

THE KING v COLIN CAMPBELL EADIE ROSS IN THE SUPREME COURT OF VICTORIA 20-25 FEBRUARY 1922

<p><i>Delivered from the Orderly's desk with the Judge on the Bench and Counsel at the Bar Table in tableau</i></p>	<p>Narrator: (Nell) Alma Tirtschke was murdered in Melbourne city on 30 December 1921. Her body was found early the next morning. Alma had been sent on an errand during the afternoon of 30 December. She was to pick up a parcel of meat at the butchers in Swanston Street (near Little Collins Street) and deliver them to Masonic Chambers at 31 Collins Street. Alma was wearing her school uniform (although it was not a school day) as it was her best city outfit. She was 12 years old. If she had walked directly to 31 Collins St it might have taken her 10 to 15 minutes. As it was between 2.30 and 3.00 o'clock she was sighted by a number of people in and around the Eastern Arcade, entering it from Bourke Street and heading towards Little Collins St. The accused Colin Ross operated the Australian Wine Saloon in Eastern Arcade. He later told the police and the jury that he saw her in the arcade but did not speak to her. No witness saw any actual contact between them. Alma's body was found the next morning in Gun Alley (which no longer exists) a short distance up Little Collins St. Alma had been sexually abused and strangled. Ross denied any involvement in the matter to police and to the court. There were however two very suspect confessions made by him. There was a full inquest, a trial, an appeal to the Court of Criminal Appeal in Victoria and to the High Court and an execution all within 115 days of the death of Alma. There was incredible public interest in the case, a queue for seats for the inquest and murder and very large rewards were offered. The whole proceedings were conducted with enormous prejudice and public fervour. Justice Schutt presided at the trial.</p>
	<p>Orderly: All rise. All persons (and members of CLANT) who have business in this honourable Supreme Court of Victoria should draw nigh and you shall be heard.</p>
	<p>Schutt J: Call the case, Madam Orderly.</p>
	<p>Orderly: Call The King v Colin Campbell Eadie Ross</p>

	Macindoe: I appear for the Crown to prosecute if your Honour pleases.
Maxwell wears dark glasses. He is almost completely blind.	Maxwell: I appear with my learned friend T.C. Brennan for the accused Colin Ross, if your Honour pleases.
	Schutt J: Thank you, gentlemen. Read the presentment, please, Madam Orderly.
Ross stands	Orderly: Place Colin Campbell Eadie Ross at the Bar. Please stand Mr Ross. Colin Campbell Ross, the presentment against you is that at Melbourne in the State of Victoria on or about December 31 1921 you murdered Alma Tirtschke. How say you? Are you guilty or not guilty?
In a clear strong voice	Ross: Not guilty
	Schutt J: You have your jury, Mr Prosecutor. Please open.
Ross [Deceased] This is all rubbish!	Macindoe: If your Honour pleases; Mr Foreman and Gentlemen of the Jury I appear before you in a very sad case Alma Tirtschke was raped and murdered on or about 30 or 31 December last year. Her body was found just off Gun Alley which itself runs off Little Collins St in the city of Melbourne. The accused Colin Ross operated the Australian Wine Saloon in the Eastern Arcade not 100 metres from where the body was found. It is the Crown's case that he took her into the Wine Saloon during the afternoon of 30 December <u>where she was subsequently seen by two of the Crown witnesses. He later confessed to one of those witnesses that he</u> had in fact killed the girl but he had not meant to kill her but strangled her in a passion. Later, when he was in gaol awaiting trial, he also confessed to a fellow prisoner Sydney Harding from whom you will also hear. The other significant evidence that you will hear, in conjunction with the confessions, is the pieces of hair were found on blankets used in the Wine Saloon which matched those of the deceased girl. This will prove to you that she was indeed in the saloon on that afternoon. At the end of all the Crown evidence you will have little doubt of the accused's guilt.

	Schutt J: Thank you Mr Prosecutor. Please call your witnesses.
	Macindoe: Thank you, Your Honour. Call Dr Crawford Mollison.
Explained by witness as an aside to the jury	<p>Mollison: I am the Government Pathologist. The deceased was 4ft10 and weighed about 5 stone. I was told she was 12 years of age and that was consistent with her appearance on post mortem. The cause of death was strangulation. There was no suggestion of a ligature having been used <u>(despite persistent press speculation on this issue which I noted and refuted at the time)</u>. There was evidence of recent sexual interference. There was no evidence of semen and one would expect greater evidence of blood loss given the genital injuries. It was possible that some washing of the private parts had taken place.</p> <p>Macindoe: Did you test the stomach for alcohol?</p> <p>Mollison: No; I was not asked to test for alcohol. When I opened the stomach there was no abnormal or alcoholic odour of any kind. I was not asked to test for alcohol and didn't.</p>
This was described at the time as a convoluted question. I have simplified it only slightly	Maxwell: Do I understand you to say that if a child that has had three glasses of sweet wine and within an hour or two dies, you would expect on making a post mortem to find no odour of alcohol at all?
	Mollison: No, I do not think you would find any.
	Maxwell: Have you ever tested that?
	Mollison: No, I have not tested it
	Maxwell: That is a mere guess?
	Mollison: That is what I know of the observation of alcohol.
	Maxwell: Have you ever had an opportunity of putting that opinion of

