

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions

R. Knox McMahon, Circuit Court Judge

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Appellate Case No. 2012-213137

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**RECEIVED**  
SEP 15 2013  
**SC Court of Appeals**

Sidney A. Hursey, Jr.,.....Appellant,

v.

The State of South Carolina,.....Respondent.

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**RETURN TO MOTION TO DISMISS**

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Appellant opposes the Respondent's motion to dismiss. The present appeal was filed October 11, 2012. At the time the notice was filed, the Appellant had an immediate right to appeal pursuant to *State v. Duncan*, 392 S.C. 404, 709 S.E.2d 662 (2011). "[T]he general rule regarding retroactive application of judicial decisions is that decisions creating new substantive rights have prospective effect only, whereas decisions creating new remedies to vindicate existing rights are applied retrospectively." *Toth v. Square D Co.*, 298 S.C. 6, 377 S.E.2d 584, citing *McCaskey v. Shaw*, 295 S.C. 372, 368 S.E.2d 672, 673 (Ct.App.1988).

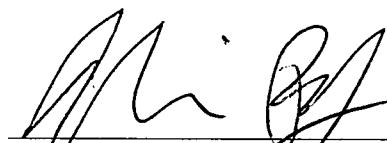
The present appeal was filed prior to the opinion in *State v. Isaac*, Op. No, 27303. Therefore, this Court should deny the Respondent's motion to dismiss because it is based upon the retroactive application of a judicial opinion.

In addition to the foregoing, the Appellant's case presents a number of unique issues of law which are distinguishable from *State v. Isaac*. Finally, the Appellant has fully briefed the

Court on his appeal, so a dismissal at this stage of the appeal would significantly prejudice the Appellant.

Based on the foregoing, the Appellant respectfully requests this Court deny the Respondent's motion to dismiss.

Respectfully submitted,



S. Lahue Moore  
M. Brooks Biediger  
Moore, Taylor & Thomas, P.A.  
Post Office Box 5709  
West Columbia, SC 29169  
Telephone: (803)-796-9160  
Facsimile: (803)-791-8410  
Attorneys for Appellant

West Columbia, South Carolina

September 16, 2013.

Other Counsel of Record:  
Donald J. Zelenka, Esquire  
Senior Assistant Deputy Attorney General  
Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727  
Attorneys for Respondent

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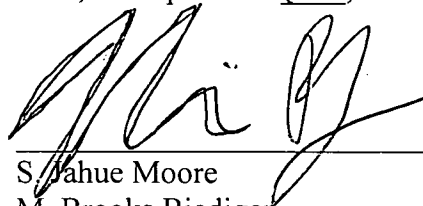
The State of South Carolina.....Respondent.

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**PROOF OF SERVICE**

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I certify that I have served the Return to Motion to Dismiss by mail, to Donald J. Zelenka, Esquire, Senior Assistant Deputy Attorney General, Office of the Attorney General, Post Office Box 11549, Columbia, South Carolina 29211, on September 16, 2013.



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S. Jahue Moore  
M. Brooks Biediger  
Moore, Taylor, & Thomas, P.A.  
Post Office Box 5709  
West Columbia, SC 29169  
Telephone: (803)-796-9160  
Facsimile: (803)-791-8410  
Attorneys for Appellant