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testify at the trial of Leo M. Frank, but that she never was subpoenaed, the reason whereof she does not understand.

Defendant further shows that it has come to the knowledge of this defendant since the motion for new trial was denied that, on April 26th, 1913, between two thirty (2:30) and three (3) o'clock, P. M., on Whitehall street that the fact that said Solicitor General Dorsey had seen said Frank at about the time just stated, is the reason that he attempted to discredit the statement made to him by Mrs. J. B. Simmons as outlined above.

Defendant further shows that the theory of the State was, and evidence was introduced at the trial for that purpose, that Mary Phagan was killed by Leo M. Frank on the second floor of the Pencil Company factory between twelve five (12:05) and twelve twenty (12:20) o'clock on April 26th, 1913, and the State's entire case, as presented to the jury, revolved around that theory. The Solicitor General proved by the witness Conley that said Conley assisted Leo M. Frank to move the dead body of Mary Phagan between the hour of four minutes to one and one-thirty (12:56 to 1:30) o'clock from the second floor to the basement the said Mary Phagan being dead already when the said Conley picked her up on the second floor. This evidence of Mrs. Simmons shows the mistake of the State's theory and tends to show that Mary Phagan was in life as late as two-thirty (2:30) P.M. at a time when Frank was away from the factory.

The defendant here and now offers to show and prove to the Court all of the facts herein set forth, as 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 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 Mrs. J. B. Simmons not being a witness on said trial, and the fact that she was in possession of the state of facts herein set forth being

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