	yours to the test?
Maxwell then sat down triumphantly; [but why?]	Mollison: No
	Macindoe: Call Blanche Edmonds
	<p>Edmonds: I was in the city with my daughter Muriel shopping on 30 December 1921. It was about 2:45pm that I saw a young girl was walking ahead of us in what appeared to be a school uniform. She was carrying a parcel. She looked over her shoulder twice and appeared nervous. I noticed her as we were entering the Eastern Arcade from Bourke St. She was walking in a southerly direction towards Little Collins St. I could see a man, who I know, standing further up the arcade outside the Wine Bar. I then went up the stairs of the arcade and saw no interaction between the girl and Ross. When I looked down from upstairs I couldn't see either the girl or Ross.</p> <p>Macindoe: You have no doubt it was Ross?</p> <p>Edmonds: None whatsoever</p>
Cross-examined by Brennan	Brennan: You thought she appeared to be frightened as she entered the arcade?
	<p>Edmonds: Yes. She was looking over her shoulder as if apprehensive.</p> <p>Brennan: This was before she reached Mr Ross?</p> <p>Edmonds: Yes</p>
	Macindoe: Call witness May Young (NOT)
	<p>Young: I was with my husband Stanley in the city on 30 December 1921. We had just come from Bourke St through the Eastern Arcade and out into Little Collins St. It was about 3pm. We saw a young woman who answered the description of the deceased girl Alma. She had crossed the road, being Little Collins St, from the Eastern Arcade and was on the other corner. She was carrying a parcel which she dropped and picked up. She looked over her shoulder and appeared to be uneasy. We walked down the hill towards Russell St. When we got to the corner of</p>

	Russell St, we looked back and she was still standing on the corner.
Ross deceased	May and Stanley Young had given evidence at the inquest to this effect but were not called at the trial by the prosecution. It was left to my side to call George Young. I wondered why more wasn't made of it by my lawyers at the time although they did complain during the final address. In looking at some of their tactics at the trial, nearly 90 years later, it is easy for me (and those of you listening to this) to be critical. Why wasn't the Crown forced to call this evidence? Did it not fit the Crown theory of my involvement in Alma's killing?
	Maxwell: Mrs Young, if you were really here giving evidence, I would make a big fuss about the apprehension which you clearly noted in your observations of this young woman. But as you aren't, I can't and won't.
	Narrator: Alma was then within 10 minutes of Masonic Chambers at 31 Collins St where she was to drop the meat off. She was 10 minutes' walk from the Butchers in Swanson St where she had collected the meat but had taken one and a quarter hours to cover this distance via a most circuitous route. This was never explained in the Crown case.
	Macindoe: Call Francis Lane Upton (and I take this opportunity to object to these critical asides and gratuitous remarks by the Orderly, your Honour)
	Orderly/Narrator: Your Honour, I am fulfilling two roles here. I am both Orderly and Narrator. The Producer has informed me that it's not easy to get good staff! Schutt J: Madam and Mr Prosecutor; please remain calm and allow the story to unfold Macindoe: Harrumph!!
Known as Darkie and dressed like a spiv with his hat at a cocky angle [to be removed as he goes into the witness box]. He gives his evidence in a very shifty manner	Upton: I am an unemployed labourer. After a heavy bout of drinking on 30 December I fell asleep in Flagstaff Gardens. It was dark when I awoke. I wanted another drink. I found myself at Ross' Saloon at 1am. I saw a light on and went to it. I heard a woman's voice saying <i>Oh my God, darling how are we going to get rid of it.</i> I then heard Ross say <i>there is somebody here</i> he rushed out like a lunatic. I asked him for a bottle. I noticed his hands were stained with blood. He rushed back snatched a bottle and thrust it into my hands and pushed me away. I walked up Little Collins St and discovered there was blood on the bottle. I threw the bottle away. I did not give evidence at the inquest as I didn't realise the significance of these

	matters.
	Brennan: You didn't realise the significance of a reward being offered?
	Upton: Not at all.
	Brennan: Why do you use the name Lane from time to time? What's wrong with the name of Upton?
	Upton: Well I was afraid me wife might get hold of me for the maintenance. Brennan: Have you been in any trouble with the Police before?
	Upton: Yes, for being drunk a couple of months ago.
	Brennan: What was the last time before that?
	Upton: I do not know why I should answer that.
	Brennan: Well perhaps if you don't, we will ask His Honour if you should answer.
	Upton: I will answer it. As far as that case goes I was found not guilty on both charges of larceny.
	Brennan: Did you ever go to gaol?
	Upton: Yes, about four years ago back to my knowledge.
	Brennan: What was that for?
	Upton: Larceny.
	Brennan: Before you saw the police officer and told him this story you knew there was a reward of £1,000.00.
	Upton: Yes.
	Brennan: When you went to the police did you have any money in your pocket?
	Upton: No, I never had any money in my pocket then.
	Brennan: Have you any reason as to why you did not after Monday 2 January, when you knew of this murder and connected the incident of Friday night with it, then tell somebody?
Ross	Upton: I was too frightened, I thought they might make me

[Deceased] And so they should have!	connected with it.
	Brennan: Have you got a friend in the world at all?
	Upton: No, I have not. I have not got a friend bar myself.
	Brennan: Did you give evidence recently in a maintenance case at Carlton?
	Upton: Yes.
	Brennan: Did you say <i>I'm a bad character and I want your Worships to know it.</i>
Witness very agitated	Upton: Your Honour I want to speak on that subject: I want to have a say on that.
	Schutt J: Then tell us whether you said that or not.
	Upton: I did say it.
	Brennan: Do you know a pawn broker named Diamond?
	Upton: Yes.
	Brennan: Do you remember trying to pawn some of your children's clothes there?
	Upton: Yes, and I will give you the reason.
	Brennan: Have you contributed to the support of your children?
	Upton: No.
	Narrator/Orderly: Those watching this performance will be pleased to note that Francis Upton received no part of the reward for his troubles in giving evidence.
	Macindoe: I call Olive Maddox.
Originally, wearing a navy frock and hat with ostrich feathers. Dressed very smartly	Maddox: I am Olive May Maddox. I am a married woman of Collingwood. I am twenty years of age. I have known Colin Ross for about nine months and visited his Wine Saloon frequently. On Friday 30 December I went into the bar just after 5pm with another girl. I ordered a drink for the two of us. I saw a young girl in the far corner of the bar. I only had a few seconds to look at her. She had a white top and what looked like a college hat. She had gingery coloured

