

( EXTRAORDINARY MOTION FOR NEW TRIAL

State of Georgia,

Vs.

Leo W. 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 W. 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 amendments thereto) and could not, by the exercise of ordinary diligence, 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 before 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