1964

# State of Utah v. Jean Sinclair : Brief of Respondent in Answer to Appellant's Petition for Rehearing

Utah Supreme Court


A. Pratt Kesler; Ronald N. Boyce; Attorneys for Respondent;
Sumner J. Hatch; Attorney for Appellant;

# IN THE SUPREME COURT
## OF THE
# STATE OF UTAH

THE STATE OF UTAH,
*Plaintiff-Respondent,*

— vs —

JEAN SINCLAIR,
*Defendant-Appellant.*

No. 9971



**Respondent's Brief in Answer to Appellant's Petition for Rehearing**

A. PRATT KESLER
*Attorney General*

RONALD N. BOYCE
*Chief Assistant Attorney General*

*Attorneys for Respondent*

SUMNER J. HATCH
516 Boston Building
Salt Lake City 11, Utah
***Attorney for Appellant***

# TABLE OF CONTENTS



## AUTHORITIES CITED



## CASES CITED

# IN THE SUPREME COURT
## OF THE
# STATE OF UTAH

THE STATE OF UTAH,
*Plaintiff-Respondent,*

— vs —

JEAN SINCLAIR,
*Defendant-Appellant.*

No. 9971

Respondent's Brief in Answer to
Appellant's Petition for Rehearing

## PRELIMINARY STATEMENT

The respondent, State of Utah, submits the following brief in answer to the appellant's petition for rehearing. It is submitted that the appellant is still unable to grasp the rule of appellate review that the evidence will be viewed in a light most favorable to the jury's verdict. Secondly, appellant refers to the case as a capital case. Indeed, many good arguments can be made for imposition of the maximum penalty in this case; however, the case as it now stands before the court is non-capital. There is no rule requiring an appellant court to make any different review of a case on appeal when the crime is murder. Each criminal case is entitled to a review for misapplication of law and a review of the evidence in a light most favorable to the jury's ver-

dict. It is submitted that the opinion and judgment of the court is proper when so viewed and that there is no merit to the appellant's petition for rehearing.

## POINT I

### THE COURT'S OPINION IS A FAIR AND PROPER APPRAISAL OF THE EVIDENCE WHEN VIEWED IN A LIGHT MOST FAVORABLE TO THE JURY'S VERDICT.

(a) The record clearly supports the statement in the court's opinion that the police received a tip from LaRae Peterson to look to Jean Sinclair as respects the killing of Don Foster. Officer Glen Cahoon testified that he had a phone conversation with LaRae Peterson on the 5th of January, 1963, at about 2:00 p.m., in the afternoon after Foster was killed, directing him to Jean Sinclair (R. 1338–1339). This, consequently, was a factor corroborative of Sinclair's participation in the crime, since LaRae Peterson was aware of the feelings Sinclair had concerning Foster and had been present at the time Foster was killed.

(b) The court's opinion states that Jean Sinclair was dressed "in gray men's pants, had on boots, and had a tan trench coat wrapped around the gun." The appellant contends that the record does not support this statement. The record, at page 580, clearly shows:

> "A. And light gray flannel pants. I believe a white shirt and a belt, although I don't remember which belt, and a blue parka, reversible parka, whatever you call them."

Further, it is admitted that Kuehne mentioned that the coat was "white" (R. 579, 584); however, in response to the district attorney's question, Kuehne indicated it was a "light coat" (R. 581). In addition, in response to a ques-

tion from the district attorney to describe the coat, Kuehne stated (R. 585):

"Q. Now, will you describe the trench coat for us?
A. It was quite similar to this one that's hanging over here.
Q. You mean this one right here?
A. Yes, except a slightly different grade of material, I believe.
Q. Different grade of material, but approximately the same color?
A. That's right.
Q. Either a white or a light beige then, is that correct?
A. That's right."

A coat, therefore, was picked out that was light, either white or tan. The cleaners where Miss Sinclair took a coat stated there was virtually no difference between beige and tan. This should be compared with the testimony of LaMar Williams (R. 981), who testified the person he saw (resembling Jean Sinclair) was wearing a "light" coat. Boyd K. Harvey described the coat of the person he saw running away as a "light colored" coat (R. 986). Clearly, therefore, the evidence is even more unfavorable to appellant than she would like the court to believe. Various shades may be described in different ways, depending on the person. The weight of the testimony is still a matter for the jury.