	<p>hair and looked about 14 or 15. There was a glass in front of her. I spoke to Col and said <i>that is a young bit of a kid to be drinking there</i>. He said <i>oh well if she wants it she can have it</i>. There was nobody in the girl's company at the time. There were two men in the room not sitting with her. I returned to the bar just before six and ordered a drink. I did not see the girl or Colin there at that time. I next saw Colin Ross on 5 February just after he had been with the police. He said to me <i>the papers make out she is a goody goody, that is only for the sake of the public. She was a cheeky little devil. She was just at the age she would feel like as if she wanted a man</i>.</p> <p>Macindoe: Can you identify the girl you saw as Alma?</p> <p>Maddox: I have seen a photograph of Alma and all I can say is there is a likeness but it does not look the image of the girl.</p>
Alma [deceased]	I was horrified at the trial (conducted in my absence of course) to hear these awful allegations made about me. I was an innocent 12 year old school girl. I certainly never went into Wine Bars as a regular thing or at all; and, if Mr Ross said these things which should not be believed by this gathering, then they were certainly untrue.
	Maxwell: Witness, you are actually separated from your husband are you not?
	Maddox: Yes.
	Maxwell: Do you follow an occupation of any kind?
	Maddox: No.
	Maxwell: Then how do you live Mrs Maddox?
	Maddox: I think everyone knows how I live. Everyone knows how I earn my living.
	Maxwell: Well, if everyone knows, I won't trouble you further. And you drink a bit on occasions and I suppose you have been a little under the influence?
	Maddox: On many occasions.
	Maxwell: Mrs Maddox have you promised anything for giving all of this evidence?
	Maddox: No and I don't expect anything.

	Maxwell: You know there was a large reward offered. Don't you expect anything?
	Maddox: I never count my chickens before they're hatched.
	Maxwell: But if anything came your way you would appreciate it?
	Maddox: If anything did come my way I would appreciate it, certainly.
	Maxwell: The fact is you first discussed this matter with Ivy Matthews on 10 January, the day the increased reward of £1,000.00 was announced.
	Maddox: I suppose so.
	Maxwell: How many people were in the saloon when you were there?
	Maddox: My estimate is 7 or 8 persons.
	Maxwell: Were they in as good a position as you to have seen Alma?
	Maddox: Yes, I suppose so.
	Maxwell: Do you know of any of these have come forward to corroborate your story?
	Maddox: I don't know.
	Maxwell: I suggest that Alma Tirtschke was never in the Wine Saloon that day or any other day.
	Maddox: All I know is that there was a girl there that day.
Ross [deceased]	Oli did quite well from the reward money. She got £170.00 from the Government reward and £42.00 from the Herald. She also got £74.00 worth of subsistence payments. This was substantial income in those days. I could probably tell you what her daily earning rates were as a prostitute, but I won't.
	Macindoe: I heartily object Your Honour to all these interruptions to the case.
	Schutt J: Well, Mr Prosecutor, you can be content in that the jury will never know of these matters.

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	Macindoe: I now call Ivy Matthews, Your Honour and I hope that those who hear the evidence today, and in the future, will give her evidence more credence.
Ross [deceased]	Maybe so; nevertheless, it is the fact, that Ivy Matthews got more than a third of the total reward money getting £350.00 from the Government and £87.00 of the Herald reward together with £37.00 sustenance. The total payment she got of nearly £500.00 was an enormous amount at that time and could pretty much set her up for life. What's more, the story is a tissue of lies.
Dressed very fashionably for the time; very self-assured and confident and well-rehearsed	<p>Matthews: I am presently not employed. I was a barmaid employed by the accused at his Wine Café until November of last year. I identified for the police a grey-blue blanket that was kept on the couch in the cubicle of the Saloon when I was there.</p> <p>Macindoe: Were you also shown this reddish-brown blanket?</p> <p>Matthews: Yes, but this one was not there in my time. I did come to the Wine Saloon at 3.00pm 30 December. I had not been there for a month before as I was in dispute with Colin Ross and Stanley Ross in respect of the terms of my employment with them. I looked across Stanley Ross' shoulder and saw a little child sitting in the cubicle. She was wearing a white blouse and had hair of an auburn shade and was about 12 or 13 years of age. I did not speak to Colin Ross that day.</p> <p>Macindoe: Did you see him the next day?</p> <p>Matthews: Yes, and I accused him of being involved in the murder. First he said he didn't know what I was talking about but then he admitted that the girl had come to his door and asked him for a drink and he gave her a lemonade. She stayed all afternoon until 6 o'clock. Although he had a visit from Gladys Wain, a friend of his, during the afternoon, he kept her hidden in the back room from her. He said that this girl knew absolutely what he was going to do with her if he wanted her. That he had (and I would have rather have written this word down) fucked her before he knew what he had done and that she had been well fucked before he got to her.</p>
Alma [deceased]	This is the most horrid and awful lie. It is not possible. I was only 12. I was completely innocent. I was never in that Wine Bar that day or any other day. The whole story of this confession is a concoction.

