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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

South Carolina State Law Enforcement Division — Appellant

v.

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

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FINAL BRIEF OF APPELLANT

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II. Did the circuit court err in applying the "non-payout" exception in S.C. Code Ann. § 12-21-2710 to a machine on which undisputed cash payouts were made?

III. Did the circuit court incorrectly apply S.C. Code Ann. § 12-21-2721 in this action despite there being no "violation of Sections 16-19-30, 16-19-40, 16-19-50, or 16-19-130"?

IV. Did the circuit court err in disregarding the existing precedent set forth by the South Carolina Supreme Court in Town of Mount Pleasant v. Chimento, 401 S.C. 522, 737 S.E.2d 830 (2012), which provides that conduct can still be illegal gambling even if skill is the predominant factor in determining the outcome?

V. Did the circuit court apply the incorrect legal analysis to determine whether this machine violated South Carolina law?

STATEMENT OF THE CASE

After viewing illegal gambling activity on the Montana Deluxe device at issue in this action, SLED agents seized it and took it to an appropriate Richland County Magistrate Judge who examined it and issued an Order of Destruction finding that the machine violates § 12-21-2710. However, the owner of the machine timely requested a post-seizure hearing, and the hearing was conducted on December 19, 2022.

At the post-seizure hearing, there was no dispute that cash was paid to players for winnings on this device. (Trial Court Order p. 34)(R. p. 37). The evidence established that while the device does not dispense money directly to the players, it does print and dispense tickets to players who then submitted the tickets to workers at the location for cash payouts. (Trial Court Order p. 35)(R. p. 38). These illegal payouts were directly facilitated by device via the "R Button to Collect Plays" and the printed tickets. (Trial Court Order pp. 35)(R. pp. 38, 193). At the post-seizure hearing, the Appellant submitted numerous undisputed payout tickets from this device and the cash payouts were undisputed. (Plaintiff's Exhibit #5 in Attachment C of the Magistrate Court Return)(R. pp. 199-246). Further, the evidence at trial established that the device also tracked the money paid in and the money paid out via the hard meters. *Id.* However, despite the undisputed illegal use of the device and the undisputed "obvious" evidence of illegal cash payouts to players facilitated by the device, the trial court ordered that the device be returned to the owner. (Trial Court Order p. 35)(R. p. 38). This ruling was in direct contravention of the spirit, intent, and plain language of South Carolina's anti-gaming machine laws. Accordingly, the Appellant timely initiated an appeal to the circuit court.

A circuit court appeal hearing was conducted on August 23, 2024, before The Honorable Jocelyn Newman. (Tr. p. 1)(R. p. 104). Thereafter, Judge Newman affirmed the magistrate's decision on a Form 4 Order dated September 17, 2024, which states only "Appellant-Plaintiff's appeal (filed on September 23, 2023) is affirmed. The Court finds no error or law.". (Circuit Court Order p. 1)(R. p. 101). There was no other analysis, justification, or legal reasoning provided. This appeal follows.

STATEMENT OF THE FACTS

On or about April 20, 2022, SLED agents conducted an alcohol inspection at the Tavern on Broad, which is a licensed alcohol location located at 7949 Broad River Road, Suite 90 in Irmo, South Carolina. (Trial Court Order p. 2)(R. p. 5). During this inspection, SLED agents observed what they believed to be an illegal gaming device on which individuals gambled and received cash payouts. *Id.*

This device is operated by a slot in which a coin or thing of value is deposited for the play of games of chance for money. This machine has the outward appearance of a traditional pinball machine with a backboard connected to a glass-covered bottom board standing on four legs. However, unlike a traditional pinball machine, this device has at least nine different electronic games of chance to play – several of which are bingo or keno games. These games are "Golden Game", "Random Game", "Super One Ball", "Triple Barrel", "Euro One Ball", "Lucky Ball", "Break The Safe", "Crazy Wheel", and "Lucky Ball II". When played, these games depict a random number grouping on the backboard, just like "bingo", "keno", and other traditional games of chance. (Magistrate Return Plaintiffs' Exhibit 1)(R. pp. 187-194).

