STATE OF GEORGIA,
FULTON COUNTY.

BILL OF INDICTMENT.

The Grand Jurors selected, chosen and sworn for the County of Fulton, to wit:

1.- J. H. Beck, Foreman,

2.- A. D. Adair, Sr.,
3.- F. P. H. Akers,
4.- B. F. Bell,
5.- J. G. Bell,
6.- Sol Benjamin,
7.- Wm. E. Besser,
8.- C. M. Brown,
9.- C. A. Cowles,
10.- Walker Duncon,
11.- Ge. A. Gershon,
12.- S. C. Glass,
13.- A. L. Guthman,
14.- Chas. Heinz,
15.- H. G. Hubbard,
16.- R. R. Nash,
17.- W. L. Percy,
18.- R. A. Redding,
19.- R. F. Sams,
20.- John D. Wing,
21.- Albert Boylston,
22.- _____
23.- _____

In the name and behalf of the citizens of Georgia charge and accuse Leo M. Frank, of the County and State aforesaid, with the offense of

MURDER,

for that the said Leo M. Frank in the county aforesaid on the 26 th. day of April, in the year of our Lord Nineteen Hundred and Thirteen, with force and arms, did unlawfully and with malice aforethought kill and murder one Mary Phagan by then and there choking her, the said Mary Phagan, with a cord placed around her neck, contrary to the laws of said State, the good order, peace and dignity thereof.

~~Fulton Superior Court, 1913.~~

Hugh M. Dorsey, Sol. Gen'l.
J. N. Starnes, Prosecutor.

WITNESSES FOR THE STATE.

J. W. Hurt, Dr.
L. S. Dobbs, (Police)
J. N. Starnes, "
R. P. Barrett,

W. W. Rogers,

Harry Scott,

B. B. Haslett,

Grace Hicks,

E. F. Holloway,

N. V. Darley,

M. L. Parry,

J. M. Gannt,

William A. Gheesling.

Copy Bill of Indictment and list of witnesses before Grandjury, waived before arraignment. Full panel waived.

Rosser and Brandon,

R. R. Arnold,

Herbert Haas. Defts. Atty

July Term, 1913.

The defendant, Leo M. Frank, waives being formally arraigned and pleads not guilty.

F. A. Hooper,

E. A. Stephens,

Hugh M. Dorsey, Sol. Gen'l.

Rosser and Brandon,

R. R. Arnold,

Herbert Haas, Deft.'s Attys.

(VERDICT.)

We, the jury, find the defendant guilty.

Date August, 25 th., 1913.

F. E. Winburn, Foreman.

(EXTRAORDIANRY MOTION FOR NEW TRIAL

State of Georgia,
Vs.
Leo M. Frank.

() Conviction of Murder, at July
() Term 1913, of Fulton Superior
(). Court. Affirmance of judgment by
() Supreme Court; entry of remittur
() at March Term 1914, of Fulton
(, Superior Court.

TO THE SUPERIOR COURT OF FULTON COUNTY:

Now comes the defendant, Leo M. Frank, and makes this, his extraordinary motion for new trial, and respectfully shows, as his reason, why this motion was not previously made, that the grounds hereof were not known by this defendant, or any of his counsel, to exist at the time of said trial, or at the time the original motion for new trial was made or heard(with the amend - ments thereto) and could not, by the exercise of ordinary dili - gence, have then been discovered, but have been discovered and brought to the attention of this defendant and his attorneys since said original motion for new trial was passed on, and the grounds of said motion are as follows:-reference being here had to the entire record in this case as showing the materiality of the grounds herein set out:

1. Because of the newly discovered evidence obtained by the defendant as to the identity of ~~the alleged hair~~ claimed to have been found by the State's witness, Barrett, at the original trial. Defendant shows that it has come to his knowledge, since the original motion for new trial was denied, and is a fact, that Dr. H. F. Harris, one of the State's expert witnesses, who testified at the trial as to the condition of Mary Phagan's stomach and other matters, at the instance of the Solicitor-General be- fore the trial took the stands of hair which said Barrett claimed to have found in the metal room on the second floor, on Monday following the murder, and examined and compared them with the strands of hair which the said Harris took from the head of Mary Phagan when he performed his autopsy upon her body. The said Harris made a careful microscopic examination of

the hair so taken from the body of Mary Phagan and the hair so claimed to have been found by the witness Barrett, and, as a result of said microscopic examination, said Harris discovered that the hair bore no resemblance to the hair taken from the body of Mary Phagan, either in color, texture, shape, or other particular. Defendant further shows that it has come to his knowledge since the original motion for new trial was denied, and is a fact, that the said Harris, before the original trial, reported said finding of fact to the Solicitor-General and told the Solicitor-General that the said hair claimed to have been found by said Barrett was not the hair of Mary Phagan. The Solicitor General then told the said Harris that he would let the investigation as to the hair end there, and the said Harris, thereupon, returned to the Solicitor-General some of the strands of hair so claimed to have been found by Barrett. On and during the trial, said Harris was asked what parts of Mary Phagan's body he had examined, and he concealed the fact that he had examined and compared her hair with the hair found in the factory.

This defendant alleges that it is a scientific fact that a careful microscopic examination of human hair is the only positive and certain way of identifying the same as the hair of any particular person, and that an examination by the eye, and especially from memory, is of practically no value.

This defendant shows that the witness Harris offered to permit the brother of the Solicitor-General, Dr. R. T. Dorsey, who was present at the original trial, assisting the Solicitor-General in his examination of expert witnesses, to make an examination of said Hair after Harris reported that it was not Mary Phagan's hair, but that Dr, Dorsey declined to do so.

Defendant further shows that, after the hair was delivered back to the Solicitor General, he claimed to have lost it, and did not produce it at the trial, and neither this defendant, nor any of his counsel, had any opportunity of seeing it or having a microscopic examination made of it to compare it with that taken from Mary Phagan's head, and neither the defendant nor his counsel had any knowledge what soever at the time of the original trial,

or at the time the motion for new trial was heard, that Harris made had any such examination or had made any such report, or that the Solicitor General had stated to Harris that he would let the investigation as to the hair end there.

Notwithstanding the foregoing facts, this defendant shows that upon the trial of the case, as appears from the record, reference to which is hereby had, one of the chief facts relied on by the stateto corroborate the witness James Conley was the alleged finding of said hair by the witness Barrett. The Solicitor General proved by the witness Barrett that, on Monday following the murder, he found several strands of hair on a lathe in the metal room on the second floor, where the negro Conley claims to have found Mary Phagan's body. The Solicitor General proved on the cross examination of the witness Magnolia Kennedy, that the hair alleged to have been found on the lathe resembled the hair of Mary Phagan. The Solicitor General argued that the finding of this hair was one of the circumstances against Frank, that it had been found by Barrett and had been identified by Magonlia Kennedy as the hair of Mary Phagan, and four times in his argument to the jury he alluded to it as a circumstance in the evidence against Frank. The Solicitor General likewise alluded to it in his brief filed with the Supreme Court of Georgia.

Defendant further shows that one of the strong contentions of the state was that Frank had inveigled the little girl into the metal room on the second flood of the factory and there murdered her.

As one of the facts sustaining this theory, the Solicitor contended that the witness Barrett had found on a lathe in the metal room certain hair which he contended was the hair of Mary Phagan. Whether or not the hair was that of Mary Phagan was a matter therefore, of the highest importance and this evidence of Harris, if it had been known, would have concluded the question and shown the hair was not the hair of Mary Phagan.

The defendant here and now offers to show and prove to the court all of the facts herein set forth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the

foregoing facts is material, and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that the said facts were unknown to him and his counsel, having been concealed by the said Harris and the Solicitor-General, and the same have only come to the knowledge of this defendant and his counsel since the motion for new trial was heard and passed upon, and could not have been sooner discovered by the exercise of proper diligence.

3. The defendant further shows that he should be granted a new trial upon the newly discovered evidence of Miss Jimmie Mayfield, which has come to the knowledge of this defendant, and of his counsel, since the original motion for new trial was denied and which is as follows, that she was an employee of the National Pencil Company and was acquainted with Mary Phagan, and knew the color of her hair, that she knew States witness R. P. Barrett, who had testified at the original trial that he had found hair on a lathe on the second floor, and that on Monday, April 28th, the said Barrett showed her the hair which he claimed he had found on said machine, and she, the said Jimmie Mayfield now states positively that the hair showed to her by the said Barrett, and which the said Barrett stated he had found on said machine, was not the hair of Mary Phagan, and that the same was entirely too light in color, and was not of the same texture as that of Mary Phagan.

Defendant further shows that one of the main facts relied upon by the State to corroborate the witness, James Conley, was the alleged finding of Mary Phagan's hair on said lathe-machine by the witness Barrett. The Solicitor-General proved by the witness Barrett that, on the Monday following the murder, he found several strands of hair on a lathe in the metal room, where the negro Conley claims to have picked up Mary Phagan's body. The Solicitor-General proved on his cross examination of the witness Magnolia Kennedy, that the hair found on the lathe resembled the hair of Mary Phagan. The Solicitor General claimed in his argument that the finding of this hair was one of the circumstances against Frank; that it had been found by Barrett and identified by Magnolia Kennedy and four times in his argument to the jury he alluded to it as a circumstance against Frank.

The Solicitor General likewise alluded to the finding of this hair in his brief before the Supreme Court of Georgia.

The defendant further shows that it was one of the strong contentions of the state that Mary Phagan had been inveigled by Frank into the metal room on the second floor of the factory and he had there murdered her. The negro Conley in his testimony stated that he found Mary Phagan in the metal room, dead, and that Frank engaged him to conceal her in the basement of the factory. The witness Barrett testified that he found certain hair upon a lathe in the metal room, which the state contended was the hair of Mary Phagan. This newly discovered testimony of Miss Jimmie Mayfield shows that the hair found by Barrett was not the hair of Mary Phagan.

The defendant here and now offers to show and prove to the court all of the facts herein set forth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and that it was impossible to have ascertained same by the exercise of proper diligence, the said Jimmie Mayfield not being a witness on said trial, and the fact that she was in possession of the state of facts herein set forth being unknown to the defendant and his counsel until after the motion for new trial had been heard and passed upon.

3. Defendant further shows that he should be granted a new trial because of the newly discovered evidence of Mrs. Cora Falta which has come to the knowledge of this defendant and of his counsel, since the original motion for new trial was heard and passed on, and which is as follows:

that she was an employe of the National Pencil Company, and was acquainted with Mary Phagan, and knew the color of her hair; that she also knew R. P. Barrett and Magnolia Kennedy; also employees of the National Pencil Company the said Barrett having testified at the original trial that he had found certain hair on a lathe on the second floor, and the said Magnolia Kennedy having testified that the said hair alleged to have been found on said

lathe looked like Mary Phagan's hair, that on Monday April 28th Magnolia called Cora Falta's attention to said hair which was alleged to have been found by Barrett on the lathe, and the said Cora Falta states positively that the hair on said lethe was not the hair of Mary Phagan, and that the same was entirely too light in color and was not of the same texture as that of Mary Phagan's.

Defendant further shows that one of the main facts relied on by the state to corroborate the witness James Conley, was the alleged finding of Mary Phagan's hair on said lathe mechine by the witness Barrett. The Solicitor General proved by the witness Barrett that, on the Monday following the murder, he found several strands of hair on a lathe in the metal room, where the negro Conley claims to have picked up Mary Ohagan's body. The Solicitor General proved, on his cross examination of the witness Magnolia Kennedy, that the hair found on the lathe resembled the hair of Mary Phagan. The Solicitor General claimed in his argument that the finding of this hair was one of the circumstances against Frank that it had been found by Barrett and identified by Magnolia Kenned and four times in his argument to the jury he alluded to it as a cir cumstance against Frank. The Solicitor General likewise alluded to the finding of this hair in his brief before the Supreme Court of Georgia.

Defendant further shows that it was one of the strong contentions of the State that Mary Phagan had been inveigled by Frank into the metal room on the second floor of the factory and he had there murdered her. The negro Conley in his testimony stated that he found Mary Phagan in the metal room, dead, and that Frank engaged him to conceal her in the basement of the factory. The witness Barrett testified that he found certain hair upon a lathe in the metal room, which the state contended was the hair of Mary Phagan. This newly discovered testimony of Cora Falta shows that the hair found by Barrett was not the hair of Mary Phagan.

Defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence-the said Cora Falta not being a witness on said trial, and the fact that she was in possession of these state of facts herein set forth being unknown to the defendant and his counsel until after the motion for a new trial had been heard and passed upon.

4. Defendant further shows that he should be granted a new trial because of the newly discovered evidence of Alice Marjory McCord, which has come to the knowledge of this defendant, and of his counsel, since the original motion for new trial was heard and passed on, and which is as follows: That she was an employe of the National Pencil Company, and was acquainted with Mary Phagan, and knew the color of her hair; that on Monday April 28th, 1913, her attention was called to some hair that was alleged to have been found on a lathe by R. P. Barrett; and the said Alice Marjory McCord states positively that the hair on said lathe was not the hair of Mary Phagan, and that the same was entirely too light in color and was not of the same texture as that of Mary Phagan.

Defendant further shows that one of the main facts relied on by the state to corroborate the witness James Conley, was the alleged finding of Mary Phagan's hair on said lathe machine by the witness Barrett. The Solicitor General proved by the witness Barrett that, on the Monday following the murder, he found several strands of hair on a lathe in the metal room, where the negro Conley claims to have picked up Mary Phagan's body.
The Solicitor General proved, on his cross examination of the witness Magnolia Kennedy, that the hair found on the lathe resembled the hair of Mary Phagan. The Solicitor General claimed in his argument, that the finding of this hair was one of the circumstances against Frank; that it had been found by Barrett and identified by Magnolia Kennedy, and four times in his

argument to the jury he alluded to it as a circumstance againts Frank. The Solicitor General likewise alluded to the finding of this hair in his brief before the Supreme Court of Georgia.

