

# POINTS TO CONLEY AS GIRL'S SLAYER

## Important New Evidence Con- tained in Motion for New Trial for Frank.

### WITNESSES WHO RETRACT

#### Repudiate Absolutely Their Unfa- vorable Testimony Given on Stand —Alibis for Condemned Man.

*Special to The New York Times.*

ATLANTA, Ga., March 27.—An extraordinary motion for a new trial, tending to show that the negro Jim Conley was the murderer of little Mary Phagan and that Leo M. Frank, under sentence of death for the crime, was innocent of any connection with it, will be filed before Judge Ben H. Hill on April 16, the day before the date set for Frank's execution, and the hearing on it will be begun immediately.

Notice of the extraordinary motion was filed to-day by Frank's lawyers, and a copy of the motion itself, which covers sixty typewritten pages, was served on Solicitor General Dorsey.

It is based on new evidence concerning the movements of Frank and of Conley on the day of the murder, and establishing alibis in the case of the former, on testimony designed to show unwarranted "shaping" of evidence by the Solicitor General and the police, and on the repudiation by several witnesses of evidence given by them on the stand. Reuben R. Arnold, of counsel for Frank, pronounces it "the strongest motion for a new trial ever filed in the State of Georgia." It contains nothing of the researches of Detective William J. Burns, and it is inferred that the service of the notice in reality is merely to fix the date for the hearing so that any other new evidence that may be obtained in the intervening period may be added.

The defense holds that the new evidence obtained upsets completely contentions of the State which sought to establish that Mary Phagan was killed by Frank in the National Pencil factory between 12:05 and 12:30 on the afternoon of April 26, and that between 12:56 and 1:30 Frank, assisted by Conley, moved the dead body from the second floor down to the basement. The solicitor sought to show by Conley, the motion sets forth, that Frank was in the factory the entire time from 12:56 to 1:30 o'clock assisting Conley in the disposal of the body, whereas he was seen in the town a few minutes after 1 o'clock.

#### Witnesses Who Saw Him.

Samuel A. Pardee and W. V. Green declare that they were at the local store of the Cotton States Belting and Supply Company at 9 North Broad Street during the morning of April 26 and up to 1 o'clock in the afternoon. Pardee professes to know Frank well by sight. They left the store at 1 o'clock, according to their story, and walked to Jacob's pharmacy at Whitehall and Alabama Streets, arriving there between 1:03 and 1:05 o'clock. Pardee affirms that he saw Frank leaning against the power pole of the Georgia Railway and Power Company with a paper in his hand, that he (Pardee) waved his hand, and that Frank replied by waving the paper. This evidence supports that of Miss Helen Kern at the trial.

Mrs. Ethel Harris Miller deposes that she also saw Frank at Whitehall and Alabama Streets between 1 and 1:10 o'clock.

Mary Rich, a negro woman who conducts a small restaurant and sells lunches at the factory, declares in her affidavit that she knows Jim Conley, and that at about 2:15 o'clock on the afternoon of the murder he came from the alley at the rear of the factory and bought a twenty-cent dinner from her, and carrying it in his hand, went back to the alley in the direction of the pencil factory. She saw no more of him that day.

Conley, according to his own story, had left the factory by the front door at 1:30 o'clock, and was on his way home at this time. If the woman's assertions are true, the fact that Conley left and returned by the back way might explain the broken lock on the rear door of the basement. The affidavit of Mrs. J. B. Simmons, previously made public by the defense, relates that the affiant heard screams coming from the pencil factory basement between 2:20 and 2:30 o'clock. This tends to show that the girl was alive an hour after the State contends she was killed.

Mrs. J. B. Simmons's evidence that the solicitor failed to call her as a witness after she had informed him that she heard screams from the basement of the factory at 2:30 o'clock is set forth as further justification for a new trial. Mrs. Simmons is quoted as declaring that the solicitor tried hard to make her change her story, but that she refused to deviate from it. The motion then contains this paragraph:

"Defendant further shows that it has come to the knowledge of this defendant, since the motion for new trial was denied, that on April 26, 1913, between 2:30 and 3 o'clock, on Whitehall Street, said Solicitor General Hugh M. Dorsey had seen Frank at about the time just stated, and this is the reason that he attempted to discredit the statement made to him by Mrs. Simmons."

Ivy Jones, a cousin of Jim Conley, who at Frank's trial told of meeting Conley shortly after 2 o'clock on the day of the murder, asserts in a new affidavit that he did not see Conley at all that day.

#### Girls Repudiate Testimony.

A large number of the girl witnesses who were called on the stand by the State to testify to Frank's alleged bad character have repudiated their testimony, and they are represented in the extraordinary motion as having been overinfluenced, in some cases intimidated, and in others misled into giving testimony derogatory to the defendant.

Miss Mamie Kitchens swears that her testimony at the trial was misunderstood because she was not allowed to tell in her own way the circumstances of Frank entering the dressing room. She declares that the girls were not undressed, and that Frank never evidenced any improper motives or intentions in looking after the girls.

Charges that she was prompted and coached by the solicitor are contained in the affidavit of Miss Marie Karst. She asserts that the solicitor directed her to say on the stand that Frank's character was bad and that later, when she was asked as a witness if the defendant did not have the reputation of being lascivious she answered that he did, not knowing the meaning of the word, as it had not been explained to her at that time. She swears that since she has learned the meaning of the word she can deny that, so far as her knowledge extends, Frank's character or reputation was bad.

