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Abernathy trial begins; 'self defense' asserted

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

CHARLESTON — Because Jason Abernathy doesn't deny that he hit Gina Giberson, a jury will have to decide if what he did was to defend himself from her.

State's Attorney Steve Ferguson showed the jury a picture of Giberson when she was hospitalized, saying it was taken shortly after she was beaten and received more than a dozen injuries to her head.

"This is what Jason Abernathy asserts is self defense," Ferguson said during his opening statement at Abernathy's trial Monday.

During his turn, defense attorney Mark Wykoff told the jury about the offense with which Abernathy is charged, emphasizing the words "without legal justification" when reciting what accusations have to be proven from him to be found guilty.

"Mr. Abernathy has never disavowed that he hit the alleged victim," Wykoff said. "What Mr. Abernathy has maintained was that he was justified."

Abernathy, 34, is charged with aggravated domestic battery for allegedly beating Giberson with an aluminum baseball bat at her residence on Oct. 16, 2007. His trial, which is supposed to take until the end of the week, will include evidence that Giberson ended a relationship with Abernathy and kicked him out of her house at 211 Fourth St. in Charleston the day before, attorneys have said.

The attorneys' opening statements concluded Monday's trial session without the presentation of evidence starting, as selecting the nine-man, three-woman jury plus two alternate jurors, one man and one woman, took most of the day.

Ferguson opened his statement by telling the jury that a fire that destroyed Giberson's house started about 6 a.m., but Giberson and Abernathy weren't there at that time.

Instead of calling an ambulance in order for Giberson to receive medical treatment,

Abernathy drove Giberson to Sarah Bush Lincoln Health Center in her car but didn't arrive at the hospital until about 7 a.m., Ferguson said. Abernathy also made calls from a friend's cell phone that he had with him around 5 a.m., and one of those was to his brother in Ashmore, asking him to bring gas as he'd run out on the way to the hospital and was stranded near Loxa, he added.

Giberson was later taken to Carle Foundation Hospital in Urbana and spent weeks recovering, "a good portion of it in a coma," Ferguson said, and she now can't remember anything about the incident.

However, Abernathy told police that after staying at a friend's house the night before, he returned to Giberson's home and saw a man run out the back door and down an alley, Ferguson said. Inside, Giberson confronted him, swung the bat at him and hit him in the left hand before he was able to take it from her and hit her with his right hand, causing her fall and hit her head on a table, he continued.

An aluminum bat with Giberson's blood and Abernathy's fingerprints was found under the carpet in the trunk of Giberson's car, and it resembled one that the friend with whom Abernathy stayed the night before said was missing from his residence, Ferguson also said. Giberson said there was no baseball bat in her home before the incident, while Abernathy told police he didn't know what happened to the bat after he took it from Giberson.

Wykoff didn't outline any of the evidence the defense will use, except to say Giberson has a history of "violent, erratic tendencies" and she "directed" them at Abernathy at the time. The jury will see how Abernathy was justified in hitting Giberson to "thwart the violence that was first directed toward him."

During jury selection, several potential jurors were excused because they knew or were acquainted with Abernathy or Giberson. One woman was excused after she said she has a friend who once dated Abernathy and what she knew about that would "absolutely" affect how she'd consider the evidence.

Monroe McWard, Abernathy's other attorney, asked prospective jurors if they understood that a man hitting a woman was justified in the case of self defense, and all jurors questioned said they understood that.

A prison sentence of six to 30 years will be required for Abernathy if he's convicted. The offense in question doesn't normally require prison time, but it does in Abernathy's case because of his criminal record.

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