

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2012-213006

STATE OF SOUTH CAROLINA,

Respondent.

v.

JULIAN YOUNG,

Appellant.

PETITION FOR REHEARING

TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

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ATTORNEY FOR APPELLANT.

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SC Court of Appeals

NOW COMES the Appellant in the above-captioned action, acting by and through undersigned counsel, seeking rehearing on this Court's unpublished opinion in this matter. The State v. Julian Young, 2014-UP-234 (S.C. Ct. App. Dated June 18, 2014). Pursuant to Rule 221(a), SCACR, the Appellant petitions for rehearing on the ground that certain issues of material fact or law have either been overlooked or misapprehended by this Honorable Court in the opinion in question. In support of this position, the Appellant would show unto this Court the following.

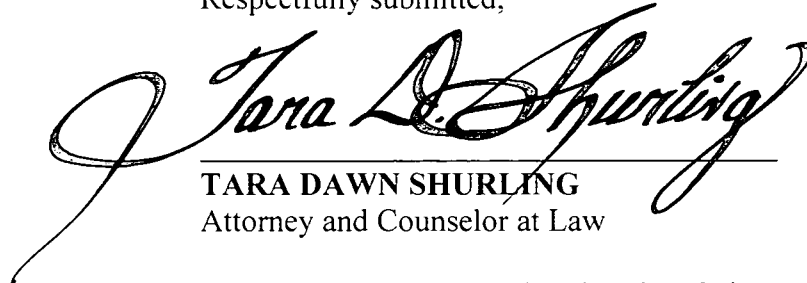
Our Supreme Court has found that the fact that a statement was made in response to a question does not prevent the answer from being an excited utterance. *State v. Smith*, 348 S.C. 16, 23 n. 1, 558 S.E.2d 518, 522 n. 1 (2002). Appellant respectfully submits, however, that the opinion of this Court overlooks the fact that on the facts of this case the answers to the questions posed by the officer who interviewed the victim indicate that the declarant was thinking forward to potential criminal prosecution. The fact that the declarant would not disclose his identity evidences the fact that he was capable of reflective thought and therefore, that his statements were not excited utterances. *See, State v. Davis*, 371 S.C. 170, 178, 638 S.E.2d 57, 62 (2006). In addition, Appellant respectfully submits that the opinion of this Honorable Court fails to take into account that the nature of the questions asked by the officer, particularly the inquiry concerning whether the declarant had been robbed, did not go to issues addressing public safety. Appellant submits that questions concerning the circumstances that lead to the victim being shot were not designed to reveal information which would aid law enforcement in curtailing any immediate threat to the community. Appellant maintains his position that the testimony in question was testimonial in nature and therefore, that its admission violated his rights pursuant to the Confrontation Clause of the United States Constitution where 1) the declarant was

unavailable to testify at trial and 2) the accused has had no prior opportunity to cross-examine this witness. *Crawford v. Washington*, 541 U.S. 36, 54, 124 S.Ct. 1354 (2004). On the other hand, the testimony in question would not be admissible simply even if it did not implicate the Sixth Amendment. *State v. Garner*, 389 S.C. 61, 697 S.E.2d 615 (Ct. App. 2012). Appellant submits that the evidence before this Court does not support a finding that the statements in question were admissible as excited utterances pursuant to *Rule 803(2), SCRE*, where the record demonstrates that the declarant engaged in reflective thought at the time the statements were made. Where the testimony in dispute constituted the only evidence that the declarant was shot in the course of a robbery, the Appellant was clearly prejudiced by its admission inasmuch as the jury would likely have factored that information into its deliberations on the question of whether the victim was shot with malice.

CONCLUSION

WHEREFORE, having set forth his grounds, the Appellant, Julian Young, asks that this Court rehear his appeal and grant him a new trial.

Respectfully submitted,



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This ^{2nd} day of July, 2014.

ATTORNEY FOR APPELLANT

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Edgar W. Dickson, Circuit Court Judge

Case No. 2012-213006

STATE OF SOUTH CAROLINA,

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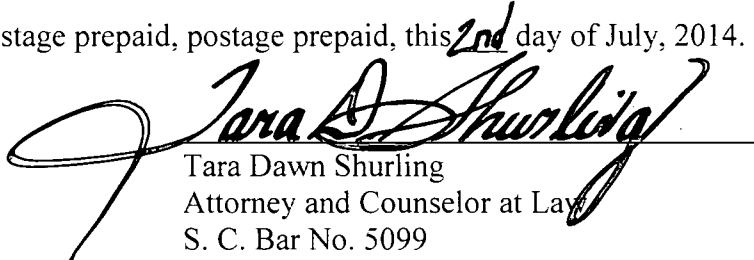
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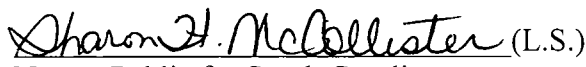
Appellant.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Appellant's Petition for Rehearing in the above-entitled case have been served upon opposing counsel, Kaycie Smith Timmons, Assistant Attorney General, P O Box 11549, Columbia, SC 29211, by depositing in the U.S. Mail, postage prepaid, postage prepaid, this 2nd day of July, 2014.


Tara Dawn Shurling
Attorney and Counselor at Law
S. C. Bar No. 5099

SWORN TO BEFORE me this 2nd day
of July, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan. 16, 2017

LAW OFFICE OF



TARA DAWN SHURLING, PA

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July 2, 2014

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: State of South Carolina v. Julian C. Young; 2011-GS-38-1833.
Case Tracking No.: 2012-213006

Dear Ms. Kitchings:

Enclosed please find the original and six copies of the Petition for Rehearing and my Certificate of Service on opposing counsel for filing in the above-captioned case. I would appreciate the return of two clocked copies to my courier. With my thanks for your assistance in this matter, I remain,

Sincerely yours,

A large, stylized handwritten signature in black ink that reads "Tara Dawn Shurling".

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sm

Enclosures

cc: Kaycie Smith Timmons, Assistant Attorney General (w/enclosures)
Julian C. Young, # 352043 (w/enclosures)
Vinnie Lee Smalls (w/enclosures)

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South Carolina Court of Appeals