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Woman convicted of shaking baby wants a new trial

Or case dismissed: Her attorney says new evidence is a "smoking gun"

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A Summit County day care operator convicted last year of shaking a baby boy either wants the case dismissed or a new trial where the jury can hear newly discovered evidence.

Maria Abigail Tiscareno was found guilty of second-degree felony child abuse for permanently injuring Nathan Molineux at Abby's Child Care in November 2003.

Tiscareno, 41, was facing up to 15 years in prison.

But last month, just days before she was scheduled to be sentenced, her attorney obtained records from Primary Children's Medical Center that may have changed the outcome of the trial.

A two-page pathology report - which prosecutors say they had never seen - apparently indicates there had been bleeding inside the victim's skull before the purported shaking at the day care center on Nov. 14, 2003.

"It's a smoking gun that points to some other cause for this injury," defense attorney James Bradshaw said in an interview Thursday. "It's an absolutely critical finding."

Bradshaw said an initial CT scan of the boy's brain showed two different densities of blood - possibly meaning there was fresh bleeding superimposed over an older injury.

But a surgeon who testified at Tiscareno's trial said he saw only fresh bleeding, and had assumed the CT scan was wrong.

The newly discovered pathology report supports the original CT findings, Bradshaw said.

He said he spoke to a pathologist who believes the older bleeding occurred at least four days before the boy fell ill at Abby's Child Care.

Bradshaw said the new evidence does not rule out child abuse on Nov. 14, but does undermine the state's theory that there was a single episode caused by Tiscareno.

Bradshaw said he obtained the pathology report while preparing for a civil lawsuit filed against Tiscareno by the injured boy's family.

Third District Judge Deno Himonas is currently mulling a defense motion to arrest judgment and dismiss the case. If the judge rules against Tiscareno, he will next consider a motion for a new trial.

An evidentiary hearing set for March 1, at which experts are expected to testify regarding the significance of the new evidence.

At trial, the injured boy's father and grandmother testified he was healthy and playful prior to being dropped off at the day care center. Three hours later, Tiscareno called 911 to report the boy was having trouble breathing.

Tiscareno later told police she "shook" the boy "to save his life" because he was having a seizure. At trial, she used a child-sized mannequin to demonstrate that she had barely jostled the boy.

Massive brain injuries have left the boy, now 2 years old, unable to walk, talk or swallow food.