

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.

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 extraordinary 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