The bottom board has a springing plunger to initiate the play, numbered holds dispersed throughout the "field of play", and both "flippers" and "pins" to redirect balls in play. To begin play, a player inserts money into the slot. The player can then select which bingo or keno game to play. Next, the player uses the plunger to send balls onto the "field of play" where the balls bounce off the "pins" and "flippers" and stop in a numbered hole. The number on the hole where the ball stops illuminates the corresponding number on the bingo or keno card on the backboard. The object, just like in "Bingo" is to make a "BINGO" or "Keno" by lining up the appropriate number combinations on the selected bingo or keno card using the balls to light up the correct numbers. Successfully doing so will win the player "credits" which can be redeemed for a "ticket". This machine, rather than using a "basket" or "hopper" full of ping pong balls like traditional bingo or keno, simply uses technology to play the same game. (Magistrate Return) (R. pp. 199-246).

The ticket depicts a "score", which the player redeems for a cash payout. Notably, this machine shows the credits available to be collected and indicates "Press the R Button to Collect Plays". In fact, the undisputed evidence in this case established that there were substantial cash payouts available and paid for the play of this device. At trial, SLED provided photographs of approximately 50 payout receipts showing payouts from the location for the play of this device including some with handwritten acknowledgments of payouts in the following amounts $11.00; $14.00; $78.00; $80.00; $90.00; $100.00; $101.00; $130.00; $151.00; $420.00, $1,025.00; $1,231.00; and $1,415.00. (Magistrate Return) (R. pp. 199-246). Further, this device itself was not only used for gambling by players, but the device itself facilitated the payments by printing tickets and tracking the monies to be paid out. (Plaintiff's Exhibit #3 in Attachment C of the Magistrate Court

Return.)(R. pp. 196). Notably, this is not akin to a pool table or a dart board on which two players can wager on the outcome. Rather, this a one-player game designed for a player to insert money for the chance to win a prize – in this instance, cash. This functionality and capability in and of itself renders the device illegal. As such, the this device was a "device licensed pursuant to Section 12-21-2720 and used for gambling" in direct contravention of S.C. Code Ann. § 12-21-2710 and should be forfeit.

While the owner submitted into evidence a contract purporting to prohibit cash payouts on the device by the licensed location, this is of no consequence. (Magistrate Return)(R. pp. 248-49). Rather, this contract serves as direct evidence of the owner's knowledge that the device is capable of being used for gambling and that the device can facilitate illegal cash payouts to players. *Id.*

STANDARD OF REVIEW

"Determining the proper interpretation of a statute is a question of law" subject to *de novo* review. Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

"Upon hearing the appeal the [circuit court sitting as an] 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 of the parties and for errors of law or fact." S.C. Code § 18-7-170.

"[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." Burns v. Wannamaker, 281 S.C. 352, 357, 315 S.E.2d 179, 182 (Ct.App.1984). However, the "Court of Appeals still retains de novo review of whether the facts show the circuit court's affirmance was controlled or affected by errors of law." Bowers v. Thomas, 373 S.C. 240, 245, 644 S.E.2d 751, 753 (Ct. App. 2007).

"At a post-seizure hearing, the burden is on the owner of the *res* [the seized device] to show why the seized property should not be forfeited and destroyed." Union County Sheriff's Office v. Henderson, 395 S.C. 516, 719 S.E.2d 665, 666 (2011).

The cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003).

ARGUMENTS

1. The circuit court's interpretation of S.C. Code Ann. § 12-21-2710, which allows cash payouts on a gaming device, does not accomplish the clear and unambiguous intent of the South Carolina Legislature to prohibit cash payouts and gambling on gaming devices.

The circuit court, like the trial court, erroneously disregarded the clear and unambiguous intent of the South Carolina Legislature by specifically allowing cash payouts for the play of the device in question. The intent of the South Carolina Legislature in passing S.C. Code Ann. § 12-21-2710, particularly the amendments enacted in 1999, was to specifically **prohibit** cash payouts on devices in South Carolina. These amendments also famously brought an end to video poker and the havoc it had wreaked on the State of South Carolina for years. The circuit court's order disregards the Legislative intent and seemingly ignores the dark history of cash payouts on devices and the damage that resulted therefrom in South Carolina. Accordingly, the circuit court's decision to allow cash payouts on devices, which may well usher in a new era of gambling on gaming devices in South Carolina, must be reversed. *See* Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003) ("The cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent."); Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)("All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute."); Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675 (2007)("[I]t is beyond this Court's power to effect a change in the statutes enacted by the Legislature.").

