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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2024-001762
Case No. 2023-CP-40-04886

S.C. State law Enforcement DivisionAppellant,

v.

Montana Deluxe 2 Machine; and Video Solutions I, Inc..... Respondents,

INITIAL BRIEF OF RESPONDENT

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Columbia, South Carolina
March 14, 2025

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STATEMENT OF THE CASE

This case concerns whether a Montana Deluxe 2 pinball machine that was seized by the State Law Enforcement Division (SLED) from Tavern on Broad in Richland County should be subject to destruction. The machine was seized on April 20, 2022, during an alcohol inspection when SLED agents observed cash payments being made by the proprietor of the establishment to players of the pinball machine. A preliminary order of destruction was issued on April 21, 2022. Order of Destruction, Return, Exhibit G.

Video Solutions I, Inc., the owner of the machine, requested a post-seizure hearing, which was conducted by Magistrate Jeffrey P. Bloom on December 19, 2022. After comprehensive analysis in a 40-page order, Magistrate Bloom vacated the destruction order and ordered the return of the machine to Video Solutions I, Inc., finding that the pinball machine was specifically exempted under S.C. Code § 12-21-2710. Order, Return, Ex. A.

SLED appealed to the Circuit Court, which affirmed Magistrate Bloom's ruling on September 17, 2024, finding "no error of law," Order. Thereafter SLED filed a Notice of Appeal in this Court. Notice of Appeal.

STATEMENT OF FACTS

The parties stipulated to the following facts before Magistrate Bloom:

- The Montana Deluxe 2 is a mechanical pinball game device played on a sloping table.
- The player can alter the course of the ball by actuating one or more levers or flippers.
- The outcome depends upon the player shooting a metal pinball into a particular divot on the playing table.

- It has a "plunger" so the player can adjust how hard or soft the pinball is discharged into the game, and "flippers" that allow the player to hit the pinball during play.
- The player can "bump" the machine to affect the play without "tilting" and defaulting the game.
- The player can affect the outcome of the game.
- When SLED agents conducted an alcohol inspection at Tavern on Broad, they observed cash payouts made by the proprietor to players of the Montana Deluxe 2 machine.
- The cash was paid out from the establishment's cash register, not dispensed from the machine itself.

Order pp 4-5.

ISSUE PRESENTED

- I. WHETHER A MECHANICAL PINBALL MACHINE THAT IS SPECIFICALLY EXEMPTED FROM THE LIST OF PROHIBITED DEVICES UNDER S.C. CODE SECTION 12-21-2710 IS SUBJECT TO SEIZURE AND DESTRUCTION UNDER S.C. CODE SECTION 12-21-2712 WHEN THE ESTABLISHMENT OPERATOR, NOT THE MACHINE ITSELF, MADE CASH PAYOUTS TO PLAYERS**

STANDARD OF REVIEW

Section 18-7-170 of the South Carolina Code (1985) articulates the standard of review to be applied by the circuit court in an appeal of a magistrate's judgment:

Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment, the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

See also Hadfield v. Gilchrist, 343 S.C. 88, 92-93, 538 S.E.2d 268, 270 (Ct.App.2000).

While the Circuit Court maintains a broad scope of review, the standard of review in the Court of Appeals and Supreme Court is more limited:

[T]he Court of Appeals will presume that an affirmance by a Circuit Court of a magistrate's judgment was made upon the merits where the testimony is sufficient to sustain the judgment of the magistrate and there are no facts that show the affirmance was influenced by an error of law.

Bowers v. Thomas, 373 S.C. 240, 244–45, 644 S.E.2d 751, 753 (Ct. App. 2007)

Unless this Court finds an error of law, this Court must affirm the judge's holding if there are any facts supporting his decision.” *Id*, citing *Hadfield*, 343 S.C. at 94, 538 S.E.2d at 271. In *Stanford v. Cudd*, 93 S.C. 367, 370, 76 S.E. 986, 987 (1913), the Supreme Court held that where the testimony is sufficient to sustain a judgment of the magistrate's court, and it is affirmed on appeal to the circuit court, the appellate court will assume the circuit court affirmed the judgment on the merits, in the absence of facts showing the affirmance was controlled or affected by errors of law.

ARGUMENT

I. THE MONTANA DELUXE 2 PINBALL MACHINE IS EXPRESSLY EXEMPTED FROM THE LIST OF PROHIBITED DEVICES UNDER S.C. CODE § 12-21-2710

SLED seized the Montana Deluxe 2 pinball machine pursuant to S.C. Code § 12-21-2712, which directs that any device prohibited by Section 12-21-2710 be seized by “any law enforcement officer and at once taken before any magistrate of the county in which the machine, board or device is seized who shall immediately examine it, and if satisfied that it is in violation of Section 12-21-2710 ..., direct that it be immediately destroyed.” The Magistrate correctly ruled that the pinball machine did not violate Section 2710 because coin-operated nonpayout pin tables and in-line pin games are expressly exempted.