Defendant further shows that it was one of the strong contentions of the state that Mary Phagan had been inveigled by Frank into the metal room on the second floor of the factory and he had there murdered her. The negro Conley in his testimony stated that he found Mary Phagan in the metal room, dead, and that Frank engaged him to conceal her in the basement of the factory. The witness Barrett testified that he found certain hair upon a lathe in the metal room, which the state contended was the hair of Mary Phagan. This newly discovered testimony of Alice Marjory McCord shows that the hair found by Barrett was not the hair of Mary Phagan.

The defendant here and now offers to show and prove to the Court all of the facts herein set forth, and swears to the existence of these facts as the truth, and asks the court to investigate them in this estraordinary motion.

The defendant further submits that the discover of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained them by the exercise of proper diligence, and the same were not brought to the attention of the defendant and his counsel until after the motion for new trial had been passed on.

5. Defendant further shows that he should be granted a new trial because of the newly discovered evidence of One Albert McKnight, which has come to the knowledge of this defendant and of his counsel since the original motion for new trial was denied which is as follows: that Albert McKnight was a witness for the State on the original trial of this case against the defendant, and that the testimony given by him at said trial had been prepared for him by one R. L. Craven, a white man employed by Beck and Gregg Hardware Company, who were the employers of said Albert McKnight; that the story prepared by said Craven and testified to by said Albert McKnight is not true; that the said story was prepared and written for said Albert McKnight by said

Craven and witnessed by E. H. Pickett and Augus Morrison, Jr., both of whom are white men also in the employ of the Beck & Gregg Hardware Company and these witnesses told McKnight that he would be obliged to stick to the story prepared for him by Craven, as they had witnesses same, and that, in the event he undertook to deny said story, they would send him to the chain gang, and explained to him that the word of three white men would be taken in preference to that of any negro; that the said McKnight states that the story prepared for him by said Craven is not the truth and that the evidence given at the said trial is not the truth; that Craven told McKnight to say that McKnight's wife, Minola McKnight had stated to him that, when defendant came home on April 26th, that he was drunk, and that the said Minola McKnight had seen the defendant with a pistol in his hand and heard him threaten to shoot himself, and that, while drunk that night, the defendant had made his wife sleep on the floor; that these stories were invented by the said Craven, who told him to swear to these facts in order to support the evidence of his wife, Minola McKnight, who had made an affidavit to the same alleged facts.

Defendant further shows that the said Albert McKnight now states that it is true that on April 26th, 1913, he called at the Selig home to see his wife Minola but that he reached said Selig home a little before twelve o'clock, noon, and that he left there when he heard the twelve thrity o'clock whistle blow; that, when he reached the Selig home that day, his wife Minola, was preparing the noon time meal, and that the said Albert McKnight did not see the defendant at all on said date, at any time or place, and that his evidence at the trial of the defendant to the effect that he had seen the defendant was the result of the plan perfected by the said Craven to collect the reward offered for the arrest and conviction of the murderer of Mary Phagan, a part of which reward was promised to the said Albert McKnight by the said Craven as a reward for the false testimony Albert McKnight was to give at the trial; that the said Albert McKnight told Craven that he did not want to tell any lies on defendant, but Craven would tell him that, in

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order to collect the reward, it was necessary for him to go right ahead and do what he (Craven) told him to do, and the said Albert McKnight admits that he was weak enough to follow by said Craven's instructions and do what he was told him .

Defendant further shows that, on the trial, the defendant calimed an alibi and, as a part of his claim, introduced evidence showing that he left the pencil factory about one o'clock on April 26th, took a street car to his home, where he arrived about one twenty (1:20) took dinner with his family and left home for the factory at about 2 o'clock; that the state relied strongly on the testimony of the said Albert McKnight to break down the defendant's alleged claim of alibi, and that the said McKnight testified at the trial that between one and two o'clock on April 26th, he was at the home of the defendant and that the defendant came in close to one thirty o'clock; that the defendant did not eat any dinner, stayed at home about 5 or 10 minutes and then went out and caught a car.

Defendant further shows that the evidence of Albert McKnight at the trial was also strongly relied on by the Solicitor General as corroborative of the affidavit of Minola McKnight introduced by the state, said affidavit being known as "state's exhibit "J" reference to which is here made, as is fully set forth herein.

Defendant further shows that the state introduced in evidence an affidavit of Minola McKnight, obtained after her arrest and incarceration in the jail of Fulton County, as follows to-wit:

"Sunday Miss Lucile said to Mrs Selig that Frank did not rest so good Saturday night, she said he was drunk and would not let her sleep with him and she said she slept on the floor, on the rug by the bed, because Mr. Frank was drinking. Miss Lucile said Sunday that Mr. Frank told her Saturday night that he was in trouble and that he did not know the reason why he would murder. He told his wife to get his pistol and let him kill himself. I heard Miss Lucile say that to Mrs. Selig and it got away with Mrs. Selig mighty bad. She did not know what to think.

I have not heard Miss Lucile say whether she believed it or not I don't know why Mrs. Frank did not come to see her husband but it was a pretty good while before she would go to see him--maybe two weeks. She would tell me wasn't it might bad he was locked up. She would say 'Minola, I don't know what I'm going to do."

The defendant shows that this affidavit of Minola McKnight was denied by her upon the stand during the trial and the evidence of her husband Albert McKnight was claimed by the Solicitor to support this affidavit of Minola McKnight.

The newly discovered evidence of the said McKnight denying that his wife told him any such thing as is alleged in the excerpt from the above affidavit is material to this defendant's case and ought to produce a different result upon another trial.

The defendant here and now offers to show and prove to the court all the facts herein set forth, and swears to the existance of these facts as the truth, and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence and the same are not brought to the attention of the defendant and his counsel, until after the motion for new trial had been heard and passon on.

6. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Mrs. J. B. Simmons, which has come to the knowledge of this defendant and of his counsel since the original motion for new trial was heard and passed on, and which is as follows; that the said Mrs Simmons was, on the 26th day of April, 1913, in the City of Atlanta, and was calling at the Atlanta Shoe Company's place of business at No. 25 W. Alabama street at about two twenty (2:20) or two thirty (2:30) o'clock P. M., that, shortly thereafter, she left the Atlanta Shoe Company's place of business, going north on Alabama

street, and that, when she got in front of the National Pencil Company's factory on Forsyth Street, she heard a girl or woman screaming and crying, saying "please don't", and then she heard the voice shut off suddenly, making a noise or sound much like one holding their hand over the mouth of another person: that, when she heard the cry, she stopped and listened, and says the sound of voice in distress apparently came from the basement of the National Pencil Company's building; that she knows that the sound came from the basement of the pencil company building because there is a grating in front of the building, which is open; the doors of the building facing the street, being all closed, and she noticed an open place beneath the grating which lead into the basement of the building, that, at the time she heard the screaming of the girl or woman, she thought perhaps some man was whipping his wife and, after waiting a short time and hearing no further similar sounds, she decided to go to her home, where she related the circumstances described to her-son-in-law. A. B. Williams and Mrs. Elizabeth Cohen; that she thought no more of the incident or occurrence until the follow ing morning, when the said Williams came into her room and told her that Mary Phagan had been murdered in the National Pencil Company's facotry; that her said son-in-law, Williams, then and there insisted that she go before the Solicitor General and give him the benefit of the information she had outlined to him; that, on or about May 5th she was subpoenaed to appear before the Solicitor General; that she answered the subpoena and made and signed a sworn statement in the Solicitor's office, said statement being taken down by Mr. Hugh M. Dorsey, in his own hand writing and which set forth the same facts as hereinbefore related, that the Solicitor-General tried very hard to induce her to swear that the screaming that she heard was at a much later time in the day, and he called her attention to the fact that Frank was not in the factory at the time she heard the screams; and she told the Solicitor General that she would not testify to anything but the truth, even though her testimony did not suit the Solicitor General; that she left her address with the Solicitor and fully expected that she would be subpoenaed to

testify at the trial of Leo M. Frank, but that she never was subpoenaed, the reason whereof she does not understand.

Defendant further shows that it has come to the knowledge of this defendant since the motion for new trial was denied that, on April 26th, 1913, between two thirty (2:30) and three (3) o'clock, P. M., on Whitehall street that the fact that said Solicitor General Dorsey had seen said Frank at about the time just stated, is the reason that he attempted to discredit the statement made to him by Mrs. J. B. Simmons as outlined above.

Defendant further shows that the theory of the State was, and evidence was introduced at the trial for that purpose, that Mary Phagan was killed by Leo M. Frank on the second floor of the Pencil Company factory between twelve five (12:05) and twelve twenty (12:20) o'clock on April 26th, 1913, and the State's entire case, as presented to the jury, revolved around that theory. The Solicitor General proved by the witness Conley that said Conley assisted Leo M. Frank to move the dead body of Mary Phagan between the hour of four minutes to one and one-thirty (12:56 to 1:30) o'clock from the second floor to the basement the said Mary Phagan being dead already when the said Conley picked her up on the second floor. This evidence of Mrs. Simmons shows the mistake of the State's theory and tends to show that Mary Phagan was in life as late as two-thirty (2:30)P.M. at a time when Frank was away from the factory.

The defendant here and now offers to show and prove to the Court all of the facts herein set forth, as swears to the existence of these facts as the truth, and asks the Court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the said Mrs. J. B. Simmons not being a witness on said trial, and the fact that she was in possession of the state of facts herein set forth being

unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

7. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Mrs. Ethel Harris Miller and Maier Lefkoff, which has come to the knowledge of the defendant and of his counsel since the original motion for new trial was heard and passed on, and which is as follows: that the said Mrs. Miller is acquainted with the defendant, but the said Lefkoff is not acquainted with him; that, on April 26th, 1913, the said Mrs. Miller, together with Maier Lefkoff, met Mrs. Miller's sister Florence Harris, who works at the department store of J. P. Allen, in front of the said store, which is in the middle of the block of Whitehall street and Alabama Sts., in the City of Atlanta, Ga., at about one o'clock on that day; that they thereupon walked down Whitehall street until they reached the corner of Alabama Street and turned up Alabama Street and walked to the corner of Forsyth and Alabama streets, where they caught the Magnolia Street car for their home; that, when they reached the corner of Alabama and Whitehall streets, the said Mrs. Miller saw, standing at the corner, Leo M. Frank, and spoke to him, and the said defendant bowed and spoke to Mrs. Miller, tipping his hat; that it was between one and one ten 1:00 and 1:10) o'clock when the said Mrs Miller saw defendant at the corner of Whitehall and Alabama streets; that the said Florence Harris and Maier Lefkoff were with Mrs. Miller at the time she saw the defendant standing at the corner of Whitehall and Alabama Streets.

Defendant further shows that the theory of the State was, and evidence was introduced at the trial in the endeavor to show that Mary Phagan was killed by Leo M. Frank at the factory of the National Pencil Company between 12:05 and 12:30 on April 26th, 1913, and that between 12:56 and 1:30 o'clock P. M. of that day, the defendant assisted by James Conley moved the dead body of Mary Phagan from the second floor of the factory down to the basement. The Solicitor General proved by the witness James Conley that Leo M. Frank was in the factory of the National Pencil Company the entire time between 12:56 and

1:30 o'clock, on that day, assisting the said Conley to move the body from the second floor to the basement.

The defendant here and now offers to show and prove to the Court all of the facts herein set forth, and swears to the existence of these facts as the truth, and asks the Court to investigate them in this extraordinary motion.

Defendant further submits that the discovery of the foregoing facts is material, and that it is such an extraordinary state of facts as would probably produce a different result on another trial; that said facts were unknown to defendant and his counsel and that it was impossible to have ascertained the same by the exercise of proper diligence, the said Mrs. Ethel Harris Miller and Maier Lefkoff not being witnesses on said trial, and the fact that they were in possession of the facts hereinbefore set forth was unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

8. Defendant further shows he should be granted a new trial upon the newly discovered evidence of Miss Dewey Hewell, which has just come to the knowledge of this defendant and of his counsel, since the original motion for new trial was heard and passed on, and which is as follows; that the said Dewey Hewell was an employee of the National Pencil Company; that she worked for said company for only a few days, and that during the time of her employment there she never met Leo M. Frank to know who he was, and never in her life did she meet Mary Phagan, nor did she ever see Mary Phagan, and that she has never seen the defendant and the said Mary Phagan together; that, at the time of the original trial of the defendant, she was a resident of the home of the Good Shepherd, at Cincinnati, Ohio, and that a Mrs. Bonnifield, the police matron, representing the City Police Department of Atlanta, Georgia, came to Cincinnati, and returned her to Atlanta, where she was used as a witness in the above named case, after which she was again returned to the Home of the Good Shepherd at Cincinnati, that, during her confinement in a large room adjoining the office of Solicitor General Dorsey, the said Dewey Hewell met some twelve or fifteen other girls, who, like herself, were to be witnesses against the defendant, among

whom was a girl named Maggie Griffin, who was very enthusiastic about going on the stand herself and testifying against the defendant; that the said Maggie Griffin, coached Dewey Hewell and told her how to testify and what to say when Dewey Hewell went on the stand; that, before she went on the stand to testify, Solicitor General Dorsey came into the room where the said girls were confined and gave them all a lecture and told them that, when they went on the stand, to go right ahead and tell everything they knew and answer his questions right off sharp am quick; that, while the girls before mentioned were crowded in the said room, there was a great deal of talk and gossip going on among them, and many of them said they were afraid to go on the stand and testify to an untruth, and that they were also afraid to go into the court room and testify at all; that the said Maggie Griffin stated several times how she was going to tell everything that the Solicitor wanted to know when she went on the stand, and that, when the said Dewey Hewell made the statement that she was afraid to go on the stand and that she knew nothing about the defendant and knew nothing about Mary Phagan, the said Maggie Griffin volunteered, with enthusiasm, to tell Dewey Hewell what she should say, and the said Maggie Griffin thereupon rehearsed Dewey Hewell many times in regard to the testimony she should give, and Maggie Griffin told Dewey Hewell that she must say that she was acquainted with the defendant, and that she knew his character to be very bad, and that she had seen defendant whispering with Mary Phagan, with his face very close to her, and, further, that she had seen defendant place his hand upon the person of said Mary Phagan; that Dewey Hewell, thereupon told Maggie Griffin that it would be impossble for her to testify to all that the said Maggie Griffin had instructed her to say, and Maggie Griffin said: "We will go over it again so that you wont forget it" and repeated it several times; that the said Dewey Hewell did not even known where Mary Phagan worked in the factory, but that she was made to say that she knew her by the said Maggie Griffin; and whatever Dewey Hewell testified to regarding either the defendant or Mary Phagan was the result of coaching given to her by the said Maggie Griffin, that, during the time of Dewey Hewell's employment at the National

Pencil Facotry, she never heard any employee, male or female, say that defendant was a man of bad character, and had never seen any wrong doing on his part.