In 1999, the South Carolina Legislature passed 1999 S.C. Act 125 to specifically put an end to cash payouts on gaming devices in South Carolina. The introductory language of this Act provides a clear recitation of the explicit intent of the South Carolina Legislature in this regard. This bill was,

> AN ACT TO AMEND SECTIONS 12-21-2710, AS AMENDED, 12-21-2712, 12-21-2720, AS AMENDED, AND 12-21-2726, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COIN-OPERATED MACHINES OR DEVICES, SO **AS TO EXTEND THE PROHIBITION ON SLOT MACHINES AND OTHER MACHINES OR DEVICES PERTAINING TO GAMES OF CHANCE TO VIDEO GAMES WITH A FREE PLAY FEATURE OR ANY OTHER COIN-OPERATED MACHINE OR DEVICE USED FOR GAMBLING**, TO EXTEND THE SEIZURE AND DESTRUCTION PROVISIONS APPLICABLE TO GAMES OF CHANCE TO THESE EXPANDED PROHIBITIONS,…
>
> AND TO REPEAL SECTIONS 12-21-2703, 16-19-60, AND ARTICLE 20, CHAPTER 21 OF TITLE 12 RELATING RESPECTIVELY TO THE RETAIL LICENSE REQUIREMENT FOR A LOCATION WITH VIDEO GAMES WITH A FREE PLAY FEATURE, THE EXEMPTION OF VIDEO GAMES WITH A FREE PLAY FEATURE FROM THE GAMBLING OFFENSES, AND THE VIDEO GAMES MACHINES ACT, **ALL OF THE ABOVE ENACTED FOR THE PURPOSE OF PROHIBITING CASH PAYOUTS FOR CREDITS EARNED ON VIDEO GAME MACHINES ON AND AFTER JULY 1, 2000**;….(emphasis added).

Should this clear language not be enough evidence the intent of the Legislature, "PART I" of this bill is also specifically entitled **"Prohibition on Payouts"**. 1999 S.C. Act 125 (emphasis added).

In Westside Quik Shop v. Stewart, the South Carolina Supreme Court acknowledged the purpose of the 1999 amendments to § 12-21-2710 indicating:

> [f]inally in an extra session called by the Governor in June 1999 S.C. Act No. 125 providing for a November referendum to be held statewide to decide the fate of video gaming. Voters would be asked whether cash payouts for video gaming machines should continue to be allowed after June 30, 2000. If voters answered "no," Part 1 of the Act would become effective

> July 1, 2000. **This part of the Act repeals § 16-19-60, which allows nonmachine cash payouts, and amends S.C. Code Ann. § 12-21-2710 (2000) to remove the exception for video gaming machines, thereby rendering the possession of these machines illegal**…. Further, under S.C. Code Ann. § 12-21-2712 (2000), these machines are then subject to forfeiture and destruction by the State.... Before the referendum was held, an action was brought challenging its constitutionality. After taking the case in our original jurisdiction in October 1999, this Court struck down the referendum, but severed it from the remaining parts of the Act. Specifically, we found Part I, which bans the possession or operation of these machines, to be a free standing legislative enactment and therefore valid. Joytime Distrib. and Amusement Co. v. State, 338 S.C. 364, 528 S.E.2d 647 (1999). **Accordingly, on July 1, [2000] under § 12-21-2710 and -2712, these machines will become contraband subject to forfeiture and destruction regardless of their use or operability.**

341 S.C. 297, 301-2, 534 S.E.2d 270, 272 (2000) *overruled on other grounds by* Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005).(emphasis added). The Supreme Court also specified that

> The plain language of the statute [§ 12-21-2710] makes clear the legislature's intent to outlaw mere possession of such machines. The statute makes it unlawful "for any person to keep on his premises *or* operate" certain gambling machines. S.C. Code Ann. § 12–21–2710 (Supp.1998) (emphasis added); *see also* State v. Appley, 207 S.C. 284, 288, 35 S.E.2d 835, 836 (1945) (possession of a machine is a violation in itself, separate from the crime of operation). **The circuit court correctly ruled possession of these machines is illegal, regardless of their intended use or operation.**

State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 187-89, 525 S.E.2d 872, 878-79 (2000)(emphasis added). Accordingly, it is without question that the Legislature amended § 12-21-2710 in 1999 for the express purpose of prohibiting cash payouts.

However, despite this clear and unambiguous Legislative intent directly to the contrary, the circuit court's affirmance of the magistrate order tacitly acknowledges the cash payouts paid to players for the play of this gaming device. (Magistrate Order p. 5)(R. p. 8). However, Cash payouts did not matter. Rather, the lower courts interpreted the

statute enacted "for the purpose of prohibiting cash payouts for credits earned on video game machines…" to allow cash payouts for credits earned on a video game machine. This is not only clear and reversible error, but it also absurdly results in the inexplicable allowance of gambling on a gaming device in direct contravention of South Carolina's longstanding prohibitions on such. *See* 1999 S.C. Act 125 *see also* Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Def., 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (courts "will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature."); Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (courts do "not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly").