	Macindoe: Please ignore the interruption, Miss Matthews, and continue.
	Matthews: It was between 6 and 8 o'clock that he had outraged the young girl. He lost control and strangled her. He wrapped her body up in a blanket and left her there until after 9 o'clock when Gladys Wain visited him. She stayed for a while then he took her home and came back later in the night and put the body of the girl in the street.
	Brennan: You have not told us where you are living, Mrs Matthews.
	Matthews: Is it necessary for me to say where I live your Honour?
	Schutt J: I don't see why you should not.
	Matthews: I should say that I prefer to be called Miss Matthews and I am living at 25 Rathdowne St Carlton.
	Brennan: Why the hesitation? What harm was there in saying where you live? You gave evidence at the inquest and you have now added bits to it to improve it.
	Matthews: Have I?
	Brennan: Yes and these are ones you've read in the paper.
	Matthews: It is all the truth nonetheless.
	Brennan: I put it to you in fact it is all lies. You didn't speak to Colin Ross. He made no such admissions to you. Do you know Olive Maddox.
	Matthews: Yes.
	Brennan: She is a prostitute?
	Matthews: If you say so.
	Brennan: You have spoken to her since the inquest?
	Matthews: Yes.
	Brennan: And you have tried to get your stories to tally?
	Matthews: I am telling the truth.
	Brennan: Did you say at the inquest one word about Colin saying

	that after Stanley left all these things happened?
	Matthews: No.
	Brennan: Did you say one word about Colin having said he shifted the body into a little room, left it there and then took it back again?
	Matthews: No.
	Brennan: You parted in bitterness when you left the Wine Shop.
	Matthews: Only with his family.
	Brennan: You had litigation pending against the accused in respect of your employment and the cessation of it.
	Matthews: Yes.
	Brennan: Is your name really Ivy Florence Matthews?
	Matthews: To the best of my belief it is.
	Brennan: [in an exasperated tone] What does that mean? Is your married or single name Matthews?
	Matthews: Absolutely I decline to tell you.
	Brennan: Haven't you used many different names over recent years including the names of your brothers to get pensions for yourself.
	Matthews: I absolutely decline to say anything about the pensions I have drawn.
	Brennan: Do you acknowledge you have taken all these different names.
	Matthews: I may or may not have taken them.
	Brennan: Your Honour, you see what type of witness she is.
	Schutt J: What I may or may not see is another matter. (To the witness); You must answer the questions.
	Brennan: Do you still decline to answer questions I have put to you in respect of assumed names you've used?
	Matthews: Yes, I absolutely decline to answer any questions. <i>I leave</i>

	<i>it to the jury.</i>
	Brennan: And what about the reward money. Did you discuss that with Olive Maddox?
	Matthews: I know about the reward money. I did discuss it with Olive Maddox. My evidence remains the truth.
	Brennan: Now Miss Matthews, you were first interviewed by the police on 5 January and you then told them you knew absolutely nothing about these matters. Is that correct?
	Matthews: Yes, that's right.
	Brennan: And all of your stories since then have come because you're determined to get some part of this reward.
	Matthews: No, it is the truth.
Ross [deceased]	It is a pity the jury never did find out about Ivy Matthews. She had been married twice before 1922 and neither of those husbands were named Matthews nor was that her maiden name. Late in 1963 Sgt Jack Ford of the Homicide Squad led a raid on a house in Kew and surprised a woman allegedly in the act of conducting illegal operations. She was an abortionist. The name she was going under then was Irene Chollet but she was really Ivy Matthews. She died in 1964.
	Macindoe: Call Sydney John Harding.
Wearing a soft felt hat and appearing on crutches at the trial.	
Perhaps a walking stick would serve as an adequate prop	Macindoe: I notice Mr Harding that you are now using crutches. At the inquest 4 weeks ago you didn't have those.
[No pun intended]	Harding: That's right, but I do need them.
Ross [deceased]	And he obviously wants to make an impression on the jury.
	Macindoe: Once again, Your Honour, I object to these mutterings from the stalls. Now continue Mr Harding with your evidence, ignoring any posthumous interruptions.

Ross [Deceased] What a joke! What a liar!	Harding: On 23 January 1922 I was a prisoner in the remand yard at Melbourne Gaol. There was a man called Ross there. I knew him from a previous occasion. He asked me what I thought of his case. I told him I didn't know and he would need to give me some more details. He then did. He told me he had been told by his solicitor Mr Sonenberg not to talk to anyone in the gaol <u>but he thought I was an honest person and he would tell me.</u>
Harding gives all his evidence as a public speaker and <i>spruiker</i> .	Harding: [Witness appears to hear the words from the deceased and looks wonderingly around the Court] Macindoe: And what did he tell you? Harding: He told me that he saw a little girl in the Arcade during the afternoon of 30 December and took her into the Wine Bar for a drink. She was behind a screen and nobody else could see her there. He gave her three glasses of wine. He then told me that he kept the girl there until 6 o'clock when his own girlfriend had left. He didn't tell me her name. He found her asleep there at 6 o'clock and could not resist the temptation and had connection with her. She started singing out and he choked her. He then said he cleaned up the blood and mess and washed the body of the girl. He had arranged for his girlfriend to come back that evening which she did. He hid the body of the girl in a blanket. He told me that he then came back into town later and disposed of the body in an alley.
	Maxwell: Have you done any public speaking?
	Harding: Yes, A good deal of recruiting during the war.
	Maxwell: Did Ross tell you that he had told Ivy Matthews about this tragedy?
	Harding: No; each time he mentioned Ivy Matthews' name it was with some execration.
	Maxwell: And he told you he had told the story to no one but you?
	Harding: Yes.
	Maxwell: And that was in spite of what he had been told by his solicitor?

