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FULTON COUNTY

# New trial ordered for man

Assistant DA failed to disclose evidence to defense lawyers.

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A new trial has been ordered for a man accused of aggravated child molestation after a 9-year-old victim recanted part of his story, but a Fulton County prosecutor failed to inform defense attorneys.

Judge Alford Dempsey earlier this month ordered a new trial for Jon Thieme when it was discovered that assistant district attorney Demone Lee had violated a rule to disclose evidence that could benefit a defendant.

Thieme, 23, was convicted of one count of aggravated child molestation, and acquitted on another count. He was sentenced to 25 years in prison.

Defense attorneys argued that Thieme might have been acquitted had they known that the boy had changed his story.

Lee could not be reached for comment Thursday, but District Attorney Paul Howard defended him.

"When we received information alleging possible withholding of 'recantations by the victim' by the ADA who prosecuted this matter, we decided that the best course of action involved consenting to a new trial," Howard said in an email. "Our consent was provided not to suggest Demone Lee was guilty in any degree of prosecutorial misconduct, but simply a legal device designed to provide a new trial for the defendant."

Howard sent a portion of the transcript of Lee's closing argument to show that showed Lee "was open and honest in highlighting the ... boy's confusion" about the charges against Thieme.

According to the transcript, Lee acknowledged that the boy was "a little confused" when he testified, but asked the jurors to consider everything they heard in the courtroom, which included a video recording of the boy's initial statement.

"You don't have to find him guilty of count two in the indictment. ... But you are compelled to find him guilty of count one," Lee said.

Thieme's lawyers said the prosecutor was vague and it was not clear why he suggested the the jurors not focus on the questionable charge.

"He played a game in closing argument by saying, 'Maybe you don't have to convict,'" said Michael Jacobs, Thieme's attorney for the trial. "It's prosecution 101. A prosecutor's job is to seek justice and their duty is to turn over whatever is exculpatory to the defense. Make it a fair trial."

Attorney Lawrence Zimmerman, who is handling Thieme's appeal, said Lee was obligated to tell defense lawyers of the change and that he should have dropped that charge before the trial started.

"The whole thing is bizarre," Zimmerman said.

Because of the case, a complaint of unethical behavior against Lee has been filed with the Bar Association of Georgia by a Georgia State University law professor.