

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,)	
)	CASE NO. 11SC99152
)	
v.)	JUDGE DEMPSEY, JR.
)	
JON THIEME,)	
)	
Defendant.)	
_____)	

CONSENT ORDER GRANTING NEW TRIAL

Defendant was charged in the above indictment with two counts of Aggravated Child Molestation. In Count One, he was charged with placing his penis in the mouth of C.B., a child under the age of 16 years. In Count Two, he was charged with placing his penis into or on the anus of the same person. After a trial, the jury returned a verdict of guilty as to Count One and Not Guilty as to Count Two (anal sex) on March 22, 2013. Defendant was sentenced to a twenty-five years in prison.

The Honorable Barry Hazen, Esq. and the Honorable Michael Jacobs, Esq. represented Defendant. After the jury trial, the Assistant District Attorney, Demone Lee, who prosecuted the case, told one of the jurors, which was overheard by both defense counsel, that the victim recanted his allegation of anal sex. However, he explained to the juror that he left that count in the indictment to see what the jury would do with it.

On May 9, 2013, both the defense team and the prosecuting attorney met with the Honorable Court in chambers to discuss the issue. The Court directed Mr. Lee to review his file to determine when he learned of this exculpatory evidence. According to trial counsel, Mr. Lee emailed Mr. Hazen stating he believes it was one week before trial. It

seems that Mr. Lee's memory was refreshed after discussing the exculpatory matter with the victim's mother. Furthermore, this also implies that the mother was aware of the recantation and had a discussion with the prosecuting attorney regarding it prior to trial.

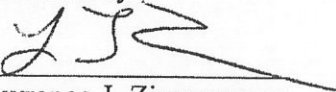
During the week leading up to the trial, there was an abundant amount of communication between the parties including a meeting at Mr. Hazen's office where Mr. Lee reviewed some evidence. At no point in time during any of those meetings, or communications, did Mr. Lee inform Mr. Hazen that the victim recanted or changed part of his story regarding these serious allegations.

The recantation was relevant to the evidence the State presented at trial. The State played two videos of forensic interviews with C.B. In the first video played at trial, the victim described in minute detail being sexually molested anally by his Uncle Clarence. When asked what Defendant did to him, he said the same thing that Uncle Clarence did. He said the same body parts were involved when Defendant allegedly molested him. In the second interview, the victim stated that Clarence raped him along with Defendant. The victim said that Defendant tried to put his penis in his anus but it was too big to fit in. Therefore, the State presented audio-recorded evidence to the jury that Defendant had committed anal sex molestation when they were previously apprised that the victim recanted this allegation. Under the laws of both the United States and the State of Georgia, the prosecuting attorney has a legal obligation to disclose this information to defense counsel upon learning of it. *See Zant v. Moon*, 264 Ga. 93 (1994)(where a prosecutor suppresses favorable evidence to the defense, the State violates the defendant's due process rights); *see also, Brady v. Maryland*, 373 U.S. 83 (1970).

Additionally, during the trial of the case, the State presented an expert witness, Anique Whitmore, who is the Director of Forensic Services for the Fulton County District Attorney's Office. Her testimony was based on her observations of the forensic interviews including that of the victim in the instant case. She made some statements that pertained to anal sex and the reluctance of young victims to come forward due to the fact that they may be looked upon as "gay." (T. 271). Thus, this testimony supported the victim's claim of anal molestation. If this recantation had been revealed, the defense would have been able to conduct a much more sifting cross-examination on her regarding this opinion.

Based on the above, there exists a reasonable probability that the outcome of the proceeding would have been different if the defense was provided this key exculpatory information.

Presented by:



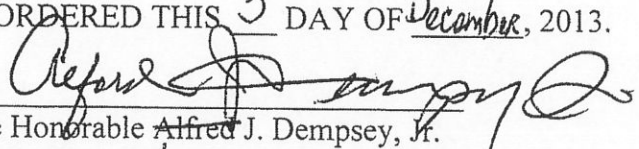
Lawrence J. Zimmerman
Attorney for Defendant
State Bar No. 785198

Consented to by:



Lenny Krich
Senior Assistant District Attorney
State Bar No. 429711

IT IS SO ORDERED THIS 3 DAY OF December, 2013.



The Honorable Alfred J. Dempsey, Jr.
Judge, Superior Court of Fulton County

Alford