	Harding: Yes; he was simply bursting to tell someone. The other men in the yard couldn't help but hear something of it.
	Maxwell: How many charges have you been committed to stand trial on?
	Harding: Two; I will eventually get cleared of everything.
	Maxwell: Have you been in gaol before?
	Harding: Yes. For housebreaking.
	Maxwell: Was that the only occasion?
	Harding: No, I don't know about 9 or 10 or something but not all for housebreaking. For ordinary assault and that sort of thing.
	Maxwell: Oh that's a mere nothing. What else besides housebreaking and assault? Shop breaking?
	Harding: Yes, well that's housebreaking.
	Maxwell: How many years have you served in gaol?
	Harding: The biggest sentence I have ever received was 18 months. I have had about 8 sentences altogether I think. This has been since 1909 except for four years when I was away at the war.
Ross [deceased]	It's a pity my defence team didn't subpoena his full criminal record for the trial. It seems that the prosecutions didn't have it either or didn't make it available to the defence. His non-military convictions alone required extensive entries in the Victorian Register of Male Prisoners and proved he was a confirmed and hardened criminal. His military history that was produced later to the CCA stated that in 1917 he spent 28 days in army lockups for insubordination involving false statements. Comments attached to his military file by senior officers stated <i>he is a worthless prisoner to have in the service</i>. His discharge was processed while he was in an army lockup. This jury might have been impressed by the fact he was wearing a returned serviceman's badge in his jacket. He was not an honest soldier!
Alma [deceased]	And this man told lies about the confession as well. It suggests that I would have gone into that Wine Bar and had three alcoholic drinks and just stayed there all afternoon. That is such a lie. And whatever happened to the parcel of meat that I was carrying from the butchers? That doesn't seem to have been mentioned in any of the alleged confessions made by Colin Ross.

	Maxwell: Now Harding this whole story you have told is a mess of lies isn't it?
	Harding: No, its not. If it had been my own brother I would have told the police.
	Maxwell: Yes, we say so too! [with some emphasis] You did not expect either monetary reward or some release from your sentence as a result from telling this story?
	Harding: No.
	Maxwell: You simply spurn the money?
	Harding: If I got it I would give it to the Children's Hospital.
Ross [deceased]	Sydney Harding received 20% of the Government reward namely £200 and a further £50 from the Herald. He also received £27 by way of sustenance, a total of £277. There is no evidence that this money ever found its way to the Royal Children's Hospital or any other charity except for the one that starts at Harding's home. This was blood money!
	Macindoe: I call Senior Detective Frederick Piggott.
Dressed as a 1920's Police Officer	Piggott: I was the Officer in Charge of the investigation of the murder of Alma Tirtschke. Our enquiries quickly zoned in on Colin Ross who was the holder of the Australian Wine Shop licence in the Eastern Arcade at the relevant time. We interviewed him on a number of occasions. He said he was in the shop on 30 December and saw a girl about 14 or 15 years of age in the arcade somewhere between 2pm and 3pm. He did not speak with her, so he said. He told us that he had a visit from a woman with whom he was friendly called Gladys Lindeman Wain at about 4 o'clock that afternoon and arranged to meet her later at the Wine Shop at 9pm. He did so and she stayed for an hour or more before he saw her to her tram to take her home. He then went home himself arriving at Footscray at about midnight. Macindoe; Did you interview him again? Piggott: Yes, we interviewed Ross again on 12 January. He continued to deny any involvement in the murder of Alma Tirtschke but we nevertheless charged him with her murder on 12 January and he was thereafter in remand

	<p>until the time of the trial and after.</p> <p>Macindoe: Did you arrange for some blankets to be tested for hair samples?</p> <p>Piggott: Yes, on 13 January Snr Detective Brophy and I went to the offices of Mr Price, the Government Analyst and left with him two blankets. There was a grey one which Ross had identified to us as being in the Wine Saloon and a brown blanket which he said was not. It was on the brown blanket that we picked off 22 separate hairs which were handed to Mr Price separately and placed by him in a bottle. As well, we gave him a lock of hair from the left side of the head of the deceased girl which had been cut off from her body by Detective Portingale the previous week.</p>
	<p>Maxwell: Snr Detective Piggott you are under some pressure to obtain a result in this case are you not?</p>
	<p>Piggott: The public were clamouring for police action and the politicians, of course, were harassing us. They were nervous thankless days but we survived the uproar long enough to come up with the theory that Ross had ravished and strangled Alma in the Saloon. But we were well aware our evidence was only circumstantial. While we suspected Ross we decided to build up the chain of evidence that was being forged against him.</p>
	<p>Maxwell: I suggest that when a piece of evidence could not forge into a link you simply discarded it.</p>
	<p>Piggott: That's your opinion Mr Maxwell.</p>
	<p>Macindoe: Call Charles Price. Mr Price are you the Government Analyst?</p> <p>Price: Yes</p> <p>Macindoe: I won't trouble you for your qualifications. Did you carry out some tests on some hair samples provided to you by the police in this matter? I now hand these samples to you.</p>
	<p>Price: Yes, I made an examination of the dark auburn hair coloured hair contained in the sealed envelope handed me by the Detectives and which was said to come from the body of the deceased. I compared those with the 22 distinct hairs removed from the brownish grey blanket which was said to have come from the home of the</p>

	<p>accused. From the results of my examination, I am of the opinion that although there are slight variations in colour, length and diameter that the hair removed from the head of the deceased the two specimens of hair are similar and were derived from the scalp of one and the same person. There was also a grey blanket on which 5 human hairs were found similar in colour to those removed from the brownish-grey blanket which I believed are derived from the same head hair.</p>
	<p>Maxwell: Mr Price you don't pretend to be an expert on the subject of hair?</p>
	<p>Price: No I knew nothing about the subject beforehand and my experiments and reading were principally done after the event. For all I know the pith of all hairs may be identical.</p>
	<p>Maxwell: When did you last examine the hairs from a woman's head?</p>
	<p>Price: Several years ago; about three years ago.</p>
	<p>Maxwell: Can you give me any idea how often altogether you have made such examination of women's hair?</p>
	<p>Price: I've made very few.</p>
	<p>Maxwell: Do you say the hair on the brown blanket and the hair on the grey blanket are in your opinion from the same head?</p>
	<p>Price: Yes.</p>
	<p>Maxwell: Are they different in colour and in diameter from the hair taken from Alma Tirtschke?</p>
	<p>Price: Yes.</p>
	<p>Maxwell: So I suppose that it is possible that the hair on the blankets might have come from another head.</p>
	<p>Price: It is possible, yes.</p>
	<p>Maxwell: Don't you think it probable?</p>
	<p>Price: No.</p>
	<p>Maxwell: Why not?</p>
	<p>Price: Because of the general similarity.</p>