Dewey Hewell was one of the State witnesses against Frank at the trial. She was called to show that Frank had tried to force his attentions on Mary Phagan and that he was a man of bad character. In the affidavit made for the defense, she affirms that she was coached and drilled in her testimony given on the stand and that Maggie Griffin, another of the State's character witnesses, was one of those most eager in coaching her. She asserts that the Griffin girl told her exactly what to

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say and that others were coached in a similar manner. She told Maggie Griffin, she says, that she knew nothing against Frank and nothing about Mary Phagan, but that the Griffin girl told her to go on the stand just the same and say that she knew Frank's character to be bad and that she had seen Frank whispering to the Phagan girl with his face very close to her. "Now we'll go over it again so that you won't forget it," the Griffin girl said, according to the affidavit, after she had given directions as to how Dewey Hewell should testify.

Miss Ruth Robinson, one of the State's character witnesses and a former employe at the factory, charges that Solicitor Dorsey, who interviewed her in his office for an hour and a half, insulted her by insisting that she knew of the alleged immoralities of Frank after she had denied having any knowledge of anything derogatory to the defendant's character. She avers that she was shocked by the solicitor's broad insinuations, and that she had never heard such insulting language by direct speech or innuendo by any of the commonest laborers about the pencil factory as was used to her by the solicitor in his private room. She asserts that she was badgered by the solicitor into saying that Frank knew Mary Phagan by name. She also corroborated much of the affidavit of Dewey Hewell, declaring that she heard the Hewell girl say that she didn't even know Mary Phagan.

## Says Police Persuaded Him.

C. Brutus Dalton, the Gwinnett County character, who testified on the stand that he had been in the factory and had seen women in Frank's office Saturday afternoons, repudiated that testimony. He asserts that he was led to tell untruths by the detectives and the solicitor, and that, as a matter of fact, his only knowledge of Frank was obtained on an occasion when he went to the factory with one of the young women employes who drew her pay.

When Detectives Stearns and Campbell first came to see him, he says, he told them that so far as he knew Frank was a moral man in every respect. He asserts that the detectives laughed at him and insisted that he should testify that Frank was a man of bad character, and that he (Dalton) had joined the defendant on various occasions in acts of immoral conduct with women, and that he had seen Frank and Conley in earnest conversation at different times. Dalton says that he told the detectives that every word of it was untrue, so far as it related to Frank, but that they induced him to go on the stand and testify the way they wanted him to.

Albert McKnight's repudiation of the testimony he gave that he saw Frank at the Selig home on the day of the crime, and that he acted suspiciously is quoted. The defense says McKnight swears the statement was written and prepared by Albert Craven, a white man employed by the Beck & Gregg Hardware Company; was witnessed by E. H. Pickett and Angus Morrison, Jr., both employed by the same firm, and that he was threatened with the chain gang if he changed the story prepared for him, which he now brands as an entire untruth. McKnight says now he left the Selig home before 12:30 o'clock

and did not see Frank at all on the day of the crime.

The defense contends that Craven planned to collect the reward offered for the arrest and conviction of the slayer, a part of which he promised to McKnight. McKnight says he was weak enough to follow Craven's directions after he had been thoroughly drilled. The defense points out that the McKnight testimony was relied upon strongly by the State to shatter Frank's alibi, and that the repudiation should entitle him to a new trial.

A good part of the motion deals with the evidence the solicitor introduced to prove that the hair found on the lathe on the second floor of the factory was Mary Phagan's. The statement of Dr. H. F. Harris that careful microscopic examination showed him that the hair was entirely unlike that of the murdered girl is quoted in support of a new trial.

The defense avers that the solicitor asked his brother, Dr. E. T. Dorsey, to examine the hair after Harris had made his findings and that the physician refused. Dorsey then failed to introduce Dr. Harris's evidence, and later reported the hair to have been lost. It is declared that the State introduced a number of witnesses to prove that the hair found was from the slain girl and distinctly prejudiced the case against Frank in that way while in the possession of expert evidence of its own to the contrary.

Testimony by Miss Jennie Mayfield and Mrs. Cora Falta, factory employes, is then quoted to show that the hair was not Mary Phagan's. These two young women testify absolutely to that fact, declaring they knew Mary Phagan well and that the hair found was much lighter and altogether different.

## The Notes Found Beside the Body.

The notes found by Mary Phagan's body are discussed at length, particularly in the light of the new discovery that one of them bears the carbon tracery of the signature of H. F. Becker, former master mechanic in the factory. The improbability that such a pad, which was used in 1909 by Becker, should be in the office of Frank rather than in the basement, where all discarded and used pads were taken, is dwelt upon at length.

The testimony by Miss Helen Ferguson, in which she says she was menaced by the negro, Jim Conley, the week before the murder, also enters into the new motion.

The testimony of J. M. Duffy, who declares that he was led into giving false and misleading testimony by the solicitor, forms the basis for the concluding ground. Duffy alleges that Dorsey bullied him into saying that when he cut his hand in an accident at the factory none of the blood could have dropped on the floor near the ladies' dressing room. On the contrary, Duffy now testifies his hand did bleed considerably, and it is quite likely that blood dropped on the floor at that point.

Duffy says that when he was called to Solicitor Dorsey's office the Solicitor said that Lemmie Quinn and a boy named Charlie had testified that Duffy had cut his hand badly and had let a lot of blood drop near the ladies' dressing room, where the blood spots were found by the detectives. Duffy, in his affidavit, declares that Dorsey then said to him:

"Now, Mr. Duffy, you know that this is not so, and you know that you were not in front of the dressing room at all, and that there was no blood that ran on the floor, and that as soon as you had injured your finger you promptly went to the office of Mr. Frank and then to the Atlanta Hospital."

This witness declares that Dorsey asked the questions and then answered them himself, and that he could see exactly what the Solicitor wanted him to testify to, and that he did so testify.