

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.