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## Woman convicted of shaking baby wins new trial

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A Park City day-care operator convicted last year of shaking a baby boy, injuring his brain, has been awarded a new trial. In a ruling filed Thursday, a 3rd District judge found Maria Abigail **Tiscareno's** jury was not properly instructed before rendering its verdict. **Tiscareno** was convicted in October of second-degree felony child abuse.

That conviction could have resulted in a sentence of up to 15 years in prison for the 41-year-old woman.

But Judge Deno Himonas took into consideration motions filed by attorneys retained by **Tiscareno's** family after the guilty verdict. They claimed the jury was wrongly instructed that it could find **Tiscareno** guilty simply by finding that she had shaken Nathan Molineux, who was 1 year old at the time.

In trial testimony, **Tiscareno** admitted she shook the child -- "to save his life," she said -- because he was having a seizure.

**Tiscareno's** attorneys argued the jury should have been instructed about the issue of intent. They also noted that the jury, in a note to trial Judge Bruce Lubeck, indicated it did not believe **Tiscareno** acted with malice.

"Your Honor: Although we have found Mrs. **Tiscareno** guilty as charged, we all believe and agree that this was not a malicious act, but a tragedy for both families," read the note, which was signed by each juror.

In a six-page memorandum, Himonas declared that the jurors had, indeed, been improperly advised.

"Under the instructions given," Himonas wrote, "a parent who, entirely by accident, pushed a child off a swing would be guilty of second-degree child abuse if the child suffers a serious injury."

But the judge disagreed with **Tiscareno's** claim that the jury's note amounted to an intended acquittal.

**Tiscareno** has been free on bail pending the resolution of the post-trial motions.

"She was very pleased and very thankful that she has the opportunity for a new trial," said Mark Moffat, one of three attorneys hired by **Tiscareno's** family.

Moffat's office also claims to have discovered an evidentiary "smoking gun" -- a medical report the attorneys claim, if presented to a properly instructed jury, should help exonerate **Tiscareno**. The report, from a brain scan taken after Nathan was injured, shows two different densities of blood -- possibly meaning there was fresh bleeding superimposed over an older injury, according to **Tiscareno's** attorneys.

The report was not part of Himonas' opinion, which was limited to whether **Tiscareno** received a fair trial. A pretrial hearing has been scheduled for Feb. 15.

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