(c) The court's statement that Jean Sinclair was seen driving around with Kuehne to find a vantage point to kill Foster is somewhat inaccurate, but merely combines two facts. First, Kuehne and Sinclair did ride around in an automobile while Sinclair looked for a spot to kill Foster (R. 540, 541). They were not observed together at this time, although, as counsel for appellant points out, they were together with Vaughn Humphries in an automobile a few months before the killing. However, Miss Sinclair's

car was seen by LaVon Turner, Don Foster's mother, circling around her house when LaRae Peterson and Foster were at her house for dinner (R. 1603). Further, LaRae Peterson testified that she and Foster were followed on occasion (R. 778) and Jean Sinclair had asked Vaughn Humphries to follow Foster and Peterson (R. 735). At best, the difference is a slight one and in no way is such as to warrant any of appellant's claim.

(d) The appellant contends the court's statement (page 3 of appellant's brief), relating to the testimony of LaMar Williams, is inaccurate. Appellant's position is not true. The record clearly and authoratively supports the court's statement. The appellant refuses to give a fair treatment to the testimony of Mr. Williams. It is clear that Jean Sinclair was dressed very similar to the way the person running away from the scene of the crime was dressed. She was described as wearing darker clothing or trousers and a light coat (R. 980–981). It is clear from Williams' testimony that he described the trousers as being darker than the light coat, which is identical to the way Kuehne and Boyd Harvey described the clothing of Jean Sinclair.

In response to the contention that the individual that Mr. Williams saw weighed 165 to 180 pounds, he estimated this to be "with the clothing they were wearing" (R. 983). It should be remembered that Jean Sinclair was wearing a heavy parka, shirt and trousers, and, with a trench coat over the parka, a manlike resemblance would very easily have looked the weight that was estimated.

Contrary to the appellant's assertion in the petition for rehearing, Mr. Williams clearly identified Miss Sinclair:

> "Q. Now, I'll ask you if after this particular time you have seen anyone who resembles the person's features that you saw that night?

A. Yes, I have seen someone who resembles the features.
Q. And who is that person?
A. That is the defendant, Jean Sinclair." (R. 980)

Further, the witness did not withdraw his identification of Miss Sinclair as to the structure of her face. Thus, in response to a question by counsel, asking where the particular "S-curve" was in Miss Sinclair's face, the following occurred:

"Q. (By Mr. Hatch) Where is the *S-curve,* as you put it?
A. *Directly underneath the lower lip, sir.* (R. 982)

Additionally, appellant's assertion that Mr. Williams only saw Miss Sinclair through the rear-view mirror is entirely incorrect since the record discloses that he stated:

"A. I saw this person coming from the archway to my east from where my car was parked." (R. 979)

Admittedly, he indicated that he saw her through the rear-view mirror, but a fair reading of the testimony is that he saw her walk from the archway past his car, and saw her after she had passed the car by looking through the rear-view mirror. The record is clear that he had a full view of Miss Sinclair.

Finally, the area where Mr. Williams saw Miss Sinclair is definitely nowhere near a full block from the place the shooting occurred. The distance is merely one tier of apartments over from the apartment area where Don Foster lived and would at best be a few hundred feet.

Mr. Williams' testimony fully demonstrates the corroborative effect of the evidence.

(e) The court's statement as to what Mr. Boyd K. Harvey testified to is absolutely correct. Mr. Harvey described the person as wearing a "three quarter length light colored car coat" (R. 986). He indicated that the coat broke in

the area of the knees. The appellant has carefully left from page 4 of her brief the color of the coat, since it obviously is similar to what Mr. Williams and Karl Kuehne described the coat to be.

Appellant's assertion that the statement as to the car is inaccurate is erroneous since the court indicates that Mr. Harvey described the car which he saw the person get into as being a two-tone car. Further the record clearly supports the fact that the defendant owned a two-tone car, also of a General Motors make.

(f) The appellant's position on the testimony of Mr. and Mrs. Pieter Combee at page 5 of her brief is ridiculous. Mr. and Mrs. Combee's testimony is clearly to the effect that LaRae Peterson cried out, "Oh, God, she killed him" (R. 1229, 1240). Although LaRae Peterson testified that she said, "Oh my God, he's been shot," the jury was free to believe whomever they desired and since LaRae Peterson was anything but a friendly witness to the State's position, the jury was certainly justified in believing independent and unbiased witnesses.

