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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 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