	Maxwell: How can you say that when you've not examined many heads?
	Price: Because I've received the hair and have examined many heads of the same colour.
	Maxwell: Did you find great variations?
	Price: Yes.
	Maxwell: Were any of the hairs like those of Alma Tirtschke?
	Price: They were somewhat similar.
	Maxwell: Did you not find some quite as like hers as those taken from the blankets?
	Price: I did.
	Maxwell: That's why I ask again, how can you possibly say these were Alma's hairs on the blanket? Mr Price did you know that the hairs that were on the blankets were found a fortnight after Alma's death after the blankets had been at the accused's home and they would have been frequently aired on a clothesline?
	Price: I'm not sure I did know that.
	Macindoe: So Mr Price in your opinion the hair found on the blanket is similar to that of Alma Tirtschke?
	Price: Yes.
	Macindoe: That now concludes the case for the Crown if Your Honour pleases.
	Maxwell: Swear Colin Campbell Ross.
	Narrator: An independent analysis of the hair samples was performed on behalf of "the Defence" (although it was to be done 80 years later as you will hear). Mr Sonenberg, Solicitor for Ross, had requested such a test on 30 January 1922, but it had been refused by the Crown Solicitor because, he said, <i>it was of the first importance that such exhibits be preserved in the same condition</i>

	<p><i>precisely as when the witness gave evidence about them.</i> How would that response be looked at nowadays?</p> <p>Macindoe: Harumph!!</p>
	<p>Maxwell: I want to come right to it, Mr Ross. Did you murder Alma Tirtschke?</p>
	<p>Ross: No.</p>
	<p>Maxwell: Were you in the Australian Wine Saloon on 30 December 1921?</p>
	<p>Ross: Yes. I got there about 2 o'clock in the afternoon. My brother Stanley Ross was in charge that day and was there when I got there from home at Footscray.</p>
	<p>Maxwell: During the afternoon did you speak to Ivy Matthews?</p>
	<p>Ross: No, the last time I'd spoken to her was in October of last year. Since then I haven't seen her let alone spoken to her. Nor did I speak to her on the following day 31 December.</p>
	<p>Maxwell: You had sued her and there was bad feeling between you?</p>
	<p>Ross: Yes, bitter feeling.</p>
	<p>Maxwell: On the afternoon of December 30 did you at any time see a little girl answering the description of Alma Tirtschke?</p>
	<p>Ross: Yes.</p>
	<p>Maxwell: Did you speak to her?</p>
	<p>Ross: Never at any time.</p>
	<p>Maxwell: As far as you know was she in your Wine Saloon.</p>
	<p>Ross: No. When I first saw her she was walking towards Bourke St in the Arcade and then she turned and walked towards Little Collins St and left. This was between 2 and 3pm as best as I can fix it.</p>
	<p>Maxwell: What were your movements that night?</p>
	<p>Ross: I had arranged to meet a friend Gladys Wain that night at 9 o'clock at the Wine Saloon. She had called in for an hour</p>

	<p>or so at 4 o'clock. I went home for dinner and came back for my appointment and left again just before 10:30 and went home to Footscray and got there at about 12 o'clock. My family can all vouch for me for my movements that evening.</p>
	<p>Narrator: And in fact they all did and gave evidence on his behalf which was obviously not accepted by the jury.</p>
	<p>Maxwell: Did your licence for the Saloon end on the following day 31 December and did you remove any of your goods from the premises?</p>
	<p>Ross: Yes. I took home some blankets and other things. The brownish blanket produced by the police in evidence in this case was never in the Wine Saloon but was always at home at Footscray. The grey blanket and another one were in fact kept at the Wine Saloon but taken by me on 31 December or shortly after 31 December.</p>
	<p>Maxwell: Did you ever see the woman Olive Maddox on 5 December?</p>
	<p>Ross: No, that is all lies.</p>
	<p>Maxwell: What about the witness Upton?</p>
	<p>Ross: Nobody could believe him.</p>
	<p>Maxwell: What about Harding?</p>
	<p>Ross: He is a complete and utter liar. He's either got his story from the papers or from what the police have told him. He's tried to match some of it up with the story told by Ivy Matthews but he hasn't even got that right.\</p>
	<p>Maxwell: Did you tell anybody in the gaol anything about what happened at the Wine Saloon?</p>
	<p>Ross: No, my solicitor, Mr Sonenberg said <i>open your mouth while you are in here and you could end up on that platform</i>. He pointed at the gallows which were just through an open door nearby. <i>Say nothing. They'll plant people in here to testify against you.</i></p>
<p>Ross [deceased]</p>	<p>Well I didn't talk to anybody in the gaol but I ended up on those gallows in any event.</p>
	<p>Macindoe: You did see a little girl in the Arcade that day.</p>