Once again, this is simply the inability of the appellant to accept the proper basis for review on appeal, that the evidence will be viewed in a light most favorable to the jury's verdict.

Further, although the opinion of the court mentions that the Combee's home was directly immediately west of the Susan Kay Arms, the home is immediately south and west of the parking area where Don Foster was killed and is adjacent to it.

(g) The appellant, in commenting on the testimony of the cleaners, is completely distorting the record. As noted above, all of the witnesses were in general agreement as to

the color of the coat that Miss Sinclair took to the cleaners. Kuehne said it could be either white or beige. The two witnesses who observed Miss Sinclair at the scene of the shooting described the coat as a light coat. All the witnesses picked out the same coat which was in the courtroom. Mr. Williams described the trousers as "darker trousers" (R. 980–981) but only in reference to being darker than the coat. This is exactly in accord with Kuehne's testimony and the other witnesses, indicating that Miss Sinclair was wearing darker colored trousers.

Joyce Harris, who testified as to Miss Sinclair's bringing the clothing in to be laundered, described the coat as being "a tan trench coat" (R. 992), and identified the same coat as Kuehne had identified in the courtroom as being similar in color (R. 993). Further, she described the coat as a "three quarter length coat" (R. 993). She did not mention at any time that the coat was a whipcord coat but described it as a trench coat. Further, Miss Harris indicated that there was little difference between a beige and tan coat (R. 997).

Additionally, it should be noted that Mr. Allred testified that it was an overcoat and tan, and picked out the same coat that the other witnesses had identified as being similar (R. 1001, 1002). He testified further that there were grease and dirt stains on the clothing.

Finally, Officer Alex Paul described the coat as a three quarter length tan trench coat which was quite dirty (R. 1007).

Obviously, therefore, the court's statement is fully and fairly corroborated by the record.

(h) Finally, the appellant indicates that Mrs. Combee's identification of Jean Sinclair was only from a right rear

view and that she never saw the face. This again is erroneous and is a misstatement of the record. Thus, Mrs. Combee testified:

> "Q. All you saw was the jacket, is that correct?
> A. Yes, that is correct, *and her face.*" (R. 916)

Additionally, she made it very clear that she had seen Miss Sinclair (R. 918, Lines 14 through 18).

An analysis of the appellant's objections to the court's opinion discloses that appellant has done the very thing which she contends the court did, that is, she has failed to view the evidence in total and has fly-specked portions of the opinion and taken matters out of context in an effort to support her position. The court's opinion clearly was based upon factors directly in the record and is thoroughly supported by items of testimony in evidence which the jury considered and could have well felt crucial.

## POINT II

### THERE IS AMPLE EVIDENCE TO CORROBORATE KARL KUEHNE'S TESTIMONY.

In Point II of appellant's brief, appellant re-argues the same issue which was argued in the main portion of her brief, that there is insufficient evidence to corroborate the testimony of Karl Kuehne. The court is directed to the brief of respondent, State of Utah, heretofore filed with the court, pages 15 through 23, which, it is submitted, clearly refutes the contention of the appellant.

(1) Mrs. Kuehne's testimony as to Miss Sinclair's statement that Karl Kuehne could get some money fast is a factor which, when considered with the presence of motive, malice, and other matters of record, lends weight to the conclusion that Jean Sinclair killed Don Foster.

(2) The fact that Miss Sinclair's car was seen following LaRae Peterson and Don Foster, and the fact that she had asked Vaughn Humphries to follow them is an additional corroborative fact which, when taken with other evidence, amply supports the court's determination. The testimony of LaMar B. Williams was to the effect that he saw a person resembling Jean Sinclair in the vicinity of the scene of the crime shortly before it occurred. The clothing which she was wearing, as he saw it, was similar to the clothing which Boyd Harvey described as being worn by the person who ran away immediately after the shooting. Further, Mr. Harvey's identification of a two-tone automobile and the fact that Miss Sinclair owned such an automobile is an additional matter of corroborative evidence.