Defendant shows that at the trial, the Solicitor General put several witnesses on the stand to testify to the bad character of the defendant, and further that the defendant knew Mary Phagan. The Solicitor General proved by the said Dewey Hewell that she had worked at the pencil factory four months and had seen the defendant talk to Mary Phagan two or three times a day in the metal department and had seen him hold his hand on her shoulder, and that he called her "Mary" and would stand pretty close to her, Frank had stated before the trial(such statement being in evidence), and again on the trial, that he did not know Mary Phagan by name. This little girl, Dewey Hewell was trained, as she now swears, to say that Frank must have known Mary's name, since he called her "Mary", and was further trained falsely to say that she saw Frank with his hands on Mary Phagan. Dewey Hewell's testimony was very hurtful to Frank and must have influenced the jury in their finding especially for the reason that the state insisted that Frank was seeking to be familiar with Mary Phagan and killed her because she resis - ted said familiarity.

Defendant here and now offers to show and prove to the Court all the facts herein set forth, and swears to the existence of these facts as the truth, and asks the Court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinar y state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the fact that said Dewey Hewell was in possession of the facts hereinbefore set forth was unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

9. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Miss Ruth Robertson

which had come to the knowledge of this defendant and of his counsel since the original motion for new trial was heard and passed, and which is as follows; That the said Ruth Robinson attorn was a witness for the State on the original trial, and that on the morning of the day she testified detective Bass Rosser came to her ~~home~~ house, and conducted her to Solicitor General Dorsey, which was her first meeting with him; that the meeting took place in a room opposite the place where the trial occurred; that after being introduced to the Solicitor General by detective Bass Rosser, the Solicitor greeted the said Ruth Robinson effusively, and said he was glad she had come down to see him, and was sure she would make a good witness, and would help him out in the Frank case; that the Solicitor talked to her and questioned her in the room for about an hour and a half; that in the beginning of the conversation, the Solicitor asked her to go ahead and tell him all she knew about the defendant and Mary Phagan; that she told him that she knew nothing against or about the defendant, except that she worked for him; and so far as she knew he was a gentleman in every respect; that thereupon the Solicitor insisted that as she had worked at the factory for a considerable time that she must know something against the character of the defendant, and asserted that he was a very bad man; that she repeated that she knew absolutely nothing against or about the defendant's character, but the Solicitor insisted that she did, and persisted in the statement that the defendant was a bad character; that the Solicitor asked her if she had ever been in the defendant's office whereupon she replied she had upon several occasions been thereupon business errands connected with the work performed in the factory; that the Solicitor then asserted that the said Ruth Robinson had been in defendant's office with him alone to keep dates for purposes other than business, to which she replied that it was not true; that the Solicitor finally openly insulted the said Ruth Robinson by affirming that she had had sexual intercourse with defendant in his office, or some room or place in the factory which defendant kept for the purpose of meeting girls and that he insisted that she knew the location of such room, and that she knew of other girls having been to this room

with defendant, that said Ruth Robinson was shocked by the broad insinuation and affirmative statement of the Solicitor General, and she told him that all such statements and allusions were lies and that she had never heard of any such thing ever occurring in the factory or elsewhere, in which defendant and any girl employe of the factory were parties to, and that she had never heard such insulting language by direct speech and innuendo by any of the commonest laborers in and about the National Pencil Factory as was used to her by the Solicitor General when in his private room, that he, being the Solicitor General, and she, being in his office, believed at the time that he possessed some sort of right to accuse and insult her and under this belief that she was obliged to take his insults and listen to his scandalous statements by direct speech and innuendo without openly resenting them further than to deny every single one of them; that the said Ruth Robertson wishes to refer to her evidence as given on the stand at the trial of defendant, as to her answers to questions of the Solicitor wherein she was made to say that she had heard defendant call Mary Phagan by her first name, "Mary"; that upon reflection, she wishes to explain that heranswer as above repeated was due entirely to her nervousness because of the badgering that she had been subjected to by the Solicitor, and that as a matter of fact she could not recall one single incident wherein she had ever heard defendant address Mary Phagan by any name, that she could not recall now under calm deliberation that she had ever heard defendant address Mary Phagan by any name as she had never seen him speak with her at any time or place except when instructing her to perform her work better and more rapidly while at her work in the factory; that the said Ruth Robinson, referring back to her first call on the Solicitor, and where he had questioned and talked to her about an hour and a half, at the conclusion of which she was directed to another large room, adjoining where the Solicitor had talked to her. in which there were 13 or 15 other girls and women, all witnesses in the Frank case, and called by the Solicitor according to her understanding, that among these girls she remembers one Carrie Smith, Myrtie Cato, Maggie Griffin and Dewy Hewell, that she remained there

until about 12 o'clock when she went to the courthouse and took the witness stand, that before the Solicitor went over to the courthouse he came into the room where the girls above described and she herself were and gave them a lecture and told them all that when they went on the stand to go right ahead and tell everything that they knew and answer his questions right off sharp; that after the lecture the said Ruth Robertson didn't see the Solicitor General again until she went on the witness stand in the court room; that while remaining in the room with the 12 or 15 girls, before she was called to go to the courthouse, the said Ruth Robertson states that there was a great deal of talk and gossip among the girls there, some of whom said they knew nothing against the defendant and that they were timid and were afraid that they would be scared when they went into court; that Maggie Griffin, however, appeared to welcome and relish the idea of going on the witness stand and told several times how she was going to tell everything the Solicitor wanted to know when she went on the stand, that the said Dewy Hewell said she did not know anything about the defendant or Mary Phagan; or anything concerning the case and that the said Maggie Griffin volunteered with enthusiasm to tell the said Dewry Hewell what to say and did tell her and rehearsed to her at one side of the room; that the said Ruth Robertson heard Maggie Griffin tell Dewy Hewell that she must say that she knew defendant and knew that he was of bad character, and that she knew Mary Phagan and to tell everything bad she could think of about defendant, and to say that she had seen defendant with his hands on Mary Phagan, and that she had seen him whisper to her and talk to her with his face close to here; that Maggie Griffin and Dewy Hewell left the large room described two or three times together, and returned together, and the said Ruth Robertson heard Dewy Hewell say repeatedly that she was afraid she would forget all Maggie had told her to say when she went into thecourthouse, and Maggie said "We will go over it again, so you won't forget it"; that this was repeated several times, that the said Ruth Robertson recalls hearing Dewy Hewell say pointedly that she did not know where Mary Phagan worked

and that she did not know here by name, but she was rehearsed to know her by Maggie Griffin in that room, and to say whatever she did say on the witness stand; that the said Ruther Robertson has seen the evidence as reported as being given by Dewey Hewell and recognized in her answers precisely what she had heard Maggie Griffin tell her to say; that the said Ruth Robertson states that she does not believe either of these girls appreciated what it was to swear falsely, as they were giggling and and laughing over the evidence they were to give when they went on the witness stand.

Defendant further shows that at the trial, the Solicitor General put several witnesses on the stand to testify to the bad character of defendant, and further that the defendant knew Mary Phagan. The Solicitor General proved by the Ruth Robertson that she had seen the defendant talk to Mary Phagan and had heard him call her "Mary". This testimony that Frank called Mary Phagan by name was in the trial peculiarly harmful to Frank, because in his statement before the trial and in the trial itself he said he did not know Mary by name.

Defendant here and now offers to show and prove to the Court all of the facts herein set forth, and swears to the existence of these facts as the truth and asks the Court to investigate them in this extraordinary motion.

The further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the fact that the said Ruth Robertson was in possession of the facts hereinbefore set forth being unknown to the defendant and his counsel, until the motion for new trial had been heard and passed on.

10. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Miss Mamie Kitchens now Mrs Mamie Edwards which has come to the knowledge of this defendant and of his counsel since the original motion for new

trial was heard and passed on, and which is as follows: that the said Mamie Kitchens worked at the National Pencil Company, that at no time during her employment at the factory did she ever hear or see defendant act in a familiar manner towards any of the female employees at the factory or at any other place, that never at any time had any girl or woman, or men told her that defendant had attempted to act in a familiar manner with them or ever in any way offered them an insult in any form; that, never at any time had she witnessed any acts in defendant's office on the part of defendant that would lead her to think that defendant was acting in any way unbecoming to a gentlemen, that it is a fact that she has never seen any woman in defendant's office, except a lady stenographer and that she never saw said lady stenographer acting in any way familiar with defendant, or defendant familiar with her; that said Mamie Kitchens says that defendant when passing through the factory was at all times very business like in his actions, conversation and dealings with the employees, and that at no time did she ever see him laughing at joking with any of the employees of the factory; that she was a witness for the State at the trial of defendant; and testified that on a certain occasion she was in the ladies dressing room on the fourth floor of the factory, in company with one Ethel Stewart and a Miss Irene Jackson, that she further stated on the stand that Miss Stewart was in the room only a part of the time while she and Miss Jackson were there, and also states that the Solicitor asked her is she was ever in the dressing room in company with a Miss Mayfield and Miss Jackson, when they were partially dressed, when defendant came to the dressing room and looked in, and said Mamie Kitchens replied that she was not in the dressing room with Miss Mayfield but was there with Miss Jackson when she was in a partially dressed condition, and that defendant did look in the dressing room at that time; said Mamie Kitchens also stated that the Solicitor asked her what defendant said to them when he looked into their dressing room, and she testified that defendant said "what's the matter girls?" Haven't you got no work to go?" and that she believed Miss Jackson replied. "No". and then added "we are dressing, blame it?" and at this point,

defendant shut the door and disappeared; that said Mamie Kitchens, when on the witness stand, only answered such questions as were put to her by the Solicitor General or by Counsel for defendant, but stated now that if she had been permitted to tell the facts in her own way she could have told them exactly as she told them in this her statement, that when defendant opened the dressing room door and looked in an asked the girls referred to if they did not have any work to do, that none of them were in an exposed condition, but that said Mamie Kitchens had removed her outside street skirt, but that her person was fully protected by her underskirt and that while Miss Jackson had removed a part of her clothing, just what part, said Mamie Kitchens did not remember, the person of Miss Jackson was not in any way exposed; that detective Bass Rosser called at said Mamie Kitchen's home during the trial of defendant and interviewed her, and asked her a great many embarrassing questions as to what she knew against the character of defendant, and that she stated she knew nothing that would in any way reflect on defendant or his standing as a gentleman, and further told him that so far as her personal knowledge of defendant was concerned and so far as she had observed, he had always conducted himself as a gentleman.

Defendant further shows that the Solicitor General endeavored at the trial, to prove to the jury that the defendant was in the habit of looking in on the girls as they were undressed in the ladies dressing room, and on cross examination of Irene Jackson showed that she and said Emily Mayfield were undressing once when defendant came to the door; that defendant came to the door, pushed it open, looked in, smiled and walked out; that the defendant, had, on another instance walked in the dressing room on Miss Mamie Kitchens while the said Irene Jackson and the said Mamie Kitchens were in there The Solicitor General further proved by the said Mamie Kitchens that she was in the dressing room with the said Irene Jackson when she was undressed and that the defendant opened the door and stuck his head inside; that he did not knock, but just stood there and laughed.

Defendant here and now offers to show and prove to the Court all of the facts herein set forth, and swears to the existence of these facts as the truth, and asks the Court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial and that said facts were unknown to the defendant and his counsel and it was impossible to have ascertained the same by the exercise of proper diligence, the facts that the said Mamie Kitchens was in possession of the facts hereinbefore set forth being unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

11. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Miss Marie Karst which has come to the knowledge of this defendant and of his counsel since the original motion for new trial was heard and passed on and which is as follows: that the said Marie Karst was a witness for the state on the original trial and was brought into the case by City detective Bass Rosser, that she was subpoenaed to the office of the solicitor general in the Kiser Building twice before the trial and questioned very closely by the solicitor general; that the solicitor told her to say that the defendant's general character was bad and that he wanted her to answer his questions right off sharp and quick; that when the solicitor was prompting her and questioning her in his office he did not at any time use the word "lasciviousness" but when she appeared on the witness stand and was questioned he used that word and asked her if defendant's character for lasciviousness was good or bad; that she answered "bad" in the face of the fact that she did not know the meaning of the word lasciviousness, it never having been explained to her at that time, that since that time the meaning of the word has been explained to her and that since she understands the meaning she positively denies that defendant's character or reputation, so

far as she knew or knows is bad for lasciviousness; that she has never heard of the defendant acting in any unbecoming manner toward anyone; that she has at no time seen any woman in the defendant's office and never heard any girl or woman say that they had ever seen any woman in defendant's office or had seen the defendant act unbecoming to ladies, that the defendant always made the girls at the factory attend strictly to business and that when she testified his character was bad at the original trial, she intended to convey the meaning that he was not generally liked by the employees on account of his strictness with them in his dealings with them regarding their work.