The South Carolina Supreme Court has long acknowledged that it "consistently has deferred to the Legislature's determination of which gaming devices must be sacrificed for the public welfare. Furthermore, forfeiture serves a deterrent purpose both by preventing the further illicit use of the property and by imposing an economic penalty, thereby rendering the illegal behavior unprofitable." Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 303-4, 534 S.E.2d 270, 272 (2000) *overruled on other grounds by* Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005) *see also* S.C. Const. Art. I, § 8 (mandating separation of powers). This rationale acknowledges the exclusive policymaking role of the South Carolina Legislature. *See* Wilson ex rel. State v. City of Columbia, 434 S.C. 206, 213, 863 S.E.2d 456, 460 (2021) ("Where, as here, the General Assembly establishes policy via legislation, it is our solemn duty to uphold that law absent a clear constitutional infirmity.")

In South Carolina, S.C. Code Ann. § 12-21-2710 is the South Carolina Legislature's determination of the types of machines and devices that are prohibited. It states in pertinent part:

> 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** or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, 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….

The plain language of this statute prohibits all "device[s] licensed pursuant to Section 12-21-2720 and used for gambling…." Accordingly, the Legislature has established and long maintained a clear and unambiguous policy determination that gambling on gaming machines is illegal in South Carolina. *See* S.C. Code Ann. § 12-21-2710. The circuit court decision erroneously disregards this longstanding and clear Legislative policy and inexplicably opens to the door to conduct that South Carolina law was specifically designed to prohibit. Accordingly, this order should be reversed in its entirety. *See* Wilson ex rel. State v. City of Columbia, 434 S.C. 206, 213, 863 S.E.2d 456, 460 (2021).

It is also noteworthy that, while § 12-21-2710 has been amended since 1999, the Legislative policy decision to prohibit cash payouts on gaming devices has not changed. In May of 2022, the Legislature amended § 12-21-2710 to allow federally licensed South

Carolina gaming device manufacturers to produce and sell items to out-of-state jurisdictions. *See* 2022 Act No. 190. However, this amendment did not change the clear prohibition on machines or devices used for gambling nor did it authorize cash payouts on machines in South Carolina.

The South Carolina Legislature has established and long maintained a clear and unambiguous policy determination that cash payouts and gambling on gaming machines are prohibited in South Carolina. *See* S.C. Code Ann. § 12-21-2710; 1999 S.C. Act 125. The circuit court's interpretation of § 12-21-2710 that inexplicably and erroneously allows cash payouts for the play of this gaming device is clear reversible error. In addition, the circuit court's decision not only leads to the absurd result that a statute, enacted for the purpose of prohibiting cash payouts, authorizes them; but the circuit court's ruling leads to a dangerous and very real concern that there will be a reemergence of the havoc wreaked on South Carolina by video gambling prior to 1999. Therefore, the circuit court's decision must be reversed, and original Order of Destruction should be restored.

2. The circuit court erred in applying the "non-payout" exception in S.C. Code Ann. § 12-21-2710 to a machine on which undisputed cash payouts were made.

The lower courts' reliance on the exemption for "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" should be reversed. (Magistrate Order p. 39)(R. p. 42). As a matter of simple statutory construction, the exemption for pin tables and in-line pin games is modified by the unequivocal requirement that these devices must be "nonpayout" (*i.e.*, there can be no payout of any kind for the play of these devices). Otherwise, there would be no deterrent purpose for to prevent the further illicit use of the property as proscribed by the Mims Amusement Co. v. S. Carolina Law Enforcement Div. case from 2005. 366 S.C. 141, 621 S.E.2d 344 (2005). The circuit court's order disregards the deterrent purpose behind the forfeiture of machines with illegal cash payouts.

The South Carolina Supreme Court has also ruled, on several occasions, that video gaming machines are contraband *per se* and illegal to possess regardless of use. The lower court disregarded and misapplied this jurisprudence. This issue was specifically addressed in State v. 192 Coin-Operated Video Game Machines, in which the Supreme Court acknowledged, "[t]he State asserts the machines are contraband *per se,* such that their possession, without more, constitutes a violation. Appellant asserts that coin-operated video games are not inherently illegal, so the machines are therefore only derivative contraband. We conclude the machines are contraband *per se.*" 338 S.C. 176, 189, 525 S.E.2d 872, 879 (2000). The Court went on further to articulate that "[t]hese illegal

gambling machines cannot be considered derivative contraband because they are themselves the subject of the statute's prohibition. In light of the statute's clear proscription of mere possession of the machines, the machines are clearly contraband *per se*." *Id*. (internal citations omitted).

