

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Orangeburg County
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Ct. Appeals Appellate Case No. 2012-213006

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SEP 24 2014

S.C. Supreme Court

The State,

Respondent,

v.

Julian Young,

Petitioner.

**APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI**

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S.C. Bar No. 5099

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Julian Young, Appellant.

Appellate Case No. 2012-213006

Appeal From Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2014-UP-234
Heard June 4, 2014 – Filed June 18, 2014

AFFIRMED

Tara Dawn Shurling, of Law Office of Tara Dawn
Shurling, PA, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, and
Assistant Attorney General Kaycie Smith Timmons. all

Summerville, for Respondent.

PER CURIAM: Julian Young appeals his conviction for murder, arguing the trial court erred in admitting hearsay testimony concerning statements made by the victim after he was shot. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Hatcher*, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011). ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)); *Michigan v. Bryant*, 131 S. Ct. 1143, 1166 (2011) (holding a gunshot victim's statement to police was non-testimonial and did not violate the Confrontation Clause when the police's "primary purpose was simply to address what they perceived to be an ongoing emergency, and the circumstances lacked any formality that would have alerted [the victim] to or focused him on the possible future prosecutorial use of his statements"); *State v. Washington*, 379 S.C. 120, 124, 665 S.E.2d 602, 604 (2008) ("A court must consider the totality of the circumstances when determining whether a statement is admissible under the excited utterance exception, and the determination is generally left to the sound discretion of the trial court."); *State v. Burdette*, 335 S.C. 34, 43, 515 S.E.2d 525, 530 (1999) (holding the supreme court has generally allowed as excited utterances statements made by the victim to the police immediately following a physical attack); *State v. McHoney*, 344 S.C. 85, 94-95, 544 S.E.2d 30, 34-35 (2001) (finding victim's statement to a nurse while she was under the continuing stress of being stabbed in the abdomen and having her throat cut was inherently reliable because the victim had no time to reflect on the event); *State v. Sims*, 348 S.C. 16, 23 n.1, 558 S.E.2d 518, 522 n.1 (2002) (finding declarant's statement in response to a question did not prevent his answer from being an excited utterance).

AFFIRMED.

WILLIAMS, KONDUROS, and LOCKEMY, JJ., concur.

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

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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.

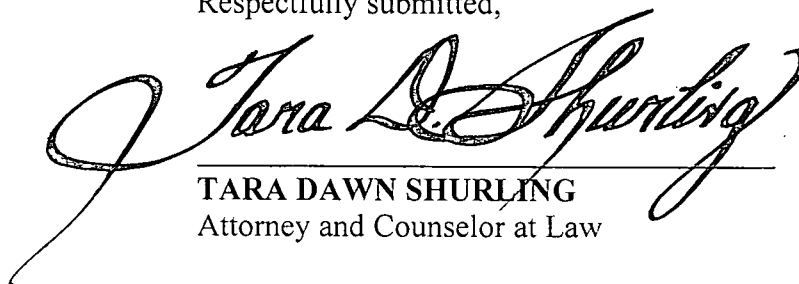
Our Supreme Court has found that the fact that a statement was made in response to a question does not prevent the answer from being an excited utterance. *State v. Smith*, 348 S.C. 16, 23 n. 1, 558 S.E.2d 518, 522 n. 1 (2002). Appellant respectfully submits, however, that the opinion of this Court overlooks 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

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2012-213006

STATE OF SOUTH CAROLINA,

Respondent.

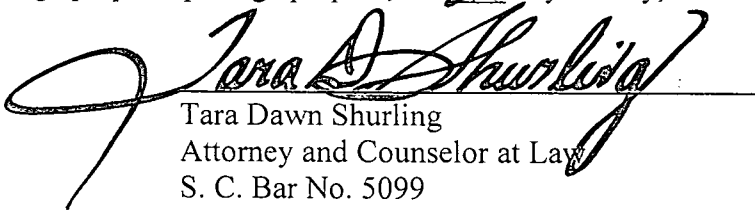
v.

JULIAN YOUNG,

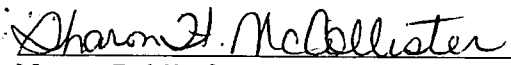
Appellant.

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

The South Carolina Court of Appeals

The State, Respondent,

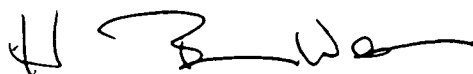
v.

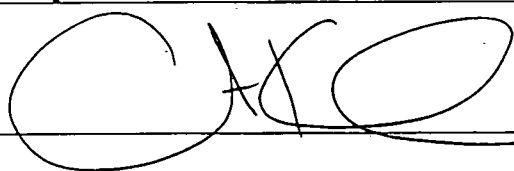
Julian Young, Appellant.

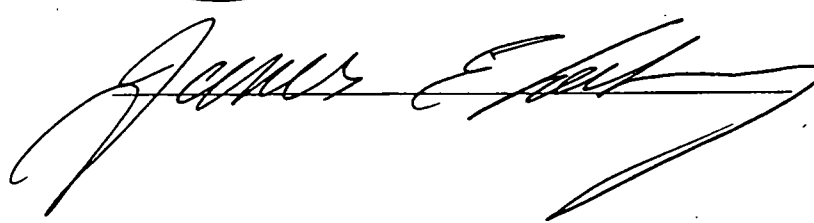
Appellate Case No. 2012-213006

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 _____ J.

 _____ J.

 _____ J.

Columbia, South Carolina

cc:
Tara Dawn Shurling, Esquire
Kaycie Smith Timmons, Esquire
Donald J. Zelenka, Esquire
The Honorable Edgar W. Dickson

FILED

August 25, 2014