

a drink where it is claimed he was met by Iva Jones and that Jones and Conley went towards home of Conley together.

Jones has since testified, and will as the defendant is informed and believes, now testify that he met no one in said saloon nor on his way by the saloon to his home, except Buddy Perry, meeting him at Davis and Hunter Streets

Neither the defendant nor his counsel had any reason to believe that Ivy Jones was telling other than the truth when he testified to seeing Conley in said saloon, and had no possible means of knowing, until the original motion for new trial was overruled, that his testimony was false and that he had not, in fact, met Conley as testified by him.

The defendant submits that the discovery that this witness Jones will now testify as is above stated, is such an extraordinary state of facts as will probably produce a different result on another trial; that the testimony he will now make came to the knowledge of this defendant and his counsel since the motion for new trial was passed upon, and could not have been discovered by the exercise of reasonable and ordinary diligence .

16. Defendant further shows that he should be granted a new trial because of the newly discovered evidence obtained from Miss Helen Ferguson, as follows, to-wit:

On the Saturday preceding the date of the murder she was on the second floor of the factory after some boxes, and Jim Conley now in jail, but who used to work at the factory, said to her: "Yes, take all the boxes you want, Miss Helen"; that she was stooping over at the time Conley addressed her; that he kept getting closer to her, and made a move as though he intended to grab her; that she was very much frightened and run away as fast as possible.

This witness testified on the original trial, but did not testify to the facts above outlines, and the defendant, nor his counsel, had no knowledge of any such state of facts; nor did they obtain any information that she had such knowledge until after the motion for new trial had been overruled.

The contention of the defendant, and his counsel is that