S.C. Code § 12-21-2710 provides:

"It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, or any video game machine with a free play feature operated by a slot in which is

deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of poker, blackjack, keno, lotto, bingo, or craps, or any machine or device licensed pursuant to Section 12-21-2720 and used for gambling..., **but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games**, or to automatic weighing, measuring, musical, and vending machines which are constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance." (emphasis added)

The Montana Deluxe 2 machine is indisputably an "in-line pin game." It is a mechanical pinball game with levers and flippers that allow the player to alter the course of the ball. The parties stipulated to these facts. Order pp 4-5. Photos of this inline pin game are in the Record. Appellant's Exhibit 1, Return. This type of machine falls squarely within the statutory exemption and is therefore not a prohibited device under § 12-21-2710.

II. THE SOUTH CAROLINA SUPREME COURT HAS SPECIFICALLY RULED THAT EXEMPT DEVICES CANNOT BE CONFISCATED EVEN IF USED FOR GAMBLING

In *Alexander Amusement Co. v. State*, 246 S.C. 530, 144 S.E.2d 718 (1965), the South Carolina Supreme Court directly addressed the issue of whether pinball machines that fall within the statutory exemption can be confiscated when used for gambling. The Court held that they cannot, stating:

"[T]he statutory law leaves no question but that, while the use of any such machine for an actual gambling transaction might support a charge against the individual for gambling, the machine itself, when one within the specific [exemption] is not subject to confiscation." *Id.* at 534, 144 S.E.2d at 720.

The facts in *Alexander Amusement* are strikingly similar to the present case. There, an undercover agent played the pinball machines and accumulated free games, which he then exchanged for cash payments from the proprietor. The court found that despite this gambling

activity, the pinball machines themselves could not be confiscated because they were exempt from the statutory prohibition.¹

Here, as in *Alexander Amusement*, the proprietor of Tavern on Broad, not the machine itself, made the cash payouts. The parties stipulated that "the proprietor paid out cash from the establishment's cash register and no cash was dispensed from the machine." Order p. 5. Under the clear precedent of *Alexander Amusement*, the fact that the proprietor engaged in gambling activity does not transform an exempt machine into a prohibited one.

III. S.C. CODE § 12-21-2721 FURTHER CONFIRMS THAT LICENSED MACHINES ARE PROTECTED FROM CONFISCATION

S.C. Code § 12-21-2721 provides additional protection for licensed coin-operated machines:

"Coin-operated machines or devices licensed pursuant to Section 12-21-2720 are not subject to confiscation under Section 12-21-2712 due to any violation of Sections 16-19-30, 16-19-40, 16-19-50, or 16-19-130."

This statute explicitly shields licensed machines from confiscation even when used in violation of the state's gambling laws. The Montana Deluxe 2 machine was licensed under Section 12-21-2720(A)(2) as "a machine for the playing of games or amusements, which has a free play feature, operated by a slot in which is deposited a coin or thing of value, and the machine is of the non-payout pin table type with levers or 'flippers' operated by the player by which the course of the balls may be altered or changed." Therefore, the fact that the location owner may have violated one or more of the state's gambling laws does not subject the Montana Deluxe 2 to confiscation.

IV. MAGISTRATE BLOOM'S FINDING THAT THE MONTANA DELUXE 2 IS A NONPAYOUT INLINE PIN GAME IS SUPPORTED BY THE STIPULATED EVIDENCE

¹ The statutory language exempting inline pin games before the Court in *Alexander Amusement* is essentially the same as the provision in Section 2710, describing the games as "coin-operated nonpayout pin tables with free play features." 246 S.C. at 533.

The Magistrate found that the Montana Deluxe 2 is a non-payout inline pin game. The

Court stated:

This machine is a nonpayout machine. The fact that the proprietor was illegally, and contrary to his contractual agreement with the owner, making illegal cash payouts does not convert the mechanics of the pinball machine into a payout machine. If this court ignored the carve-out clause then it would render such clause as mere surplusage. [W]e must read the statute so that “no word, clause, sentence, provision, or part shall be rendered surplusage.” *Senate by & through Leatherman*, 425 SC at 322, 821 S.E.2d at 912.

Order p. 34.

The Magistrate also rejected SLED’s argument that the pinball machine is a keno or bingo game which is expressly prohibited by S.C. Code §12-21-2710. The Court explained:

As for the second argument, no evidence was presented to this court that there is a “keno” or “bingo” game on the machine. There is no stipulation that those games are on the machine. The parties agreed that no witness testimony was needed. If those games are on the machine, this court has not heard evidence of it. The court has reviewed the Plaintiff’s exhibits submitted in evidence without objection. The words “keno” or “bingo” do not appear on any of the pinball operational games that a player may select...[T]he court is left with no evidence to support Plaintiff’s statement in this regard that this machine is capable of illegal bingo or keno. The claim is neither presented nor preserved.

Order p. 35.

