

Article Last Updated: 7/28/2005 01:19 AM

## Woman tries to rebuild life

She lost day care, reputation fighting shaken-baby charges

**By Christopher Smart**  
**The Salt Lake Tribune**  
**Salt Lake Tribune**

PARK CITY - Abigail Tiscareo weeps.

Convicted of a felony shaken-baby assault charge that carries up to a 15-year sentence and later found not guilty of the crime at a second trial, she now can only wonder what's next in her shattered life.

So she weeps for her three children, who were ridiculed at school during the two-year ordeal; and for her husband, who spent the family's entire savings on her defense. She weeps knowing that even when she finds the courage to go shopping amid whispers and finger-pointing, she will never have another Abby's Day Care.

And she weeps for Nathan Molineaux, the toddler whose severe brain damage means he never will enjoy a normal life and will require constant care.

"I no longer had a life. I just wanted to be with my kids and my husband and pray that it would be over," Tiscareo says of the period after her October 2004 conviction in Summit County's 3rd District Court. "They were going to give me 15 years in prison. When the judge [in the second trial] said, 'not guilty,' I just cried."

The story swirls around a justice system that continues to grapple with crimes against infants and how police and courts depend upon physicians to guide them to perpetrators and, hopefully, to justice. It's about the renewed debate over whether "shaken-baby syndrome" - believed to be gospel for the past two decades or more - can be supported by science.

For Tiscareo, it's also a tale about a crucial piece of evidence that inexplicably was omitted from her first trial and how a second defense team found what it calls the "smoking gun" that eventually exonerated the day-care provider.

A fateful day: It was Nov. 14, 2003, when Tiscareo's life began to unravel shortly after James Molineaux dropped off his sons, Jaden, 2, and Nathan, 12 months, at Abby's Day Care in her modest home near Park City at about 7:40 a.m. By 10:28 a.m., according to Summit County's 911 log, she was explaining to an emergency operator that Nathan was having difficulty breathing.

Paramedics rushed the child to Primary Children's Medical Center in Salt Lake City, where doctors diagnosed an acute subdural hematoma - bleeding between the brain and the skull - that quickly can reach life-threatening dimensions.

Through special X-rays called CT scans, they assessed that Nathan's brain was swelling dangerously. Surgeons moved quickly to remove the top of his skull to give the enlarged brain more space until the swelling subsided. The operation saved his life, but was not in time to avert severe brain damage.

During the crisis, according to trial testimony, Lori Frasier, the pediatrician who directs the hospital's Center for Safe and Healthy Families, advised Summit County investigators that the injury could have been caused only by the day-care provider.

Although sheriff's detectives had sought a warrant to search the home where Nathan lived with his father, grandmother and several others, they immediately dropped that avenue of investigation and focused on Tiscareo.

That evening at 9, authorities summoned the baby sitter to the Summit County Sheriff's Office, where they questioned her for five hours.

"They asked me why I hurt Nathan," she recalls of the interrogation in which no attorney was present. "I said I did nothing to Nathan. And they said, 'You were the only one there.' I didn't know what was going on, but I began to see that they thought I did it."

By the time she was allowed to return home at about 2 a.m., detectives believed they had their perpetrator, according to investigative reports. Within days, authorities charged Tiscareo with felony aggravated assault.

Summit County prosecutor David Brickey assembled a case against the day-care provider with witnesses, including Frasier, an expert in "shaken-baby syndrome," and Marion "Jack" Walker, the surgeon who had saved Nathan's life.

Frasier testified that Nathan's injuries were inflicted by shaking that could have only occurred directly before the baby showed the symptoms of trauma.

Walker told the jury that the blood on Nathan's brain was from an hours-old injury. Responding to a question from Brickey, Walker said the pathology report showed that "it was basically a fresh blood clot."

It was largely on the strength of the two doctors' testimony that a jury convicted Tiscareo.

While awaiting sentencing, Tiscareo and her family found themselves on a second legal front. Nathan's parents, James Molineaux and Christina McIntire, sued in civil court - the case is still pending - hoping to recover monetary damages for what will be a lifetime of medical care for their son.

James Molineaux met McIntire at the Summit County Jail, where they both were serving sentences. The pair had two children and a volatile relationship, according to police reports and courtroom testimony.

The day Nathan was taken to the hospital, McIntire again was incarcerated at the Utah State Prison. Her parole had been revoked after Molineaux reported to authorities that she continued to use methamphetamine.