Defendant further shows that at the trial the solicitor general in order to prove the bad character of the defendant, put the said Marie Karst on the stand and she testified that she knew the defendant and that his character for lasciviousness was bad.

Defendant here and now offiers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result at another trial and that said facts were unknown to the defendant and his counsel and that it was impossible to have ascertained the same by the exercise of proper diligence, the fact that the said Marie Karst was in possession of the facts hereinbefore set forth being unknown to the defendant and his counsel until after the motion for new trial was heard and passed on.

13. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Samuel A. Pardee and W. V. Green which has come to the knowledge of defendant and of his counsel since the original motion for new trial was heard and passed on and which is a fact that the said Samuel A. Pardee knows the defendant by sight, having seen defendant at his place of business several times but that the said W. V. Green does not; that on April 26, 1913, the said Samuel A. Pardee, in company with the said W. V. Green, was at the local store of the Cotton States Belting and Supply Company at Number 9 South

Broad street during the morning and up to one O'Clock in the afternoon; that at one o'clock they left the local store of said Cotton States Belting and Supply company at No. 9 South Broad street and walked to Jacobs' Pharmacy corner, at Whitehall and Alabama Streets, arriving there between 1:03 and 1:05; that the said Samuel A. Pardee saw defendant leaning against the power pole of the Georgia Railway and Power Company; that he recalls the defendant had a newspaper in his hand and as said Pardee passed defendant he waved his hand at him and defendant answered the salutation by waving the paper.

Defendant further shows that the theory of the state was and evidence was introduced at the trial in the endeavor to show that Mary Phagan was killed by Leo M. Frank, at th factory of the National Pencil Company between 12:05 and 12;30 on April 26th, 1913, and that between 12:56 and 1:30 o'clock P. M. of that day the said defendant assisted by James Conley moved the dead body of Mary Phagan from the second floor of the factory down to the basement. The solicitor general proved by the witness James Conley that Leo M. Frank was in the factory of the National Pencil company the entire time between 12:56 and 1:30 o'clock on that day assisting the said Conley to move the body from the second floor to the basement.

The defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of thesefacts as the truth and asks the court to investigate them in this extratordinary motion.

Defendant further submits that the discovery of the foregoing facts is material, and that it is such an extraordinary state of facts as would probably produce a different result on another trial, that said facts were unknown to defendant and to his counsel, and that it was impossible to have ascertained the same by the exercise of proper diligence, the said Samuel A. Pardee and W. V. Green not being witnesses on said trial and the fact that they were in possession of the facts hereinbefore set forth was unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

13. Defendant further show that he should be granted a new trial upon the newly discovered evidence of Mary Rich, which has come to

the knowledge of defendant and of his counsel since the original motion for new trialwas heard and passed on, and which is as follows: that the said Mary Rich knows Jim Conley, and that On April 26th, 1913, at about 3:15 P. M. she saw Jim Conley come out of the alley immediately in the rear of the National Pencil Company's factory; that the said Jim Conley bought a 20 cent dinner of Mary Rich, who runs a restaurant on wheels facing said alley, that after purchasing said dinner he carried same in his hand and went back to the aforesaid alley in the direction of the Pencil factory, and that the said Mary Rich saw no more of the said Jim Conley during that day.

Defendant further shows that one Mrs. J. B. Simmons was passing the factory of the National Pencil company on the 26th day of April 1913 at about 3:20 or 3:30 O'clock P. M. and heard screams of a girl or woman emanating from the basement of the factory, which is more fully set forth in ground 6 hereof and to which full reference is here prayed.

Defendant further shows that the theory of the state was and evidence was introduced at the trial in the endeavor to show that Mary Phagan was killed by Leo M. Frank on the second floor of the Pencil Company's factory between 12:05 and 12:20 on April 26th, 1913, and the state's entire case as presented to the jury revolved around that theory. The Solicitor General attempted to prove by the witness Conley that said Conley assisted Leo M. Frank to move the dead body of Mary Phagan between the hour of 4 minutes to 1 and 1:30 from the second floor to the basement, the said Mary Phagan being dead already when Conley picked her up on the second floor. The witness also testified that he left the front door of the factory about 1:30 P. M. went to a saloon corner Hunter and Forsyth streets, and went from there home,- thereby denying that he was in the alley in the rear of the factory as testified to by Mary Rich.

Defendant here and now offers to show and prove to the Court all of the facts herein set forth and swears to the existence of these facts as the truth and asks the court to investigate them in this extratordinary motion.

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The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial, and that said facts were unknown to the defendant and his counsel and it was impossible to have ascertained the same by the exercise of proper diligence, the said Mary Rich not being a witness on said trial, and that she was in possession of the state of facts herein set forth being unknown to defendant and his counsel until after the motion for new trial had been heard and passed on.

14. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of G. Burtis Dalton, which has come to the knowledge of the defendant and of his counsel since the original motion for new trial was heard and passed on and which is as follows; that the said Dalton, at the time of the trial of defendant for the murder of Mary Phagan resided at the home of one W. W, Barber, at 470 Whitehall street that the newspaper accounts of said murder was the general topic of conversation at the boarding house where he was living; that during one of the several conversations Dalton made the remark that he had been to the National Pencil company's factory several times and confided this to a fellow named R. L. Wann; that he had immoral relations with a girl in the basement of said National Pencil Company's factory; that the said Dalton thought no more of his remark until one day city detective Campbell and Starnes called at his boarding house and told him that the said Wann had reported to them that Dalton knew some bad things against defendant; that the said Dalton at once told the detectives that the information they had received was false, but that so far as his knowledge of defendant went, that the said defendant was agentleman in every respect, that thereupon the detectives Campbell and Starnes laughed at the declaration he had made in defense of defendant and treated his statement as a joke and insisted that Dalton should admit that defendant was a man of bad character and that he had seen defendant go into closets and dressing rooms with various women and girls at various times at the National Pencil Company's factory and that

he, Dalton had joined defendant on several occasions in acts of immoral conduct with women and girlsand that he had on various occasions joined defendant and women in the office of defendant, and that on these occasions they would all drink beer and have a so called good time and that Dalton had seen Jim Conley and defendant on various occasions talking earnestly together and that women and girls had told him that defendant had committed both natural and unnatural acts of intercourse with them, and that Dalton had at various times taken women to the base ment of the Pencil Factory for immoral purposes, with the knowledge and consent of defendant, and detectives Campbell and Starnes told Dalton that they had called on him to see if he would not support the statement of Jim Conley, that Dalton told the detectives referred to that every suggestion they had made was untrue and proceeded to deny separately and collectively every suggestion made to him by detectives Campbell and Starnes as outlined above, that Dalton told the detectives referred to at that time that he did not know defendant; that he knew nothing against or about the character of defendant and had never seen Mr. Frank go into any closets, dressing rooms or other places with any woman or girls at any time or place, and that he never had joined defendant at any time or place in acts immoral with women and girls and that he never at any time or place saw defendant in conversation with Jim Conley and that no woman ever told him that defendant had committed either natural or unnatural immoral acts with them or attempted to do so or asked to do so, that Dalton told detectives Campbell and Starnes that he, Dalton, had been in the basement of the National Pencil factory with one Daisy Hopkins for immiral purposes but that he told the detectives then that he never went to the factory with Daisy Hopkins with the knowledge or consent of defendant, but told the detectives at the time of the conversation referred to that he went to the basement with the consent and knowledge of Jim Conley, and that the said Conley always received a tip of 25 cents from him for such privilege, and that the said Conley would remain on guard for said Dalton while he was in the basement, with the understanding thoroughly understood between Dalton and Jim Conley

that the said Conley would warn Dalton if defendant or anyone else should happen to come along and possibly disturb Dalton while he was in the basement and that said Jim Conley would assist Dalton and Daisy Hopkins to get out of the factory without being seen by anyone; that on one occasion said Dalton looked into defendant's office, but that defendant did not see said Dalton as defendant was busy at the time talking to Daisy Hopkins, who had gone to the factory in company with said Dalton, for the purpose of drawing three dollars on her salary account; that Dalton saw in defendant's office at the time referred to, a lady whom he had since learned to be Miss Eula May Flowers, and another woman who dressed like and looked like a factory employe, but that said Dalton saw nothing wrong going on in the office on the occasion referred to, and that there was no evidence that there was or had been any beer drinking or drinking of any kind, and that defendant was sitting at his desk, apparently attending to his business and all other occupants of the office also appeared to be attending to business, and that as soon as Daisy Hopkins had drawn the money from her salary account as referred to above, Dalton and the Hopkins woman at once left the factory together and Dalton never saw defendant any more, that if anyone had gained the impression from the evidence Dalton gave at the trial that he knew or knows anything against the character of the defendant, that he now wants to disabuse their minds of any such false impression and that he wants everyone and everybody to know that he knows absolutely nothing about or against the character of defendant.

Defendant further shows that it was the theory of the state that defendant had been in the habit of using his office and the basement of the National Pencil factory for immoral purposes, and the Solicitor General proved by the witness Him Conley that defendant had been in the habit of taking girls in his office and in the basement of the factory for immoral purposes. The Solicitor General further proved by the said Dalton that he knew the defendant, and Daisy Hopkins and Jim Conley; that he had visisted the Pencil factory three or four or five times, and had been in defendant(s office two or three times, and

had been down in the basement; that the defendant knew that he was in the basement, that there would be ladies in defendant's office, sometimes two and sometimes one; that he visited the Pen oil factory with Daisy Hopkins; that said Daisy Hopkins introduced said Dalton to defendant in defendant's office before Christmas; that Daisy Hopkins accompanied said Dalton down to the basement where there was an old cot and stretcher; that defendant had coca cola, lemon and lime and beer in his office; that Daisy Hopkins knew defendant and Dalton had seen her talking to him.

The defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth, and asks the court to investigate them in this extraordinary motion. Neither this defendant nor his counsel knew of the existence of Dalton until he was put upon his trial had no knowledge nor could have known that he would make the statements above outlined. They did not know that he would make the statements here made out until after the motion for new trial wasover ruled.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the fact that she was in possession of the state of facts herein set forth being unknown to the defendant and his counsel until after the motion for a new trial had been heard and passed on.

14-1/2. Defendant further shows that he should be granted anew trial upon the newly discovered evidence which has come to the knowledge of defendant and of his counsel since the original motion for new trial was heard and passed on and which is as follows; that the notes found by the body of Mary Phagan and which it is admitted were written by Jim Conley, were written on waste paper found in the basement of the factory by the body of Mary Phagan; that on the note written on yellow carbon order blank, about 8 lines from the bottom of said sheet is a faint

scrawl of the name "H. F. Becker" sought to be erased but which is clearly discernible under the microscope; that also on said note is the date "Sept. 1909", also sought to be erased but also discernible under a powerful microscope, together with the serial number "1018" that said sheet was a duplicate carbon order blank of a requisition sent to the Cotton States Belting and Supply company in September 1909, by the said H. F. Becker. who was master mechanic at the National Pencil Company at that time, and whose business it was to secure and obtain supplies for the Pencil factory, it being his practice to write out the requisition, sign it with his name and send it by an apprentice to the place from where he desired to secure the supplies; that it was the practice and custom of the said Becker to send the original requisition to the place where he secured the supplies and to retain a carbon duplicate copy thereof in his office on the 4th floor of the Pencil factory; that the said duplicate requisitions were contained in pads which remained in his office on the fourth floor of the Pencil factory; that from the time Becker first entered the employ of the Pencil company, until about January 1, 1913, he was allowed to obtain supplies with out obtaining the sanction or authority of anyone else in the factory, his department being conducted entirely independent of other departments, and the requisitions signed by him being sent out and honored without passing through any other office of the factory; that it was his practice to keep his pads of duplicate requisitions in his office, and after having no use for same, to send them down to the basement of the factory with the other trash; that on the 27th day of December 1913, the said Becker left the employ of the Pencil factory, and that within a few weeks thereafter his office on the fourth floor of the factory was cleaned out and the trash, including papers and old pads, were gathered and taken to the basement and placed on the trash pile; that the pad from which the sheet on which Conley wrote his second note was among the pads that were carried down there from Becker's office and dumped into the basement on the trash pile and that Conley picked up said sheet from off the trash pile and wrote the aforesaid note thereon in the basement of the factory.

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Defendant further shows that the serial number on said note namely, "1018" corresponds to the serial number of the requisition made on the Cotton States Belting and Supply by said Becker in September 1909, the preceding serial numbers, namely 1016, 1017 being dated September 10, 1909, and serial number 1019 the one immediately following the sheet on which Conley wrote, being dated October 6th, 1909, that the serial numbers of the order pads used at the time the murder was committed were far in excess of said number----------and that at that time there were no order blanks with serial numbers as low as Number 1018 in any part of the factory, excepting in the basement on the trash pile.

Defendant further shows that none of the order pads having the date "190" had been in the defendant's office since January 1, 1911; that since January 1, 1911, all pads that had been used for requisitions were printed with the date "191"; that on April 26th, 1913, there were no "190" order pads in the factory, excepting on the trash pile in the basement.

Defendant further shows that it was the theory of the state that the crime was committed on the second floor of the factory and proved by Conley that the notes found by the body were written by Conley at defendant's dictation in defendant's office on the second floor of the factory, and that the defendant pulled the sheet on which said note was written from a pad lying on his desk in his office on the seco nd floor of the factory.

The defendant here and now offers to show and prove to the court all of the facts herein set forth and swears to the existence of these facts as the truth and asks the court to investigate them in this extraordinary motion.

