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## 'Affirmative self-defense' argument planned in Abernathy case

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CHARLESTON — Self-defense will be part of the argument for a man accused of severely beating a woman to the point she was comatose for about two weeks.

During a pretrial hearing Wednesday, attorneys for Jason A. Abernathy stated their intent to use self-defense as what is called an “affirmative defense” in the case. 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.

Abernathy, 34, is charged with aggravated domestic violence for allegedly beating Gina Giberson with a baseball bat on Oct. 16, 2007, to the point that she was comatose in an area hospital for about two weeks, according to authorities. The incident is alleged to have occurred at her home at 211 Fourth St. in Charleston.

Defense attorney Mark Wykoff said the use of self-defense as an affirmative defense will make evidence of Giberson’s alleged history of violence admissible during the trial. Coles County State’s Attorney Steve Ferguson did not dispute Wykoff’s statement about this evidence.

“I want to make sure we are clear on what that evidence is going to be,” said Circuit Judge Gary Jacobs. He said the evidence needs to be clear so the prosecution has an opportunity to raise any objections.

Wykoff said the evidence would include testimony from five witnesses about Giberson’s alleged tendency toward violence, including at least one witness who purportedly had a romantic relationship with her. He said there also will be testimony about her alleged reputation for violent behavior.

Abernathy, who reportedly had been living with Giberson, 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 were not consistent with falling against a table.

Two fires destroyed Giberson’s home shortly after the beating. Jacobs has denied a defense motion to bar the prosecution from mentioning the two fires. No arson charges have been filed against Abernathy or anyone else concerning the fires at the house.

The trial for Abernathy is scheduled to start Oct. 6. Jacobs tentatively scheduled a pretrial hearing for Oct. 3, if needed, to handle any remaining motions or other matters that need to be resolved before the trial.

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.

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