As noted by the Magistrate, SLED stipulated to the following facts which support the Magistrate’s find that the Montana Deluxe 2 game is an exempt non-payout inline pin game:

- The Montana Deluxe 2 is a mechanical pinball game device played on a sloping table.
- The player can alter the course of the ball by actuating one or more levers or flippers.
- The outcome depends upon the player shooting a metal pinball into a particular divot on the playing table.
- It has a "plunger" so the player can adjust how hard or soft the pinball is discharged into the game, and "flippers" that allow the player to hit the pinball during play.

- The player can "bump" the machine to affect the play without "tilting" and defaulting the game.
- The player can affect the outcome of the game.

Order pp. 4-5.

The Magistrate's factual finding is supported by the above stipulations. Thus, unless this Court finds an error of law, the Magistrate's decision must be affirmed. *Bowers v. Thomas*, 373 S.C. 240, 244–45, 644 S.E.2d 751, 753 (Ct. App. 2007)

V. MAGISTRATE BLOOM'S COMPREHENSIVE ANALYSIS CORRECTLY APPLIED THE LAW

Magistrate Bloom's 40-page order thoroughly analyzed the relevant statutes and controlling precedent. The Magistrate correctly recognized that:

1. The Montana Deluxe 2 is a nonpayout in-line pin game that is expressly exempted from S.C. Code § 12-21-2710.
2. The act of the proprietor in making cash payouts does not change the exempt status of the machine itself.
3. The Supreme Court's decisions in *Alexander Amusement Co. v. State*, 246 SC 530, 144 S.E.2d 718 (1965) and *Powell v. Red Carpet Lounge*, 280 S.C. 142, 311 S.E.2d 719 (1984), clearly establish that exempt pinball machines cannot be seized even when used for gambling.

As Magistrate Bloom explained: "The proprietor in this case by his unlawful actions does not turn this nonpayout pinball machine into an illegal machine. In other words, the bad actor's unlawful actions do not subvert the statute itself by transforming an exempted machine into an illegal per se one – not unless the Court or Legislature say so."

The Circuit Court properly affirmed this analysis, finding "no error of law" in Magistrate Bloom's decision. Order.

VI. THE COURT OF APPEALS' RECENT DECISION IN *1 DRAGON'S ASCENT v SLED* IS DISTINGUISHABLE BECAUSE THE MONTANA DELUXE 2 GAME IS EXEMPT FROM S.C. CODE § 12-21-2710.

Respondent anticipates that SLED will rely upon the recent ruling by the Court of Appeals in *1 Dragon's Ascent v. SLED*, Opinion No. 6098 (Feb. 5, 2025) in Reply. In this case, the Court of Appeals ruled that a coin operated video machine was violated Section 2710 because it was being used for gambling. However, this ruling is distinguishable from the Magistrate's ruling concerning the Montana Deluxe 2 machine on several key grounds.

The central distinction lies in the explicit statutory exemption that applies to the Montana Deluxe 2 machine. S.C. Code § 12-21-2710 contains specific carve-out language that states: "the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games..." The Montana Deluxe 2 is precisely this type of machine - a mechanical in-line pin game (pinball machine) with a nonpayout feature.

By contrast, the Dragon's Ascent machine does not fall within any statutory exemption. Dragon's Ascent is a video gaming device with electronic components rather than a mechanical inline pin game. The Court of Appeals recognized that while skill may predominate in Dragon's Ascent, the Court of Appeals determined that the machine is nevertheless prohibited by Section 2710 because it is a licensed machine being "used for gambling."² The Court ruled that "used for gambling" occurs whenever players can receive cash rewards for their play.

The Montana Deluxe 2 inline pin game is exempt from the provisions of Section 2710 and therefore the provision which prohibits video game machines used for gambling simply does not apply. The Court of Appeals' ruling in *1 Dragon's Ascent* involved an interpretation of the statute

² Section 2710 prohibits the possession of "any machine or device licensed pursuant to Section 12-21-2720 and used for gambling."

which by its very terms exempts non-payout inline pin games. The Magistrate's ruling correctly relies on *Alexander Amusement Co. v. State*, and *Powell v. Red Carpet Lounge*, both of which specifically addressed pinball machines and found them exempt under the statutory language. These cases remain good law and have not been overruled.

The Magistrate correctly recognized that the Montana Deluxe 2 is a mechanical nonpayout in-line pin game, which falls squarely within the statutory exemption regardless of how it was misused by the establishment owner. The improper use of the exempt machine by a third party cannot transform the machine itself into a non-exempt device contrary to the plain language of the statute.

CONCLUSION

The Montana Deluxe 2 pinball machine is a coin-operated nonpayout in-line pin game that is expressly exempted from the list of prohibited devices under S.C. Code § 12-21-2710. The South Carolina Supreme Court has directly held in *Alexander Amusement Co. v. State* that such exempt machines cannot be confiscated even when used for gambling by the proprietor of an establishment.

Both Magistrate Bloom and the Circuit Court correctly applied the law in determining that the machine should not be subject to destruction. This Court should affirm the Circuit Court's judgment.

Respectfully submitted,

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