	Ross: Yes.
	Macindoe: Did you see Olive Maddox in the Saloon that afternoon?
	Ross: Yes.
	Macindoe: Did she say to you <i>that's a young bit of a kid to be drinking there.</i>
	Ross: No, that's pure invention.
An inadmissible question!	Macindoe: Can you suggest why Olive Maddox should invent that?
	Ross: For £1,000.
	Macindoe: Do you suggest that she gave that evidence so she could get a £1,000.
	Ross: Yes, a prostitute will come at anything.
	Macindoe: You heard Ivy Matthews' evidence.
	Ross: Yes, that's all lies too.
	Macindoe: What she made that up?
	Ross: Well revenge is sweet isn't it? It was to get even with me.
	Macindoe: What, the only reason? What about the £1,000?
	Ross: She might be in for a cut of that too. She might be like the other bloke and give it to the Children's Hospital.
	Macindoe: Can you tell me how the hairs got on these blankets?
	Ross: No. My idea is that they have been put there by the police to get me hung, to fit me.
	Macindoe: Can you tell us why any member of the police force should try dishonestly to fit you?
	Ross: Because I beat them in another case some time ago.
	Brennan: Call Gladys Wain.
Youthful, pretty with auburn coloured hair but wearing a	Wain: I am a friend of Collin Ross and attended at the Australian Wine Saloon on December 30 at about 4pm. I asked Mr Ross for a drink and I walked through to the small room at the end of the bar. I was there about 10 minutes. There

<p>hat trimmed with flowers.</p>	<p>were several men at the bar at the time. I did not see any little girl in the bar in any part of it. I left at about 5:30pm and made arrangements to meet Colin at 9 o'clock. My mother was to come with me and look at some furniture as the Saloon was closing. As it turned out, my mother couldn't attend but we then spent an hour or so together and I left at 10.20 with Colin Ross and went home. He saw me to my tram. We were not romantically attached. I was not <i>his girl</i>. I am married.</p>
<p>Witness takes of hat and shows curly auburn hair</p>	<p>Brennan: Will you take your hat off please, and show us your hair?</p>
	<p>Maxwell: Call Professor/Dr James Robertson.</p>
	<p>Narrator: If Maxwell could have called this evidence a completely different picture may have emerged. Dr Robertson was not then born!</p>
	<p>Maxwell: Dr Robertson you are now a Professor at ANU with a speciality in hair and fibre identification.</p>
<p>A broadish Scottish accent</p>	<p>Robertson: Yes, I trained at Glasgow University; in 1999 I was the Director of Forensic Services of the Australian Federal Police in Canberra and prepared a report in respect of the hair samples in this case.</p> <p>I was then, if I may say so, an acknowledged expert in the field of hairs and fibres and had published widely. The opinion I formed is effectively the reverse of that expressed at the trial by Mr Charles Price who then described himself as a Government medico legal analyst.</p>
	<p>Maxwell: Yes, well can you state your opinion for us?</p>
	<p>Robertson: Hairs from three sources were examined by me. The first were those acknowledged as being from the body of Alma Tirtschke, there were those from a brown grey blanket and some hairs from Mrs Gladys Wain which had been provided at the time of the trial by the Defence. They were all easily differentiated at the stereomicroscopic level based on colouring. This was confirmed at a more detailed microscopic level when there were very clear differences in colour, pigmentation and other features.</p> <p>In my opinion, the hairs recovered in the brown grey blanket could not have come from the deceased (Alma Tirtschke) or from Mrs Wain. I say that notwithstanding that some of the hair samples were incomplete and that</p>

	<p>they were over 70 years of age. It is <i>very unlikely the hairs on the blanket could have come from the deceased Tirtschke.</i></p> <p>DNA tests could not be conducted on the hair samples.</p>
	<p>Macindoe: Well, what it comes down to, Professor Robertson, is that your opinion is different to that of Mr Price [and you are more than 70 years late]?</p>
	<p>Robertson: While that is true, if stated as simply as that, it ignores the fact that I'm an expert in this area and Mr Price, as I understand it, never claimed any expertise.</p>
	<p>Narrator: The Defence had been forced to call Gladys Wain although it might be thought that she was more properly a Crown witness. The same goes for Stanley Young, the husband of May Young, who was called as the last Defence witness. But it was then necessary for the Defence counsel to address first as evidence as to the facts had been called during the trial.</p>
	<p>Schutt J: Yes, Mr Maxwell will you address the jury.</p>
	<p>Maxwell: Mr Foreman, members of the jury I feel that no man has ever stood in the dock more heavily handicapped than the man you are now trying, Colin Campbell Ross. Before he was put on trial his case had been judged by the community and sentence had been pronounced before a single word of evidence in this trial had been given. I know of no case where the public mind has been so inflamed and public passion so aroused. Every scrap of information in the press was eagerly seized on by the community and discussed and re-discussed and conclusions drawn.</p> <p>But, gentlemen, thank God, verdicts are not obtained by a public acclamation and a man is not condemned by an irresponsible community. The whole of the Crown case relies on a quintet of disreputables; the two women Maddox and Matthews whose stories are glaringly stretched according to the evidence required and the three men, the gaolbird Harding and that solitary derelict Upton and that other prisoner whose evidence was both unconvincing and unbelievable. I could not see these gentlemen because it has pleased the good Lord Almighty to deprive me of my sight. But although I could not see them, I could hear them and they sounded like damned rogues to me.</p>