The defendant further submits that the discovery of the foregoing facts is material and that it is such an extraordinary state of facts as would probably produce a different result on another trial and that said facts were unknown to the defendant and his counsel, and it was impossible to have ascertained the same by the exercise of proper diligence, the said notes having been continually in the possession of the Solicitor General and

and defendant's counsel having no access thereto.

15. Defendant further shows that he should be granted a new trial because of newly discovered evidence of Ivy Jones, which has come to the knowledge of the defendant and his counsel since the original motion for new trial was heard and passed upon

Upon the trial said Jones testified for the state as follows:

That he saw Jim Conley at the corner of Forsyth and Hunter streets on April 26, 1913, in a saloon between one and two O'clock on the opposite corner from the factory; that he and Conley went towards Conley's home at the corner of Hunter and Davis streets a little after two o'clock.

This witness will now testify to the following: that on April 26th, 1913, he was employed by Walker Brothers, wholesale grocers in the Louisville and Nashville Teminal Building; that he was released from his work that day at one thirty o'clock P. M. and, after being released, he went at once to the corner of Forsyth and Hunter streets to a saloon at the corner, where he had a glass of beer; that, while he was drinking the beer in the saloon, he did not see anyone he knew, that he did not remain in the saloon but a short time in fact, only long enough to drink a glass of beer, then left the saloon by himself and walked up Forsyth street to Mitchell street and out Mitchell street to Davis Street; that he was not joined on the way by anyone, and did not meet any one he knew until he reached Davis street; and, at Davis street, he met Buddy Perry, a friend of his who worked for the L. W. Rogers Grocery Company; that he did not meet any one else but Buddy Perry; that he and Buddy Perry walked to his home at No. 8 Electric Ave., and thereafter went to a ball game, but not together; that he did not meet any other man he knew while on his way with Buddy Perry from the corner of Davis and Hunter streets; and that he did not meet any other man he knew other than Buddy Perry at his home that day.

The testimony of this witness Jones was introduced by the State, for the purpose of corroborating Conley's testimony that he left the factory at one thirty o'clock and went to the corner of Forsyth and Hunter streets, for the purpose of getting him a

a drink where it is claimed he was met by Iva Jones and that Jones and Conley went towards home of Conley together.

Jones has since testified, and will as the defendant is informed and believes, now testify that he met no one in said saloon nor on his way by the saloon to his home, except Buddy Perry, meeting him at Davis and Hunter Streets

Neither the defendant nor his counsel had any reason to believe that Ivy Jones was telling other than the truth when he testified to seeing Conley in said saloon, and had no possible means of knowing, until the original motion for new trial was overruled, that his testimony was false and that he had not, in fact, met Conley as testified by him.

The defendant submits that the discovery that this witness Jones will now testify as is above stated, is such an extraordinary state of facts as will probably produce a different result on another trial; that the testimony he will now make came to the knowledge of this defendant and his counsel since the motion for new trial was passed upon, and could not have been discovered by the exercise of reasonable and ordinary diligence .

16. Defendant further shows that he should be granted a new trial because of the newly discovered evidence obtained from Miss Helen Ferguson, as follows, to-wit:

On the Saturday preceding the date of the murder she was on the second floor of the factory after some boxes, and Jim Conley now in jail, but who used to work at the factory, said to her: "Yes, take all the boxes you want, Miss Helen"; that she was stooping over at the time Conley addressed her; that he kept getting closer to her, and made a move as though he intended to grab her; that she was verymuch frightened and run away as fast as possible.

This witness testified on the original trial, but did not testify to the facts above outlines, and the defendant, nor his counsel, had no knowledge of any such state of facts; nor did they obtain any information that she had such knowledge until after the motion for new trial had been overruled.

The contention of the defendant, and his counsel is that

the little girl was killed by Jim Conley, and this testimony is material as showing his disposition towards the little girls in the factory.

17. Defendant further shows that he should be granted a new trial because of the following;

J. E. Duffy testified on the trial that he worked at the National Pencil Factory and was hurt in the metal department by a cut on his forefinger on the left hand; that he went to the office to have it dressed, that it was bleeding pretty freely and a few drops of blood dropped on the floor at the machine where he was hurt; but that the blood did not drop any where else but at the machine; that none of it dropped near the dressing room or the water cooler.

This defendant is informed that said witness will now testify the truth, which is as follows:

That he was an employee at the factory during a part of 1913 and while at work there, he was injured on the index finger of his left hand; that he worked on a machine on the second floor of the building, in the metal department; that, when he received this injury, there was a vast amount of blood that ran from the wound, a considerable part of which ran on the floor near the machine at which he was at work, and which was directly opposite the one Mary Phagan was employed on; that he saw on various occasions bloody guards- such as women wear during their periods- in the dressing room, on the second floor, and right at the corner of the polishing room; that in answer to a subpoena served upon him by one Garner, he met the Solicitor. Mr. Dorsey, in his office, and that Mr. Dorsey asked him a great many questions regarding the injury to his finger, how it happened, where it happened, how much blood there was, and what method he employed to staunch the blood; that he did very little except to answer Mr. Dorsey's questions; that Mr. Dorsey did most of the talking leading the conversation, that, finally, Mr. Dorsey said that Lemmie Quinn and a boy named Charlie had testified in the case to the effect that he had hurt his hand, and had stopped in front of the dressing room, with his hand extended allowing the blood to drop upon the floor; that Mr. Dorsey then said: "Now, Mr.

Duffy, you know that is not true, and you know that you were not in front of the dressing room at all, and that there was no blood that ran upon the floor, and that, as soon as you injured your finger, you promptly went to the office of Mr. Frank and then to the Atlanta Hospital, where Dr. Ballinger waited on you" Mr. Dorsey then asked what it was he used to stop the blood, and that he replied that he stopped it with a piece of waste; that for some reason he both permitted Mr. Dorsey to ask and answer his questions for him; that he could see precisely how Mr. Dorsey wanted him to testify, and he did testify as suggested by Mr. Dorsey; that after mature deliberation and thought, it is plain to him that he was made to express himself on the witness stand in a manner that he would not have done, had he been permitted to have gone on the witness stand and testified to the facts, as he knew and remembered them; that he now says that when he was injured, his hand did bleed and run upon the tin at the machine he was working on, and did run upon the floor, that, during his conversation with Mr. Dorsey, he, in his leading way, insisted that the witness had gone to the office of Mr. Frank as soon as he had injured his hand, and then went to the office of Dr. Ballinger and had it dressed.

The witness now says that it is possible, and quite probable, that blood dropped from his hand while passing in front of the dressing room, and ~~his~~ he is not willing to state that blood did not drop from his hand in front of the dressing room.

Neither the defendant, nor his counsel had any information or knowledge that the witness, Duffy, knew the facts as above outlined, or that he would testify to the same. On the contrary, he had testified at the trial, as above first outlined in this ground, and neither this defendant, nor his counsel, had any knowledge that he would testify otherwise and further, as next above outlined, until after the motion for new trial had been overruled Exhibits hereto attached are here made a part of this motion in support of the above and next above ground.

18. Defendant further shows that he should be granted a new trial because of the following fact, Mrs. M. Jaffe will testify that she is personally acquainted with the defendant and has been for several years; that on the day of the murder, April 26th, 191[illegible]

she saw Leo M Frank at the corner of Whitehall and Alabama streets at Jacobs' corner at 1:05 P. M. Neither the defendant nor his counsel had any information or knowledge that this witness knew the facts as shown outlined or would testify to the same on the trial; they knew nothing thereof until after the motion for new trial was over ruled in this case.

The witness Conley testified that from four minutes to one to 1:30 on the day of the murder, April 26th, 1913, he was present in the Pencil factory with Frank, engaged in disposing of Mary Phagan's body, and the state contended strongly before the jury that the interval between those said two times was employed by Frank and Conley in disposing of the body. This witness Mrs. Jaffe will testify, as is above stated, making it impossible for Frank to have been so engaged at the time mentioned.

Morris Brandon,
L. Z. Rosser,
R. R. Arnold,
Leonard Haas,
Herbert Haas,
Movants Attys.

STATE OF GEORGIA,
Fulton County.

Before the undersigned personally appeared Leo M. Frank, who deposes and says that the facts stated in the above and foregoing motion are just and true as they stand stated.

Leo. M. Frank.

Sworn to & subscribed before me,
this April 15, 1914.
Montefiore Selig,
Notary Public Fulton County, Ga.

Read and considered. It appearing to the court that notice of the above and foregoing extraordinary motion for new trial has been given to the opposite party as provided by law, as set up in section 1091 of the Penal Code, it is considered, ordered and adjudged that this above and foregoing motion for new trial be filed and made part of the record in the case of the State Vs. Leo M. Frank, pending in Fulton Superior Court.

Let the State of Georgia, through the Solicitor General, show cause before me on the 22 day of April 1914, why the above and foregoing motion for new trial should not be granted upon each and all of the grounds therein stated; and in the meantime it is further considered ordered and adjudged that said motion may be amended at any time before the actual hearing that the present sentence heretofore imposed upon Frank be and the same is hereby stayed and superceded until other and further order of this court.

Benj. H. Hill,
Judge S. C. A. C.

Due and legal service of the within motion and order thereon hereby acknowledged, copy received. This 18 day of April, 1914.

E. A. Stephens,
Hugh M. Dorsey,
Sol. Gen'l.

The recitals of fact in each ground of the foregoing motion are hereby approved as true and correct.
May 9th 1914.

Benj. H. Hill,
Judge S. C. A. C.

Filed in office this the 16th day of April, 1914, at 11 A. M.
John H. Jones, D. Clk.

(1st A M E N D E D M O T I O N.)

GEORGIA, FULTON COUNTY.

And now comes the defendant, Leo M. Frank, and amends his extraordinary motion for a new trial, and for amendment says:

(a). Because of the newly discovered evidence, of J. W. Boozer, which in substance is that, while collecting for Patrick & Thompson one of his accounts was against Jim Conley, now in jail, and connected with the Mary Phagan murder.

On April 26th 1913, he was unable to get to the pencil factory by 1:30 o'clock in the afternoon, it being his custom to go to the pencil factory each Saturday by that time and get the dollar, but he did not collect at the factory that day: However on the afternoon of April 26th, 1913, after 4 o'clock in the afternoon, as near as deponent can recollect about 4:15 O'clock and certainly somewhere between 4 and 4:30 o'clock on Saturday afternoon, on April 26th, 1913, the said Boozer came upon and met up with Jim Conley on Peters street near Castleberry street; that he knows Jim Conley well, and that Jim Conley was, on the afternnon of April 26th, 1913, between 4 and 4:30 o'clock on said Peters Street, and said Boozer came upon him; said Jim Conley was standing leaning up against a pole, and then and there Boozer and Conley spoke to each other, and had a brief conversation; that he asked Jim Conley for his weekly payment of a dollar on his watch, and that Conley told him that deponent could get the money from Mr. Frank, and that Conley asked said Boozer whether he had been by the factory for the dollar.

(b). That he did not tell these facts to any one at the time nor immediately after the Mary Phagan murder, but that during the month of July, and to the best of his recollection, he did tell these facts to Solicitor Dorsey, that he did not tell any of lawyers of Leo M. Frank.

(c). That the above stated testimony is material for the reason that Jim Conley was the main witness for the State, testifying that he had an agreement with Leo M. Frank to return to the factory and destroy the corpse of Mary Phagan; but

about 3 o'clock he went to his home, some distance from the factory went to sleep and forgot to come back to the factory; that he remained at home until about 6 o'clock went out a while and then retutned and spent the night at home.

(d). That this testimony shows that Jim Conley was on Peters street between 4 and 4:30 o'clock.

(e). That this testimony was not known at the trial, nor until after the overruling of the motion for a new trial, nor until the 7th day of April, 1914, by Leo M. Frank or by either of his counsel.

(f). Neither Leo M. Frank, nor his counsel, had any opport - unity to know this, nor had they heard, nor had any reason to suppose that the witness J. W. Boozer, had seen Conley, at the time and place above stated.

(g). This evidence is material and ought, if a new trial be granted, to cause a different verdict to be rendered upon the trialagainst Leo M. Frank.

R. R. Arnold,
Rosser and Brandon,
Leonard Haas,
Herbert J. Haas.

STATE OF GEORGIA,
FULTON COUNTY.

Before the undersigned, personally appeared Leo M. Frank, who upon oath deposes and says that the facts stated in the above and foregoing amended motion for a new trial are just and true and as stated.

Leo. M. Frank,

Sworn to and subscribed before me,
this the 23 day of April, 1914.
C. W. Burke,

Amendment allowed and ordered filed. April 23, 1914.

B. H. Hill,
Judge S. C. A. C.

Filed in office this the 4th day of May, 1914.

John H. Jones, D. Clk.

(3rd A M E N D M E N T T O M O T I O N.)

GEORGIA, FULTON COUNTY.

