

unknown to the defendant and his counsel until after the motion for new trial had been heard and passed on.

7. Defendant further shows that he should be granted a new trial upon the newly discovered evidence of Mrs. Ethel Harris Miller and Maier Lefkoff, which has come to the knowledge of the defendant and of his counsel since the original motion for new trial was heard and passed on, and which is as follows: that the said Mrs. Miller is acquainted with the defendant, but the said Lefkoff is not acquainted with him; that, on April 26th, 1913, the said Mrs. Miller, together with Maier Lefkoff, met Mrs. Miller's sister Florence Harris, who works at the department store of J. P. Allen, in front of the said store, which is in the middle of the block of Whitehall street and Alabama Sts., in the City of Atlanta, Ga., at about one o'clock on that day; that they thereupon walked down Whitehall street until they reached the corner of Alabama Street and turned u/ Alabama Street and walked to the corner of Forsyth and Alabama streets, where they caught the Magnolia Street car for their home; that, when they reached the corner of Alabama and Whitehall streets, the said Mrs. Miller saw, standing at the corner, Leo W. Frank, and spoke to him, and the said defendant bowed and spoke to Mrs. Miller, tipping his hat; that it was between one and one ten (1:00 and 1:10) o'clock when the said Mrs. Miller saw defendant at the corner of Whitehall and Alabama streets; that the said Florence Harris and Maier Lefkoff were with Mrs. Miller at the time she saw the defendant standing at the corner of Whitehall and Alabama Streets.

Defendant further shows that the theory of the State was, and evidence was introduced at the trial in the endeavor to show that Mary Phagan was killed by Leo W. Frank at the factory of the National Pencil Company between 12:05 and 12:30 on April 26th, 1913, and that between 12:56 and 1:30 o'clock P. M. of that day, the defendant assisted by James Conley moved the dead body of Mary Phagan from the second floor of the factory down to the basement. The Solicitor General proved by the witness James Conley that Leo W. Frank was in the factory of the National Pencil Company the entire time between 12:56 and