weren't consistent with falling against a table.

On Thursday, Jacobs scheduled another hearing in the case for Sept. 17 and kept Abernathy's trial date of Oct. 6 in place. He said he wanted Wykoff and co-defense attorney Monroe McWard to state by the next hearing whether they plan to use self defense as what's called an "affirmative defense" for Abernathy.

If Abernathy's attorneys prove an affirmative defense, he could be acquitted of the charge even if evidence shows he committed the act in question.

Jacobs denied a defense motion to bar the prosecution from mentioning two fires that destroyed Giberson's house shortly after the beating. However, he told the defense

attorneys they could bring it up again later if State's Attorney Steve Ferguson doesn't show the link to the beating as he claimed, namely the possibility that Abernathy set at least the first fire to hide evidence of the attack.

No arson charges have been filed against Abernathy or anyone else concerning the fires at the house.

Abernathy is jailed without bond. The aggravated domestic battery charge would normally carry a possible sentence of three to seven years if there is a conviction, but a prison sentence of six to 30 years would be required for Abernathy because of his criminal record.

Contact Dave Fopay at dfopay@jg-tc.com or 348-5733.