Now comes Leo M. Frank and amends his extraordinary motion for new trial:

Further amending said extraordinary motion for new trial movant says that a new trial should be granted him because of the material facts set forth in the affidavit of Mrs. Maud Bailey, said Mrs. Maud Bailey testifying that on April 26th, 1913, she was living at 253 Humphries street in Atlanta, Ga., that at 11 o'clock in the morning or a few minutes after that time, she boarded a Stewart Avenue Street Car and left the same at Forsyth and Mitchell streets; that her mother Mrs. May Barrett was with her, and after leaving the car, they both walked together to the store of Alverson Brothers located on Forsyth street near Mitchell street, at which time the witness believes was about 11:30 o'clock in the morning. When they reached Alverson's store that witness's mother left her at the store to go to the Pencil factory, promising to come right back; that after waiting at the store for about ten minutes, witness decided to walk towards the Pencil Factory to meet her mother; that at arriving at the factory, the witness, in as much as she did not meet her mother entered the factory and went to the second floor nearthe time clocks, one of which registered fifteen minutes to twelve and the other showed thirteen minutes to twelve; that when the witness reached a point opposite the time clocks there was present Leo M. Frank, a lady stenographer, Corinthia Hall, Emma Clark Freeman, Arthur White and Mrs Arthur White. That Emma Clark Freemen asked Mr. Frank if she could use the telephone, whereupon Frank told her that she could use the 'phone, and after a short talk on the 'phone, both Mrs. Freemen and Miss Hall left the factory and the witness did not see then any more that day; that just as Mrs Freemen and Miss Hall left the factory and while Arthur White and his wife were standing at the foot of the steps leading up to the third floor from the second floor, where they were in conversation, that the witness's mother came down the steps referred to and when she saw deponent standing near the time clocks the

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mother said: "I thought I left you at Alverson's store," and witness replied that she was tried waiting and told her mother to hurry and got out with her. Witness's mother told her she had to go back to the fourth floor to get a package and would be back as quickly as possible. Witness says she was angry and vexed with her mother for keeping her detained and she and her mother talked for several minutes and when witness and her mother finished talking, witness's mother went up the stairs; Arthur White also went up the same stairway and Mrs White left the factory. Witness says that when she was again left alone, she noticed that the lady that she had supposed to be the stenographer, was gone and she did not see her any more, and witness thinks she must have left the factory while she, witness, was talimg with her mother. Witness says that at about ten (10) or twelve (12) minutes after twelve (12) o'clock noon, she saw a young girl come up the staire and walk into Mr. Frank's office and that she paid very little attention to the girl's face, and that after remaining in Mr. Frank's office some three or four minutes, the grial went out of Mr. Frank's office and passed on down the stairway that led to the first floor. Witness says the girl has on an attractive dress which she thinhs was between pink and lavender color and that the dress was short and the girl was evidently young and that she was heavily built; and witness says the girl passed right on down the stairway that led to the first floor, and witness says she did not see the girl again. Witness says that just as the girl left the building, she saw Mr. Frank in the outer room of his office and saw him disappear into his private office where deponent could not and did not see him again. Witness says that in about five minutes after the girl referred to left the factory, deponent's mother came down the stairs and she and witness left the factory. Witness says that when she reached the bottom of the stairs. Lemmie Quinn was going up the stairs very fast and witness said "howdy" to Mr. Quinn and Mr. Quinn nodded but did not speak.

Witness further says that she and her mother then went to Alverson's store to use their'phone and call Mr. W. B. Newcomb who works at the Swift Soap works, which was then between twenty five

(25) and thirty (30) minutes after twelve (12) o'clock noon, when she reached the store, the reason for knowing that it was about that time being because the Swift Soap company do not permit their employees to use the 'phone after twelve thirty (12:30) o'clock, and witness knows that she was just in time because she had only a moment or two to talk to Mr. Newcomb.

Witness further says that when she entered the Pencil factory that day, Jim Conley was sitting on a box between the stairway and the elevator on the first floor. Witness says that she would not have noticed Conley but for the fact that he made a noise with his foot against the box upon which he was sitting which attracted her attention and caused her to look up and see him.

Witness says that she has made an affidavit to Mr. Hugh Dorsey and further says that if Mr. Dorsey had treated her properly and had not abused her and cut off her story and interrupted her continuously, she would have told him exactly the same state of facts that she has outlined and described in this affidavit. Witness says that she wanted to tell Mr. Dorsey all she knew that might throw light on the investigation that he was conducting, but that Mr. Dorsey wanted to get from her evidence of conditions that were not the facts, on account of which she got mad with Mr. Dorsey and with his methods.

Witness further says that it was very evident that Mr. Dorsey became angry with witness, the result being that he took only a short affidavit from her, and witness says that Mr. Dorsey had her so confused at the time that she cannot at this time recall just what Mr. Dorsey put in the affidavit which he took from her; and witness left his office and has not seen him since.

Witness further says that she makes this statement of her own free will and accord and without any promise of reward of any kind from any person.

Movant submits that the foregoing evidence is very material and vital and that the same would probably produce a different result upon another trial of said case. Movant says that upon the

trial of said case, the state insisted that Leo M. Frank carried the deceased, Mary Phagan, back to the metal room in the rear of the factory and killed her, whereas the testimony of this witness shows that the said Mary Phagn went into said Frank's office and came out and that when she came out and went down the steps, that Frank was still in his office. Movant further shows that said testimony completely repudiates the evidence of the negro Jim Conley and corroboates to the fullest extent the testimony of the witness Lemmie Quinn, and shows that it would have been a physical impossibility for Frank to have taken Mary Phgan back to the metal room and killed her at the time the state claimed, to-wit: somewhere between twelve (12) and twelve five (12:05) o'clock. Movant shows that this evidence was never discovered until after his motion for new trial was over ruled, that he exercised all diligence to ascertain all the facts in connection with his case and that the witness never disclosed to either movant or his counsel or to anybody on his behalf what she would testify to until the present moment.

Movant further says that a new trial should be granted him because of the testimony of Mrs. May Barrett as set forth in her affidavit made in this case, the said Mrs. May Barrett testifying that the facts stated by Mrs. Maud Bailey, wherever the same related to the said May Barrett, are true, the importance of the testimony of the said Maud Bailey having been hereinbefore set forth in the ground immediately preceding; and the testimony of May Barrett is newly discovered as well as the testimony of Maud Bailey and the same is important and would produce a different result upon another trial.

The testimony above set out constitutes such an extraordinary state of facts and circumstances as would justify and demand a new trial.

Movant further states that he had no information or knowledge that the said Maud Bailey or May Barrett knew or would testify to the before mentioned facts until the date of said affidavit s, nor did his counsel know of same. Movant states that he could not have ascertained the same by any possibility, because movant was ignorant of the fact that the said affiants knew and would

testify to the facts above set out, and neither movant not his counsel could have discovered the same by the exercise of due diligence.

Rosser and Brandon,
Leanord Haas,
H. J. Haas,
R. R. Arnold,
Attys. for Movant.

GEORGIA, FULTON COUNTY.

Personally appeared Leo M. Frank, who upon oath deposes and says that the facts in the above and foregoing amendment for new trial are just and true as they stand.

Leo M. Frank,

Sworn to and subscribed before me,
this 24th, day of April, 1914.
C. W. Burke,
N. P. Fulton Co., Ga.

State of Georgia, In Fulton Superior Court,
Vs. Conviction of Murder.
Leo M. Frank. Extraordinary motion for New Trial
at March Term, 1914.

GEORGIA,—FULTON COUNTY.

Personally came before the undersigned attesting officer, Leo M. Frank, who upon oath says that neither at his original trial, nor at the time of making his original motion for new trial, nor at the time the same was overruled, did he have any knowledge of the facts testified to by Mrs. Maude Bailey or Mrs. May Barrett, as set forth in their affidavits made in this case. Affiant, from Tuesday April 29th, 1913, has been in prison, and has been unable to go out and investigate the evidence of his case, and has been compelled to rely upon others to do thw work for him. He exercised all possible diligence, under the circumstances, to ascertain all facts which throw any light upon the truth of the charge against him,

but had no knowledge of the facts testified to in these affidavts.

Leo M. Frank,

Sworn to and subscribed before me,
this 23rd day of April, 1914.
Leopold Haas Jr.
N. P. Fulton County, Ga.
(N. P. Seal.)

This amendment is hereby allowed and ordered filed.
This April 24th, 1914.

Benj. H. Hill,
Judge S. C. A. C.

Filed in office this the 4th day of May, 1914.
John H. Jones, D. Clk.

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(O R D E R O F MAY 9th, 1914.)

The recitals of facts contained in the grounds of the fore - going motion for new trial are hereby approved as true.

This 9th day of May, 1914.

B. H. Hill,

Judge S. C.A. C.

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(ORDER STRIKING 3nd AMENDED MOTION)

Upon motion of the defendants counsel the amended motion for new trial based on affidavits of Ragsdale and Barber is herewith stricken from the files of this Court.

This 28th day of April 1914.

Let the original affidavits made by Ragsdale and Barber referred to in the petition be filed in the Clerk's Office.

Benj. H. Hill,

Judge S. C. A. C.

V. 2

(4th AMENDMENT TO MOTION.)

STATE OF GEORGIA	)	
	(	Fulton Superior Court
VS.	)	
	(	Extraordinary Motion for new trial.
LEO M. FRANK.	)	

And now comes the defendant, Leo M. Frank, and amends his extraordinary motion heretofore made in said case, and for amendment says:

1: A new trial ought to be granted in this case because of the newly discovered evidence of one Annie Maude Carter, which newly discovered evidence is set out and appears in her affidavit, which is hereto attached and marked Exhibit A, said evidence fully appearing in her said affidavit, and said affidavit being made a part and parcel of this motion for new trial. The facts and circumstances in this affidavit set out, which is the newly discovered evidence of Annie Maude Carter were unknown to this movant at the date of his trial and at the date of the overruling of his motion for new trial and was not known to him until this date.

This movant did not know this Annie Maude Carter and had never heard of her until she made the affidavit hereto attached marked Exhibit A.

This movant shows that said evidence is material to the case of this movant for the reason that upon his trial before the jury the main witness against him was J ames Conley, who testified that he watched during the time that the said movant was in communication with Mary Phagan and that after Mary Phagan had been killed this movant called the said James Conley to the second floor of the factory and engaged him, the said Conley, to aid this movant in the concealment of the body of Mary Phagan.

This newly discovered evidence, Exhibit A hereto attached, shows that the murderer of Mary Phagan was the said James Conley and that this movant was not the murderer of the said Mary Phagan.

The facts and circumstances of said Exhibit A, hereto attached, are such extraordinary facts and circumstances as would

justify and demand a new trial, and if introduced before a jury would produce a verdict of acquittal for this movant. This movant shows that these facts set out in Exhibit A were not known to this movant or to movant's counsel until the date of said affidavit and could not by any possibility have been discovered either by this movant or movant's counsel, for the reasons above set forth.

(Signed) L. Z. Rosser
Morris Brandon
H. J. Haas
Leonard Haas
Reuben R. Arnold
Attorneys for Leo M. Frank.

EXHIBIT "A"

STATE OF GEORGIA, VS. LEO M. FRANK.

Extraordinary motion for a new trial.

In Fulton Superior Court, March Term 1914.

Personally appeared Annie Maude Carter of 88-1/2 West Linden Ave., who on oath says, that about October 7th 1913, I was locked up in the Fulton County jail where I saw Jim Conley. I first met Jim Conley in the Court House in November 1913, at the time I was sentenced to jail. After I was sentenced I was well aquainted with Conley and knew him well for four months straight in jail. I talked daily with him about all his affairs and I asked him if he was guilty or not; and he first told me no, that he was innocent; that God above alone knows who did the murder, and I said if you are not guilty, why should you worry so, and he told me he was so near guilty, he felt lost; that he had lost all hope. During December 1913, we were very good friends in jail, he had all confidence in me, he would tell me his secrets and of course I would listen. He again told me he didn't know any thing about Mary Fagans murder and then I told him if that was so, he ought to prove up his character, so during Christmas week I was talking with him in his cell and he said he would tell me the whole truth about it. I asked him why he waited so long: He said" If I tell you will you marry me" and I told him yes. He then told me that he really did the murder of Mary Phagan, but that it was so plainly shown on Mr. Frank that he let it go that way: That him and Mr. Frank both had connection with the girl, but then he immediately confessed that he lied, when he said that Mr. Frank had connection with the girl; and said that he had done it all alone by himself. He bagged me never to say anything about this. He said he first choked her and after she was unconcious he had connection with her, and she being young and never having had anybody, he had to tear her privates. He said he was sitting on a box in the Facory when the girl came down, that he told her some

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one had called her, that she turned back and he then struck her with his fist, knocking her down and dragged her back where they put rubbers on pencils: That finding Mr. Frank absent, he dropped her through the hole; that he then took her around by the furnace starting to put her in the furnace but his concience wouldn't let him; that he put her down there to make people believe Newt Lee did it; that afterwards he found a piece of blank paper, tears it in two, picks up a pencil, and puts the paper on the cellar door and writes the notes; that he first took the notes and put them in her bosom, then he took them out and laid them by her side. That he then took a thing they use to open boxes with and pulled the staple out of the back door, and went out the door, going over on Broad street to get a glass of beer, that he went back to the Factory to make people believe that he was innocent, but that the truth must come to light; that we went to save Mr. Frank by saying he helped move the body but that he knew that that wouldn't work. That afterwards he went and got drunk, went home and started to leave town but that he knew that that wouldn't do, so he stayed here to show that he wasn't guilty. He begged me not to say anything about this, that he wanted to serve his twelve months so that he would be free; that if he couldn't get me he would go north and marry some white woman around Cincinnati.

He also told me that he kept the money he found in the purse but gave the purse to a negro child. While I was in his Company he asked me to be with him and I told him no, that that was what got him in jail there. He asked me that twice in my presence. He asked me that several times in letters he wrote me, but I simply sent the letters back to him, not caring to be in his Company anymore. He wrote me that he had a big hard thing waiting for me and that I had a big fat ass, and he wanted to get it down to natural size. I have not got the letters. I give them back to him myself. I have not told this before, because I only got out of jail March 9th, 1914, but I want to tell the whole truth about what he told me while in jail and I am willing to take the witness stand and swear to this at any time. I have not been given any money or anything else to make this

statement and I have not been promised anything and don't ask anything to make this statement. I am simply telling the truth of my own free will.

Detectives Langford, Chewing and Sturdevant took a statement from me today. I did not tell them all that I am telling here because I knew they were trying to get things to favor Conley and I knew he was guilty, and that what I knew wouldn't help him but would break his neck. Chief Langford also asked me if Conley used his mouth on me and I didn't say anything.

