

# Abernathy trial delayed for further review of evidence

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CHARLESTON — Prosecuting and defense attorneys agreed Monday to a delay in the trial of Jason A. Abernathy, who's accused of severely beating a woman almost one year ago.

The attorneys cited newly filed motions and evidence, meaning each side will need to review the other's new materials before either can be ready for trial. Circuit Judge Gary Jacobs granted the motion that the defense made, but to which the prosecution didn't object.

Abernathy's trial had been scheduled to take place next week. Jacobs said he wanted to use one day that week, Oct. 8, to handle the pending motions. The judge set a new trial date of Dec. 8 but said he and the attorneys would confirm that at the next hearing.

Abernathy, 34, is charged with aggravated domestic violence for allegedly beating Gina Giberson with a baseball bat 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.

Defense attorneys Monroe McWard and Mark Wykoff filed several motions in the last few days. State's Attorney Steve Ferguson agreed when Jacobs asked if he needed time to prepare responses, with Ferguson noting that Jacob's rulings on the motions would affect what evidence the prosecution will be able to use.

The new defense motions include requests to bar evidence that Abernathy set the fire that destroyed Giberson's home after her attack and to keep out evidence of a substance found on Abernathy's shoes.

Meanwhile, Ferguson provided the defense with photographs depicting Giberson after the attack that he plans to use during the trial. Earlier, Jacobs didn't rule on a defense motion to bar those photographs because, he said, it wasn't known then which pictures the prosecution wanted to use.

Wykoff also said he might file another motion asking to bar evidence of what he

called a “warrantless search” of Giberson’s residence, to which he also referred as Abernathy’s former residence. Ferguson said the only motion he might file would be a request to videotape the testimony of a doctor who treated Giberson.

At a hearing in the case earlier this month, Abernathy’s attorneys went on record that they plan to use self-defense in 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, 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 weren’t consistent with falling against a table.

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

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