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# Jury finds Abernathy guilty

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CHARLESTON — A jury Friday rejected Jason Abernathy's self defense claims and found him guilty of the beating of Gina Giberson in October of last year.

With attorneys focusing on the extent of Giberson's injuries, the jury apparently believed prosecutors' contentions that they must have been inflicted with an aluminum baseball bat, as they alleged, and not because Abernathy hit her and caused her to fall against a table.

Abernathy showed no reaction when Circuit Judge Gary Jacobs read the jury's verdict. Giberson was in the courtroom's audience at the time and seemed stunned but showed little other reaction.

Abernathy was convicted of a charge of aggravated domestic battery that accused him of attacking Giberson at their shared home at 211 Fourth St., Charleston, on Oct. 16, 2007. The house was destroyed by fire the same day, and while Abernathy hasn't been charged with arson, the prosecution tried to show the jury that he might have set the fire to conceal evidence of the beating.

During the trial, Giberson testified that she didn't remember what happened. Defense attorney Mark Wykoff argued Friday that Abernathy's story remained consistent throughout, including during his own testimony.

"Only two people know what happened," Wykoff said. "One of them told you what happened and one didn't."

But State's Attorney Steve Ferguson said Giberson's severe head injuries along with injuries to her arms, legs and other parts of her body wouldn't have happened with Abernathy's story that he only hit her in the head with his fist, not the bat.

"The bruises on her body give her the voice to tell how it happened," Ferguson said.

Jacobs scheduled Abernathy's sentencing hearing for March. A prison sentence of six to 30 years will be required, with prison time mandatory and the maximum sentence longer than normal for the offense because of Abernathy's earlier criminal convictions.

The jury deliberated for about three hours before reaching its verdict. The nine-woman, three-man jury had the option of convicting Abernathy of the less-serious offense of reckless conduct, but opted for the guilty verdict on the aggravated domestic battery charge.

Jacobs let the jury consider the reckless conduct charge at the defense's request, and it would have meant the jury thought Abernathy was acting in self defense but what he did was excessive and not justified. A one- to six-year prison sentence would have been possible for that offense, but prison time wouldn't have been required.

Abernathy claimed that, after spending a few days away from the home after a fight with Giberson, he returned to find a man running out the back door. Inside, he said, Giberson immediately attacked him with the bat, hitting him once in the left hand before he was able to take it from her and hit her with his right.

He said Giberson then fell and hit her head on a table, and then he dropped her twice while trying to get her to a car to take her to the hospital.

The defense tried to use Giberson's earlier convictions for domestic battery and similar offenses along with her sparring during questions by Abernathy's attorneys during the trial to show she was "erratic and violent," as Wykoff put it.

"The lady who came in here was just that," he said of Giberson's behavior during her testimony. "Her actions speak for themselves."

And noting that Giberson had several brain contusions and numerous bruises, Wykoff argued that she would have been injured even more seriously had Abernathy attacked her as alleged.

"If this man whacked the living bejesus out of that woman, she would have had fractures," he said.

Ferguson noted that there was no blood found on the concrete steps where Abernathy claimed he dropped Giberson. Abernathy admitted taking the bat with him to the hospital, saying he hoped it would support his story, but Ferguson said that was because leaving it at home wouldn't eliminate the evidence.

"Why does he take that with him? It doesn't burn," he said.

Much of the trial also centered on where the bat came from. It might have belonged

to Jeff Craig, a friend with whom Abernathy visited just before returning to the house and who's bat was later missing; Craig first told police the bat they found was his but changed that story during his trial testimony.

Wykoff said the number of bats of the type had to be "immense," while Ferguson asked the jury "how many bats mysteriously disappeared from Jeff Craig's?"

Ferguson also mentioned Abernathy's account of first going the wrong direction then taking an indirect route and running out of gas to account for the roughly three hours it took him to get to the hospital.

"Is that time to develop a story? Yes, it is," he said.

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