

the knowledge of 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 Mary Rich knows Jim Conley, and that On April 26th, 1913, at about 2:15 P. M. she saw Jim Conley come out of the alley immediately in the rear of the National Pencil Company's factory; that the said Jim Conley bought a 20 cent dinner of Mary Rich, who runs a restaurant on wheels facing said alley, that after purchasing said dinner he carried same in his hand and went back to the aforesaid alley in the direction of the Pencil factory, and that the said Mary Rich saw no more of the said Jim Conley during that day.

Defendant further shows that one Mrs. J. B. Simmons was passing the factory of the National Pencil company on the 26th day of April 1913 at about 2:20 or 2:30 o'clock P. M. and heard screams of a girl or woman emanating from the basement of the factory, which is more fully set forth in ground 6 hereof and to which full reference is here prayed.

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 M. Frank on the second floor of the Pencil Company's factory between 12:05 and 12:30 on April 26th, 1913, and the state's entire case as presented to the jury revolved around that theory. The Solicitor General attempted to prove by the witness Conley that said Conley assisted Leo M. Frank to move the dead body of Mary Phagan between the hour of 4 minutes to 1 and 1:30 from the second floor to the basement, the said Mary Phagan being dead already when Conley picked her up on the second floor. The witness also testified that he left the front door of the factory about 1:30 P. M. went to a saloon corner Hunter and Forsyth streets, and went from there home,-- thereby denying that he was in the alley in the rear of the factory as testified to by Mary Rich.

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.