As to how I come to make this statement, when I was down at the station house today and the Detectives asked me all those questions, I knew what they were trying to do; that they were trying to help Conley, and so I went right from the station house to Mr. Jake Jacobs on Decatur street and told him everything that had happened, and he then told me that I ought to make a statement about it and that is how I come to make this statement.

Annie Maude Carter.

Sworn to and subscribed to
before me this 23rd, day of April 1914.
J. O. Knight,
Notary Public, Fulton County, Georgia.
(N. P. Seal.)

G E O R G I A
FULTON COUNTY.

STATE OF GEORGIA)
(Fulton Superior Court
VS.)
(Extraordinary motion for new trial.
LEO M. FRANK.)

Before the undersigned, personally appeared Leo M. Frank, who upon oath deposes and says that the facts in the above and foregoing amendment for new trial are just and true, as they stand stated.

(Signed) Leo M. Frank

Sworn to and subscribed before me
this 23rd day of April, 1914.

(Signed) C. W. Burke,
Notary Public, Fulton County, Ga.

GEORGIA
FULTON COUNTY.

STATE OF GEORGIA)
VS.)
LEO M. FRANK.)

Fulton Superior Court

Extraordinary motion for new trial.

Personally appeared Leo M. Frank, who upon oath deposes and states that the facts set out and sworn to in Exhibit A hereto attached were unknown to deponent at the time of his trial beforethe jury in Fulton County, Georgia, and were unknown to this deponent until the date of said Exhibit A; that he didnnot know the facts and circumstances set out in Exhibit A until the date of said Exhibit A and could not possibly have known the same by the exercise of any manner of diligence.

(Signed) Leo M. Frank.

Sworn to and subscribed before me
this 23rd day of April, 1914.

(Signed) C.W.Burke,

Notary Public,Fulton County,Ga.

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Copy of 4th
Amendment
(Annie Maud Carter)

STATE OF GEORGIA)
VS.) Fulton Superior Court
LEO M. FRANK.) Extraordinary Motion for New Trial.

G E O R GIA
FULTON COUNTY.

Personally appeared R. R. Arnold, Morris Brandon, Herbert J. Haas, Leonard Haas and L. Z. Rosser, who upon oath depose and state that they did not, at the date of the trial, nor until after the Supreme Court had affirmed the case of Leo M. Frank have any knowledge of the facts and circumstances ~~set~~ out in Exhibit A, hereto attached; that these deponents, except Morris Brandon, who did not have active control of the case, and whose firm was represented by L. Z. Rosser, made diligent seargh to find out all about the connection of James Conley with the murder of Mary Phagan, and these deponents and neither of them had any knowledge of any of the facts and circumstances set out in Exhibit A, hereto attached, at the date of the trial of Leo M. Frank, nor until the date of Exhibit A, hereto attached. These deponents knew nothing about the facts set out in Exhibit A hereto attached, nor could they possibly have known the same by the exercise of any manner of diligence.

(Signed) L.Z.Rosser,
R.R.Arnold
Leonard Haas
Herbert J.Haas
Morris Brandon

Sworn to and subscribed before me
~~Notary Public, Fulton County, Ga.~~
this 23rd day of April, 1914.

(Signed) Leo Strauss,
Notary Public, Fulton County, Ga.

This amendment allowed and ordered filed this April 24th, 1914.

(Signed) B.H.Hill,
~~Judge S.C.A.C~~

Filed in office this the 28th day of April, 1914.

F. N. Myers, D. Clk.

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(O R D E R O F M A Y 9th, 1914.)

The recitals of fact contained in the grounds of the foregoing motion for new trial are hereby approved as true.

This 9th day of May, 1914.

B. H. Hill, Judge S. C. A. C.

(5th A M E N D M E N T T O M O T I O N.)

GEORGIA, FULTON COUNTY.

And now comes the movant, the defendant in the above stated cause, Leo M. Frank, and amends his extraordinary motion for new trial, and for cause of amendment says:

1-a. Because of the newly discovered evidence of Georgia Denham which evidence so newly discovered is hereunto set out in an affidavit hereto attached and marked Exhibit A.

The movant hereto, Leo M. Frank, did not, at the date of the original trial nor at the date when his motion for new trial was overruled, know of the facts in said Exhibit A set out; nor did he know that Georgia Denham would make an affidavit as set out and shown by said affidavit; nor did he have any reason to know, nor any means by which he could know, that Georgia Denham knew and would testify to the facts set out in said Exhibit A.

Said testimony, in said Exhibit A set out, is of the highest importance to this movant. Jim Conley one of the main witnesses against this movant, upon movant's trial, testified that he was engaged by Frank to move the body of Mary Phagan from the metal room of the pencil factory down to the basement.

Movant denied, on said trial that Mary Phagan was killed in the metal room and that Conley, through Movant's instigation carried the body from the metal room to the basement, but contended through his counsel that Conley, himself, was the slayer of the littlegirl, and that the wounds and bruises upon the little girl's body was made by Conley and not by movant.

The witness Conley admitted the washing of the shirt, as in said affidavit testified to, but alleged that the apparent stains on the shirt were rust stains.

Movant did not know, and had no opportunity to know, that this witness, Georgia Denham, would testify that Conley told her that the stains upon the shirt were blood stains and not

rust stains and that said stain were in fact blood stains. This testimony of Georgia Denham, unknown to the movant as aforesaid, shows that the stains upon the shirt were not rust stains but were blood stains, and strongly enforces and fortifies the position of this movant that Conley was the slayer of Mary Phagan and that, in the slaying, he was stained with Mary Phagan's blood. Movant affirms that this testimony was likewise unknown to his counsel at the date of the original trial and at the date when the motion for new trial was overruled, and the fact that it is so n wly discovered until it only came to their attention on the date of the affidavit of said Exhibit A.

Movant further shows that this testimony is material, and presents such an extraordinary set of circumstances as would and should produce a different verdict upon another trial.

1-D. Because of the newly discovered evidence of the witness Annie Maud Carter, which evidence is so newly discovered that it is hereunto set out in an affidavit, which is hereto attached and marked Exhibit C.

Movant shows that, when the body of Mary Phagan was discovered in the basement of the pencil factory, there was discovered, lying near thereto, certain notes, introduced in evidence by the State which the negro Conley testified were written by himself, but at the direction and dictation of this movant.

The witness Conley further testified that he could not read and write good; that he could not read a newspaper through. that he tried and found that he could not; and that there were little letter like "dis and dat" that he could read, but the other things he could not understand.

The State contended that a portion of the words of the notes, especially the word "did" and the word "negro" showed that Conley was not the real author of the notes, but that moavnt was, contending that if the negro had written the notes, he would have used the word "done" instead of "did" and the word "nigger" instead of "negro". It was further contended by the State that the negro would not, immediately after murdering the girl, scrawl, out with great paine,the notes, and that

the notes themselves showed that they were conceived by a white man.

The letters, newly discovered and hereto set out as a part and parcel of said Exhibit C, hereto attached, show therein the same words, the same spelling, and the same style of composition as appears in the notes found near the child's body; especially does it appear from these newly discovered letters that the negro Conley did use the word "did and did use the word "negro" instead of the words "done and "nigger". Even in the very question of spelling, the notes hereto set out as a part and parcel of said Exhibit C. show the same character of spelling as is shown in the notes found near the little girl's body. Especial attention is called to the spelling of the word "self", which is spelled in the notes found by the little girl's body and which is spelled in the letters hereto attached as a part of said Exhibit C. as "~~self~~ self". The number of letters hereto attached also negatives the contention of the State and of the witness Conley that he could only write with difficulty, and demonstrates that he could write with facility and that he was a chronic letter writer.

The original notes are set out in the brief of evidence prepared in the motion for new trial, and the originals, themselves, are here to the Court shown.

Neither movant, nor his counsel had any knowledge of the existance of these letters at the time of the trial, nor at the time his motion for new trial was overruled.
Indeed at neither of said dates were these letters in existence. The fact that these letters were in existance became know to this movant and his counsel after the case was affirmed by the Supreme Court, and as a result thereof it has been a physical impossibility that these letters should become known to this movant or his counsel until too late to bring them to the attention of the court, except in this extraordinary motion for new trial.

The discovery of these letters is material, and presents such an extraordinary set of facts and circumstances as would justify the grant of a new trial; and movant insists that, with these

letters before the Court and jury, upon another trial, a verdict would and should be rendered in his favor.

These letters are further material by reason of their substance they reek with the vilest filth and show that they were written by one with the most loathsome and perverted nature, whose testimony was absolutely worthless, and whose depraved disposition could be depended upon to murder this little girl.

The substance of these letters corroborates the contention of movant and of his counsel, that the condition in which the girl's underclothes were found is the result of the work of the negro Jim Conley, and of him alone, the underclothes taken from the body of Mary Phagan being in the following condition: The inside seam of the drawers was cut, not with a sudden rip but deliberately, by one who must have taken his own time in doing it. The cut began at the lower right leg, continuing up across the crotch and partially down the left leg. The drawers, themselves, were extremely roomy. This left the little girl fully exposed, with the exception of a knitted undershirt which fitted next to her skin and which adhered closely to the skin. This knitted undershirt was also cut, the cut starting on the left side, extending up about four or five inches, then extending across the shirt to the left side. There was also a cut over one of the breats of the shirt, which exposed the left breast. The drawers, themselves, show that they were cut and not torn, and, at the crotch, it can be seen where the knife slipped and the material itself was cut.

The contention of the State was not that Frank had deliberately determined to murder the girl; but, having sought familiarity with her, either natural or unnatural, and being refused, he suddenly killed her to protect himself.

The condition of these clothes, as above outlined, shows the murder not to be the act of an excited and unbalanced man, but the leisure, ferocious conduct of one possessed of an unnatural passion, with time and opportunity to gratify it.

This movant shows that, had the nature of said Conley, as exhibited in these letters, been known to the jury trying him

they would not have convicted this movant upon the testimony of such a vile creature.

Movant insists that these letters, introduced before a jury upon another trial, should and would produce a verdict of acquittal.

1-B. Because of the newly discovered evidence of Cora L. Leffew, which evidence so newly discovered is hereunto set out in an affidavit hereto attached and marked Exhibit E.

Upon the original trial of movant, the State contended that Mary Phagan had been murdered in the metal room of the second floor of the factory and had been carried from that place by movant and Jim Conley down the elevator and placed in the basement. Movant and his counsel contended that Mary Phagan was not killed on the second floor of the pencil factory, but on the street floor thereof, by Jim Conley alone and thrown into the basement.

One Barrett testified, upon the trial that he found six or eight strands of hair upon a lathe in the metal department of the factory, not testifying as to whose hair it was.

One of the witnesses for movant, upon cross examination, testified that the hair found on the lathe by this man Barrett looked like the hair of Mary Phagan.

One of the State's strong contention in support of its theory that Mary Phagan was killed in the metal department, on the second floor of the factory, was the finding of this hair upon the lathe, which the State contended was the hair of Mary Phagan.

This newly discovered evidence, Exhibit E, shows that the hair found upon this lathe was not the hair of Mary Phagan.

This newly discovered evidence is material, and presents such an extraordinary state of facts as ought to produce a verdict of acquittal upon another trial.

This movant did not know at the date of his trial nor until after the affirmance of his case by the Supreme Court, nor until the date of the affidavit Exhibit E, that said Cora L. Leffew knew or would testify to the facts set out in said Exhibit E. Movant shows that his counsel was likewise without knowledge,

until the date of said affidavit, Exhibit E, that said Cora L. Leffew would testify as in said Exhibit E set out and could not have ascertained such by exercising due diligence.

1-C. Because of the newly discovered evidence of Georgia Denham, which evidence so newly discovered is hereunto set out in an affidavit hereto attached and marked Exhibit D.

Upon the original trial of movant, the State contended that Mary Phagan had been murdered in the metal room of the second floor of the factory and had been carried from that place by mov

and and Jim Conley down the elevator and placed in the basement.

Movant and his counsel contended that Mary Phagan was not killed on the second floor of the pencil factory, but on the street floor thereof, by Jim Conley alone, and thrown into the basement.

One Barrett testified, upon the trial, that he found six or eight strands of hair upon a lathe in the metal department of the factory, not testifying as to whose hair it was.

One of the witnesses for movant, upon cross examination, testified that the hair found on the lathe by this man Barrett looked like the hair of Mary Phagan.

One of the State's strong contentions in support of its theory that Mary Phagan was killed in the metal department on the second floor of the factory, was the finding of this hair upon the lathe, which the State contended was the hair of Mary Phagan.

This newly discovered evidence Exhibit F, shows that the hair found upon this lathe was not the hair of Mary Phagan.

This newly discovered evidence is material, and presents such an extraordinary state of facts as ought to produce a verdict of acquittal upon another trial.

This movant did not know at the date of his trial, nor until after the affirmance of his case by the Supreme Court nor until the date of the affidavit Exhibit F, that said Georgia Denham knew or would testify to the facts set out in said Exhibit F. Movant shows that his counsel was likewise without knowledge, until the date of said affidavit, Exhibit F, that said

Denham would testify as in said affidavit set out, nor could they have ascertained same by exercise of due diligence.

1.-D. Because of the newly discovered evidence of Cora Lavander Laffew, which evidence so newly discovered is hereunto set out in an affidavit hereto attached and marked Exhibit B.

The movant hereto, Leo M. Frank, did not, at the date of the original trial, nor at the date when his motion for new trial was overruled, know of the facts in said Exhibit B set out; nor did he know that said Cora Lavander Laffew would make an affidavit as set out and shown by said affidavit, nor did he have any reason to know, nor any means by which he could know, that Cora Lavander Laffew knew and would testify to the facts set out in said Exhibit B.

Said testimony, in said Exhibit B, set out, is of the highest improtance to this movant. Jim Conley, one of the main witnesses against this movant, upon movant's trial, testified that he was engaged by Frank to move the body of Mary Phagan from the metal room of the pencil factory down to the basement.

