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## New Trial in Tainted Conviction

Prosecutor withheld knowledge that alleged victim recanted key testimony in child molestation case

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Barry Hazen says he overheard a Fulton ADA tell a juror after child molestation trial that the victim had recanted testimony on one of the two counts the defendant faced at trial. Photo by John Disney/Daily Report



Michael Jacobs, left, overheard conversation that supported Lawrence Zimmerman's new trial bid. Photo by John Disney/Daily Report

A new trial has been ordered for a man convicted of aggravated child molestation after his defense attorneys told the judge they'd overheard the prosecutor confide to a juror after the trial that the victim had recanted his testimony on one of the two alleged incidents.

Instead of informing opposing counsel, said defense attorney Barry Hazen, the assistant district attorney allowed the trial to proceed on the two-count indictment without disclosing that one of the counts was based on testimony the state knew had been retracted.

Hazen said he and co-counsel Michael Jacobs were in the jury room after the trial when they heard a juror ask Fulton County Assistant District Attorney Demone Lee why he had not questioned the defendant, Jon Thieme, about the victim's assertion that he had been anally sodomized.

"He said he didn't push the anal sodomy [count] because the kid said it didn't happen," said Hazen.

Lee told the juror he had left the charge in "because he wanted to see what the jury would do with it," said Hazen.

In March, Thieme was convicted on one count and sentenced to 25 years in prison by Fulton County Superior Court Judge Alford Dempsey.

On Tuesday, Dempsey entered a consent order granting Thieme a new trial, agreeing with his attorneys that the prosecution's failure to inform the defense about the recantation violated Thieme's rights under the U.S. Supreme Court's 1970 decision in *Brady v. Maryland*, under which the state has a duty to turn over exculpatory evidence to a criminal defendant.

Fulton County Senior Assistant District Attorney Lenny Krick signed the order, and DA Paul Howard offered no excuses on Wednesday.

"Providing Brady material is both a legal and moral obligation resting upon every prosecutor," Howard said in an emailed statement. "When the line of demarcation is close or somewhat unclear, we believe the better practice is to make the disclosure. Such was not done in this case. Accordingly, as communicated through the consent order, we believe honesty requires that this matter is retried."

According to the State Bar of Georgia website, Lee is a graduate of the University of Florida's Levin College of

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Law and joined the bar in 2011. The Daily Report was not able to reach Lee for comment.

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