Missing report: It was the couple's suit that spurred Salt Lake City-based attorneys James Bradshaw and Mark Moffat, who had picked up Tiscareo's case after her conviction, to seek records from Primary Children's Medical Center. But in the dozens of documents provided by the hospital, the pathology report was nowhere to be found, Bradshaw said, making it conspicuous by its absence.

Although Walker's testimony referred to the pathology analysis at the first trial, the document was not in evidence before the jury.

Tiscareo's original attorney, Earl Xiaz, said despite requesting all pertinent records from the Summit County prosecutor, the pathology report never turned up.

"I don't want to speculate as to why we didn't have it," Xiaz said. "But I think it would have made a lot of difference. I would like to think that a jury would look at that and say, 'That's enough for reasonable doubt.'"

Bradshaw and Moffat kept digging for the pathology report. "It's inherently unbelievable there wouldn't be one," Bradshaw said.

But no such document could be found in Nathan Molineaux's file at Primary Children's. Working outside the hospital's official channels, however, the defense team eventually found it after prodding a clerk in the medical center's pathology department.

"It was a bomb," Bradshaw said of the analysis. "It was remarkable because it showed old blood from a previous brain injury. The whole premise of the prosecution's case is that it had to be Abby because it happened that morning. But the pathology report says that is not true."

Oddly, Bradshaw and Moffat won a new criminal trial based not on the new evidence but on an improper jury instruction during the 2004 trial. For the new trial this past May, the defense waived a jury in favor of arguing the case directly to 3rd District Judge Deno Himonas.

Despite the revelation of the pathology analysis, Walker and Frasier testified as they had at the first trial.

Walker said the injury was new and not the result of previous trauma. And Frasier insisted that Abigail Tiscareo was the only person who could have caused the injury.

Nathan had a "very serious head injury and he would have had to manifest symptoms of a very serious head injury," Frasier testified. "You just don't walk around with a serious head injury like Nathan had with bleeding blood vessels, arteries and brain swelling and act normal."

But Primary Children's pathologist Theodore Pyshar explained to the court that his analysis revealed some of the bleeding on Nathan's brain could have taken place three days before the baby fell into a coma.

11 to 14 days before: And Jan Leestma, a neuropathologist from Children's Memorial Hospital at Northwestern University in Chicago, testified that, based on the pathology analysis and CT scans, some of the bleeding from veins and arteries attached to Nathan's brain could have occurred 11 to 14 days before the crisis at Abby's Day Care.

In an interview, Leestma said a brain injury like Nathan's would require the force of at least 10 G's - something he maintains is not attainable by shaking alone. "That could not be accomplished without striking the baby's head against a solid object. But there were no bruises to suggest such impact."

A previous injury could well have led to acute trauma on Nov. 14, 2003, Leestma said.

"This child had a very large subdural hematoma. It may have been weeks old. We don't know how it got there, but it percolates and grows," Leestma explained. "If the brain moves even 1 millimeter and the bulging vessels are tight, it could snap some of them, leading to new bleeding."

Further, Leestma said there is no scientific evidence to support the "shaken-baby" theory. "If you could shake a baby hard enough to reach 10 G's, it would break its neck. Yet, it is very rare to see one of these cases with spinal injuries."

Tiscareo was acquitted May 27, 2005.

The discovery of the pathology report came as a shock, said prosecutor Brickey. On two separate occasions, he said, the Summit County Attorney's Office subpoenaed all documents from Primary Children's. But, Brickey said, he became aware of the pathology analysis only through Tiscareo's attorneys, Bradshaw and Moffat.

"I'm surprised and I'm disappointed in Primary Children's," Brickey said in an interview.

Knowing that Nathan had an earlier brain injury would have led to a re-evaluation of the case against Tiscareo, Brickey said. It could also have led to a more thorough investigation of other possible suspects.

"If we had had that report, I don't know without further investigation that the [Tiscareo] trial would have gone forward," Brickey said.

Frasier and Walker declined several requests for interviews for this story through Primary Children's spokeswoman Bonnie Midget.

While Abigail Tiscareo tries to adjust to life after the ordeal, her husband, Guillermo, remains angry at the Primary Children's physicians and at Summit County authorities.

Going forward with a second prosecution after the pathology analysis came to light is unconscionable, Guillermo said. "As soon as I heard that, I just didn't understand why. The only thing I was thinking is, they are going to put someone in jail, no matter what."

Starting over: The Tiscareos must start all over again, Guillermo laments.

"Now everything is gone. I don't care about the money. Thank God I have hands to work. Maybe someday we can recover, I don't know," he said. "But they threw my wife's reputation out the window. It's going to be hard."

**csmart@sltrib.com**