Movant denied, on said trial, that Mary Phagan was killed in the metal room and that Conley, through movant's instigation, carried the body from the metal room to the basement, but contended through his counsel that Conley himself, was the slayer of the little girl, and that the wounds and bruises upon the little girl's body was made by Conley and not by movant.

The witness Conley admitted the washing of the shirt, as in said affidavit testified to, but alleged that the apparent stains on the shirt were rust stains.

Movant did not know, and had no opportunity to know, that this witness Cora Lavender Leffew would testify that Conley told her that the stains upon the shirt were blood stains and not rust stains, and that said stains were in fact blood stains.

This testimony of Cora Lavender, unknown to the movant as aforesaid, shows that the stains upon the shirt were not rust stains, but blood stains, and strongly enforces and fortifies the position of this movant that Conley was the slayer of Mary Phagan and that, in the slaying, he was stained with Mary Phagan's blood. Movant affirms that this testimony was likewise

unknown to his counsel at the date of the original trial and at the date when the motion for new trial was overruled, and the fact that it is so newly discovered until it only came to their attention on the date of the affidavit of said Exhibit B and could not have been discovered by exercise of due diligence.

Movant further shows that this testimony is material, and presents such an extraordinary set of circumstances as would and should produce a different verdict upon another trial.

Rosser and Brandon,
R. R. Arnold,
Leanord Haas,
Herburt J. Haas.
Attys. for Deft.

State of Georgia, (). No. Fulton Superior Court
Vs. (). Conviction of Murder, July Term, 1913
Leo M. Frank. (). Extraordinary Motion for New Trial.

G E O R G I A,
FULTON COUNTY.

Before the undersigned, personally appeared Morris Brandon, R. R. Arnold, Leonard Haas, Herbert J. Haas, and L. Z. Rosser, each of whom deposes and says as follows:

That they, nor neither of them, until the date of Exhibits A, B, D. E. attached to the ~~amended extraordinary motion~~ for new trial this day allowed, did not know of the facts set out in said Exhibits A, B, D and E.

Deponents Arnold, Rosser and Herbert J. Haas, who had actual ~~charge of the case, themselves went to the factory and made a~~ personal examination of the employees of the factory, seeking to see each and all of the said employees; and thus, seeking among the employees of the factory, they did not discover and did not know until the date of said Exhibits A, B, D and E, that Geo rgia Denham and Cora L. Laffew knew the facts set out in said Exhibits A, B, D and E.

Deponents, nor neither of them, did not know of the existence of the letters attached to the affidavit of Annie Maud Carter, which is attached to the amended extraordinary motion for new trial and marked Exhibit "C", until after the case of Leo M. Frank had been affirmed by the Supreme Court. That deponents did not know of the existance of these letters, nor could they have known of them by the exercise of any diligence.

L. Z.Rosser,
Morris Brandon,
Herbert J. Haas,
Leanord Haas,
R. R. Arnold.

Sworn to and subscribed before me,
this 1st day of May, 1914.
B. H. Hill
Judge S. C. A. C.

EXHIBIT A.

GEORGIA, FULTON COUNTY

State of Georgia, Fulton Superior Court.
Vs. Extraordinary Motion for New Trial
Leo M. Frank.

Personally appeared Mrs. Georgia Denham who states that she was employed at the plant of the National Pencil Co., on Forsyth St., Atlanta, Ga. during April and May 1913 that on a certain day which affiant believes was Thursday May 1st, 1913, and which was the day upon which James Conley was arrested in connection with the murder of Mary Phagan affiant saw said Conley in the Metal room of said pencil co., washing a shirt. Affiant saw said shirt plainly and on same there was a large spot which looked to affiant like blood the same to be about the size of a persons hand. The affiant asked said Conley what it was and Conley stated that it was blood that his nose had blead when he had bumpted his head. And the said Conley attempted to demostrate to the affiant how the blood from his nose had gotten around on top

of the shoulder.

Affiant further states that she related the above facts to the detectives who were then working on the case and that her affidavit was taken by them.

Affiant states that some of her associates are- Miss Mary Pirk. Jennie Mayflied. Annie How.

her
Georgia X Denham
mark

Sworn to and subscribed before me,
this 30th day of April, 1914.
J. O. Knight,
N. P. Fulton County, Ga.
(N. P. Seal.)

Correction made before being sworn,
J. O. Knight.

Witness: Notary Public.
Eula Flowers,
N. V. Darley.

EXHIBIT D.

GEORGIA, FULTON COUNTY.

State of Georgia, Fulton Superior Court.
Vs. Extratordinary Motion for New Trial
Leo M. Frank.

Personally appeared Mrs. Georgia Denham, who on upon oath states that she was present in the metal room at the National Pencil Company's plant on Monday, April 28th, 1913, when some strands of hair were found upon a certain lathe, and which were sought to be identified as the hair of Mary Phagan, deceased. Affiant further states that she was well acquainted with the deceased Mary Phagan, and with the color of her hair, and that the hair above mentioned was not the hair of Mary Phagan; that it was entirely too light in color to have been from the head of the deceased. Mary Phagan. That Mary Phagan's hair of an auburn hue while that found on the lathe was more blonde.

Deponent states that amongst those present at the time were Mrs. Cora Lavander, R. P. Barrett, Cora Falta, Marjorie McCord, Miss Jimmie Mayfield, Deponent states some of her associates are

Miss Mary Pirk, Miss Jimmie Mayfield and Annie How.
her
Georgia X Denham
mark

Sworn to and subscribed before me,
this 30th day of April, 1914.
J. O. Knight,
Notary Public Fulton County, Ga.
(N. P. Seal.)

Corrections made before being sworn.
J. O. Knight,
Notary Public

Witness to signature
J. P. Fyffe,
N. V. Darley.

EXHIBIT E.

GEORGIA, FULTON COUNTY — Fulton Superior Court.

State of Georgia,
Vs.
Leo M. Frank.

Extraordinary motion for new trial

Personally appeared Mrs. Cora Lavander Leffew who upon oath states that she was present in the metal room at the National Pencil Company's plant on Monday, April 28th, 1913, when some strands of hair were found upon a certain lathe, and which were sought to be identified as the hair of Mary Phagan, deceased. Affiant further states that she was well acquainted with the deceased Mary Phagan, and with the color of her hair, and that the hair above mentioned was not the hair of Mary Phagan; that it was entirely too light in color to have been from the head of the deceased. Affiant further states that amongst those present at the time were Mrs. Georgia Denham, H.P. Barrett, Cora Falta, Marjorie McCord, Miss Jimmie Mayfiled.

Affiant further states that her associates are

Mrs. Cora Lavander Leffew.

Sworn to and subscribed before me
this 30th day of April, 1914.
D. I. Mac Intyre, Jr.
Notary Public Fulton County, Ga.

STATE OF GEORGIA, No. Fulton Superior Court.
Vs. Conviction of Murder: July Term
Leo M. Frank. 1913. Extraordinary Motion for
New Trial.

:------:

Georgia, Fulton County.

Before the undersigned, personally appeared Leo M. Frank, who being duly sworn, deposes and says that at the date of his trial and at the date when his motion for new trial was overruled he had no knowledge that the witnesses Georgia Denham and Cora L. Laffew knew the facts, or could, or would testify to the facts set out in Exhibits A, B, D and E attached to the amendment to the motion; that at niehter of said dates, and not until the date of the Exhibits A, B, D and E did the defendant know that either of said witnesses had any knowledge of the facts in said exhibits outlined.

Deponent says that he did not know until after his trial before a jury, and after his motion for new trial had been overruled, of the existence of the letters purporting to be written by Jim Conley, attached as Exhibits C to the amended extraordinary motion for new trial this day allowed; and the knowledge of said leeters and the existence of said letters, and that Jim Conley was the author thereof, has recently come to his knowledge, and was not known by him until after the affirmance of this case in the Supreme Court.

Leo M. Frank,

Sworn to and subscribed before me,
this 1st day of May, 1914.
J. O. Knight, Notary Public, Fulton County, Ga.
(N. P. Seal.)

State of Georgia, No. Fulton Superior Court.

Vs. Conviction of Murder; July Term, 1913

Leo M. Frank. Extratordinary Motion for New Trial

GEORGIA, FULTON COUNTY.

Personally appeared before the undersigned Leo M. Frank who, being duly sworn, deposes and says that he is the defendant in the above stated cause, and that the statements contained in the foregoing amendment to his extraordinary motion for new trial are true as they stand stated.

Leo M. Frank.

Sworn to and subscribed before me,
this the 1st day of May, 1914.

J. O. Knight,
Notary Public Fulton County, Ga.
(N. P. Seal.)

The above and foregoing amendment is hereby allowed and ordered filed.

This May 1st, 1914.

B. H. Hill,

Filed in office this the 8th day of May, 1914.

C. H. Brotherton, D. Clk.

(O R D E R O F May 9th, 1914.)

The recitals of fact contained in the grounds of the foregoing extraordinary motion for new trial are hereby approved as true. This 9th day of May, 1914.

Benj. H. Hill,

Judge S. C. A. C.

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(6th A M E N D M E N T TO M O T I O N.)

GEORGIA, FULTON COUNTY.

Now comes the defendant Leo M. Frank, and hereby amends paragraph 2 of the original motion by striking therefrom the following words: "that she was an employee of the National Pencil Company and was acquainted with Mary Phagan, and knew the color of her hair; that she knew state's witness R. P. Barrett, who had testified at the original trial that he had found hair on a lathe on the second floor, and that on Monday, April 28th, the said Barrett showed her the hair which he claimed he had found on said machine, and she, the said Jimmie Wayfield, now states positively that the hair showed to her by the said Barrett, and which the said Barrett stated he had found on said machine, was not the hair of Mary Phagan and that the same was entirely too light in color, and was not of the same texture as that of Mary Phagan", and place in lieu of the stricken matter the following, to-wit: "that she worked at the National Pencil Company for about eight months and knew Mr. Frank when she saw him; that she was acquainted with Mary Phagan, and knew the color of her hair; that R. P. Barrett was known to her, that on Monday, April 28, 1913, Barrett showed her the hair he said he had found on a lathing machine, and she gave it as her positive opinion that the hair was entirely too light in color to be the hair of Mary Phagan.

2. Movant also moves to strike from paragraph 3 of the original motion the following; "that she was an employee of the National Pencil Company, and was acquainted with Mary Phagan, and knew the color of her heir; that she also knew R. P. Barrett and Magnolia Kennedy, also employees of the National Pencil Company the said Barrett having testified at the original trial that he had found certain hair on a lathe on the second floor, and the said Magnolia Kennedy having testified that the said hair alleged to have been found on said lathe looked like Mary Phagan's hair; that, on Monday, April 28th, 1913, Magnolia Called Cora Falta's attention to said

said hair which was alleged to have been found by Barrett on the lathe, and the said Cora Falta states positively that the hair on said lathe was not the hair of Mary Phagan, and that the same was entirely too light in color and was not of the same texture as that of Mary Phagan, and places in lieu thereof the following; "that she was working at the National Pencil Co., for five years past; that she was acquainted with Mr. Frank and also R. P. Barrett, and knew Mary Phagan quite well and knew the color of her hair, that, on Monday, April 28, 1913, she was in the pencil factory and Magnolia Kennedy called her attention that R. P. Barrett was alleged to have found some hair on a lathing machine; that, at that time, she gave it as her positive opinion that the hair found on the machine was not the hair of Mary Phagan, as it was entirely too light in color to be the hair of Mary Phagan. The said Cora Falta now states that she is most positive that the hair she saw on the machine could not have possibly been Mary Phagan's hair and that the hair on the machine was much lighter in color than the hair of Mary Phagan.

3. The defendant further amends paragraph 4 by striking therefrom the following: "That she was an employee of the National Pencil Company, and was acquainted with Mary Phagan, and knew the color of her hair; that on Monday, April 28th, 1913, her attention was called to some hair that was alleged to have been found on a lathe by R. P. Barrett; and that the said Alice Marjory McCord states positively that the hair on said lathe was not the hair of Mary Phagan, and that the same was entirely too light in color and was not of the same texture as that of Mary Phagan" and places in lieu thereof the following; that on Monday April 28th, 1913, her attention was called to some hair that was on a lathe machine on the second floor of the National Pencile Factory; that she examined said hair very closely; that she knew Mary Phagan during her time of employment at the factory and knew the color of her hair; and she states that, in her opinion, the hair, found on the lathe machine was not that of Mary Phagan, as it was much too light to be the hair of Mary Phagan.

4. The defendant also strikes ground number 6 of the original motion.

5. The defendant further amends by striking ground number 12 of the original motion.

6. The defendant further amends by striking from paragraph 13 the following; "that the said Mary Rich knows knowe Jim Conley, and that on April 26th 1913, at about 2:15 P. M., she saw Jim Conley come out of alley immediately in the rear of the National Pencil Company's factory; that the said Jim Conley bought a 20 cent dinner of Mary Rich, who runs a restaurant on wheels facing said alley; that, after purchasing same, he carried same in his hand and went back to the aforesaid alley, in the direction of the Pencil factory, and that the said Mary Rich saw no more of the said Jim Conley during that day" and adding in lieu thereof, that said Mary Rich knows Jim Conley; that on the 26th day of April 1913, Jim Conley bought from her a twenty cent lunch at her lunch stand, which was then located on Hunter Street facing the alley which is in the rear of the National Pencil Company, between Madison Avenue and Forsyth street; and that she never saw anything more of Jim Conley that day.

Rosser and Brandon,
R. R. Arnold
H. J. Haas,
Leanord Haas.
Deft's Attys.

This amendment allowed and ordered filed.

B. H. Hill,
Judge S. C. A. C.

Filed in office this the 9th day of May, 1914.

F. M. Myers, D. Clk.