	<p>When you come to look at the hair evidence you should be very suspicious of that. I am told that Gladys Wain, for example, has hair of a very similar kind to that of the deceased girl. You should not be easily satisfied that it was Alma's hair on the blanket.</p> <p>My client has made a statement and a suggestion that the police evidence was somehow manufactured. I absolutely disassociate myself from Ross' statement that the police are trying to prove that he did this dastardly thing on framed up evidence. From my knowledge of the officers involved, they are incapable of such a thing.</p> <p>It is not the evidence in this case that I am afraid of, it is the preconceived opinion and judgment. If a verdict were asked today from the public outside, a verdict of guilty would be given without hesitation. You are representing that community but you have been set apart and taken an oath to find a verdict only on and according to the evidence. That verdict should be not guilty.</p>
	<p>Schutt J: Yes Mr Macindoe.</p>
	<p>Macindoe: If Your Honour pleases. Mr Foreman, gentlemen. The Crown has clearly proved beyond real reason of doubt that Ross is guilty. The evidence on which it's based is proper evidence as Mr Maxwell has conceded.</p>
<p>Ross [deceased]</p>	<p>Yes, thanks very much Mr Maxwell for putting me right in it.</p>
	<p>Macindoe: It is suggested that the witness Harding is disreputable but he is only a shop breaker, and such a criminal is preferable to an attacker of innocent little girls, who is a cur at heart, while a shop breaker after all is a bit of a sport. On the other hand, Mr Upton, I can tell you quite candidly that I'd not ask you to swing a cat on his evidence.</p> <p>The Crown case is built up on a foundation of circumstances and on that is crafted the various submissions made by the accused to these different witnesses. If anyone of those witnesses alone had to be considered you might be justified in saying we will not convict, but the accumulated effect of all the different statements is that you should find beyond reasonable doubt that the prisoner is guilty of wilful murder.</p>
	<p>Narrator: It was 3:22pm on the Friday afternoon, the 5th day of the trial. Justice Schutt embarked on a two hour address to</p>

	<p>the jury. They went out after 5 o'clock and then at 9:18 were dismissed for the evening. The jury was to return on the Saturday morning. At 10:30am they were assembled and still had not been able to reach an agreement but they did within an hour or so. A big crowd was waiting for the result outside.</p>
	<p>Orderly: Gentlemen of the Jury have you agreed upon your verdict?</p>
	<p>Foreman: We have.</p>
	<p>Orderly: Is the prisoner at the Bar guilty or not guilty of murder?</p>
	<p>Foreman: Guilty.</p>
	<p>Orderly: Prisoner at the Bar you have been found guilty of murder have you now anything to say why sentence of death should not be pronounced upon you according to law?</p>
	<p>Ross: Yes, Your Honour, I still maintain that I'm an innocent man and that my evidence is the truth. If I am hanged, I'll be hanged an innocent man. My life has been sworn away by desperate people.</p>
<p>Judge places black cloth on top of his [notional] wig</p>	<p>Schutt J: Prisoner at the Bar you have been found guilty of the crime of wilful murder and it only remains for me to pronounce the dread sentence of the law.</p> <p>Prisoner at the Bar, the sentence of the Court is that you be taken from the place where you now stand to the place from whence you came, and that you be taken thence at such time and place as His Excellency the Governor shall direct, and that you then and there be hanged by the neck until you be dead.</p>
	<p>Ross: I am innocent Your Honour.</p>
	<p>Schutt J: And may God have mercy on your soul.</p>
	<p>Ross: I am innocent.</p>
	<p>Narrator: As you will see from the programme, there was then an appeal to the Court of Criminal Appeal (on which the Trial Judge, Schutt J, sat) and an application for Special Leave to the High Court. Colin Ross was hanged on 24 April 1922 at Melbourne Gaol.</p> <p>On 20 December 2007, three judges of the Appeal Division of the Supreme Court of Victoria provided an opinion to</p>

<p>This conclusion read from the Bench by Justice Schutt</p>	<p>the Attorney-General, pursuant to a reference on a Petition for Mercy under the Crimes Act. They gave particular consideration to the evidence of Dr Robertson, the hair expert. They were driven to the conclusion that there had been a miscarriage of justice in respect of the trial of Colin Ross and advised the Attorney-General accordingly. The three judges (Teague, Cummins and Coldrey JJ) concluded their opinion:</p> <p><i>It needs to be understood, however, that a finding that there has been a miscarriage of justice does not automatically result in an acquittal. Rather in a case such as the present one, it will in our opinion result in the quashing of the conviction and the ordering of a new trial. Of course in this case no new trial is possible but that would not prevent a Court of Appeal seized of the matter by way of reference pursuant to the Crimes Act from quashing the conviction of Colin Ross.</i></p> <p><i>The Attorney-General also has the option of granting a pardon independently of this statutory regime. Such a pardon is not however the equivalent of an acquittal, and the conviction itself would remain formerly unreversed. Nonetheless, it could constitute a recognition or acknowledgement that the culpability of Mr Ross cannot now be conclusively determined.</i></p>
	<p>Narrator: And so it was that on 27 May 2008, a formal letter of Pardon signed by the Governor was presented to each of the Ross and Tirtschke families. It was the first time in Australian history that a person executed by the State has been pardoned.</p>
<p>Ross [deceased]</p>	<p>As Mr Maxwell told the jury, there was not a word of truth among the lot of those witnesses; all were underworld, crooks and prostitutes.</p> <p>Nevertheless, I am pleased that I have been pardoned 86 years later although I would have liked the opportunity of a proper retrial, in front of an impartial jury, and with proper evidence.</p> <p>As I said to the priest who prepared me for my hanging on 24 April 1922, I am ready now to face the highest Court of Appeal, where there is no law – but justice.</p> <p>I have finally received a form of justice.</p>

Alma [Deceased]	My family representatives were also pleased that the conviction of Colin Ross has now been established to be of doubtful validity. The awful scurrilous reports of my behaviour all those years ago have been properly examined and found to be false. Perhaps I can rest in peace.
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Schutt J: Adjourn the Court

Narrator: This session of CLANT's Bali Conference 2013 is now adjourned to Morning Tea

The transcript of the trial has been adapted, very liberally and with dramatic licence, from the book by Kevin Morgan, ***Gun Alley***, with the kind permission of its author and the publishers, Hardie-Grant Books.