

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 employes of the National Pencil Company the said Barrett, <sup>having</sup> 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