(3) The testimony of the employees of the cleaning establishment, that Miss Sinclair brought clothing into the establishment the next day for cleaning, which clothing was similar to the clothing LaMar Williams and Boyd Harvey identified the person to be wearing at the scene of the crime, is also corroborative. Further, the spots on the clothing are corroborative of being near automobiles on a hard-topped surface which is the nature of the surface at the Susan Kay Arms where the automobiles were parked.

(4) Mrs. Combee's identification of the defendant is clearly borne out by the record. The appellant's assertion that *State v. Sommers,* 97 U. 132, 90 P.2d 273 (1939), is somehow contrary to the court's opinion is erroneous, since in that opinion the court expressly noted that the presence of an individual in the vicinity of a crime may be persuasive of the individual's connection with the crime. The court stated:

> "* * * This may, under some circumstances, be persuasive of accused's connection with the burning of the building, * * *."

Although the court in that case found that the presence of the accused was not corroborative, it was only because the accused lived in the area and had an otherwise exculpatory reason for his presence. There was no reason for Miss Sinclair's presence. She did not live in the area and, in fact, at one point stated that she had never been there. Consequently, this factor is directly corroborative.

Finally, the appellant's assertion that somehow there is no evidence sufficient to show an intense relationship between LaRae Peterson and Jean Sinclair is simply absurd, since the record overwhelmingly shows the nature of the relationship and the intensity of the feeling between LaRae Peterson and Jean Sinclair, and the appellant simply refuses to recognize the evidence and, in begging the court to ignore it, asks the court to commit error. Further, the relationship between LaRae Peterson and Jean Sinclair is another factor relevant to the fact that Miss Sinclair committed the crime. Reliance upon *The Matter of the Contempt of LaRae Peterson,* 386 P.2d 727 (1963), to contend that the testimony is not important, is misplaced. In that case the court expressly noted that the relationship "might have a tendency to prove motive for such an act" and as is noted in 23 C.J.S., *Criminal Law,* Sec. 812(4) and *State v. Bolton,* 65 Mont. 74, 212 P. 504 (1922), motive when coupled with other evidence may be corroborative of the commission of the crime by the person charged.

## POINT III

## THE OTHER POINTS IN APPELLANT'S PETITION FOR REHEARING ARE WITHOUT MERIT.

Appellant contends that the law of corroboration would be changed by the court's opinion. This is not so. The court correctly states the test to be applied, weighs the evidence

and when the evidence and the test are examined against other valid precedents (see respondent's brief, pages 15 through 23), the opinion of the court is clearly correct.

The appellant's assertion that the *Contempt of LaRae Peterson,* 386 P.2d 727 (1963), involves the same situation as this case simply is not correct. An entirely different principle was involved and the court clearly recognized the relevancy of such evidence to the *Sinclair* case and merely determined that Mrs. Peterson had a privilege which overrode the usual rules of relevancy and materiality. As noted previously in respondent's brief, the privilege is exclusively that of a witness and the defendant may not claim benefit by it.

Finally, it should be noted that numerous points in the appellant's brief were frivolous, legally unmeritorious and would add nothing to the state of the law. Consequently, the court was correct in not unduly burdening the opinion with the points.

Further, the fact that the opinion may treat points raised by the appellant with less literary force than she would have does not mean that the court did not thoroughly consider each of the points.

## CONCLUSION

It is respectfully submitted that the appellant's petition for rehearing is patently without merit. It attacks the court's opinion without justification in numerous instances, misquotes the record and cites authorities out of context.[1] There is, therefore, absolutely no basis which would warrant this court in granting a petition for rehearing.

Respectfully submitted,

A. PRATT KESLER
*Attorney General*

RONALD N. BOYCE
*Chief Assistant Attorney General*

*Attorneys for Respondent*

[1] An example of this is the appellant's citation of *State v. Crank*, 142 P.2d 178, for the position that the conduct of the jury foreman and Mrs. Combee was prejudicial error. It suffices to note that the Crank case did not consider the issue of juror misconduct for error and, as the court points out in the opinion heretofore issued, was speaking of what ought to be and not what warrants reversal. Finally, appellant refuses to recognize the case of *State v. McNaughtan*, 92 U. 114, 66 P.2d 137 (1937), where, in an identical case, this court ruled that there was no prejudicial error.