The South Carolina Supreme Court addressed this issue again in 2005 in the Mims Amusement case. Mims Amusement Co. v. S. Carolina Law Enforcement Div., 366 S.C. 141, 621 S.E.2d 344 (2005). In Mims, the Court articulated that the "controlling question we must answer, then, is whether a video gaming machine—at the moment of seizure—is an item of contraband *per se* or derivative contraband. Is the unexamined machine more like a roulette wheel or an automobile? If it is the former, a claimant has no right to a jury trial; if it is the latter, a claimant has a right to a jury trial." *Id*. at 153. The Court held as follows: "[w]e conclude, based on our precedent addressing an owner's right to adequate due process in the forfeiture of a machine and the statutory regulation of the video gaming business, that a video gaming machine constitutes contraband *per se* at the moment it is seized by authorities." *Id*. The Court went further to state that,

> [i]t is apparent, however, that an allegedly illegal video gaming machine is deemed an unlawful gambling device at the moment of seizure, *i.e.,* the machine is contraband *per se* because it is illegal to possess and not susceptible of ownership. Moreover, this conclusion is appropriate in light of South Carolina's long-established statutory prohibitions on the ownership or use of specified gambling devices, including video gambling devices developed in recent years. *See Johnson [v. Collins Entertainment Co.],* 88 F.Supp.2d [499]…502 n. 1 [D.S.C. 1999)] ("[l]egislation designed to control 'the mischiefs of gambling' was enacted by the South Carolina colonial legislature in 1712").

Id. at 154. Ultimately, the Court found, "[a]ccordingly, we conclude that a seized video gaming machine constitutes contraband *per se* in the nature of a roulette wheel, and is not in the nature of derivative contraband such as a vehicle or parcel of real property normally

used for lawful purposes." *Id*. As such, because cash payouts were made for the play of this device, South Carolina law mandates that it is contraband *per se* and is illegal to possess regardless of other intended, capable, or other possible uses. The lower court's ruling disregards the binding jurisprudence on this device being contraband *per se*, and should be reversed.

The South Carolina Supreme Court has also stated on several occasions that even the component parts of illegal machines are illegal to possess. In late 2011, in the case of Union County Sheriff's Office v. Henderson, the South Carolina Supreme Court indicated that "[**§]** 12-21-2710 makes it unlawful to possess illegal gambling machines, even if they are not fully operational. The mere possession of the gambling devices, or even their component parts, is unlawful." 395 S.C. 516, 519-20, 719 S.E.2d 665, 666 (2011). In State v. 192 Coin-Operated Video Game Machines, the South Carolina Supreme Court South Carolina's prohibition on the mere possession of the parts of these machines indicating,

> Appellant asserts that due to the sophisticated nature of modern video machines, a machine cannot be illegal unless it is fully operational. In Squires v. South Carolina Law Enforcement Division, 249 S.C. 609, 155 S.E.2d 859 (1967), we held based on the predecessor statute to § 12–21–2710 that gambling devices need not be operational or in complete repair before they are subject to seizure and destruction. Moreover, component parts, subassemblies, and dies and molds used to make such parts are also subject to seizure and destruction. *Id.* at 613, 155 S.E.2d 859. Appellant argues Squires is outdated and should be overruled. We disagree.
>
> The substance of appellant's argument is that in the 1960s, when the predecessor statute to § 12–21–2710 was enacted, slot machines were readily identifiable. Today, with the advent of the computer, a video game machine is simply a box containing a computer which can be configured to play a variety of games, from poker to pac-man; therefore, the machine itself should not be considered illegal.
>
> Although slot machines have changed since the 1960s, the substance of the statute has not. The relevant portions of the current version outlaw the same conduct as its predecessor….

> **The plain language of the statute makes clear the legislature's intent to outlaw mere possession of such machines. The statute makes it unlawful "for any person to keep on his premises *or* operate" certain gambling machines.** S.C. Code Ann. § 12–21–2710 (Supp.1998) (emphasis added); *see also* State v. Appley, 207 S.C. 284, 288, 35 S.E.2d 835, 836 (1945) (possession of a machine is a violation in itself, separate from the crime of operation). **The circuit court correctly ruled possession of these machines is illegal, regardless of their intended use or operation.**

338 S.C. 176, 187-89, 525 S.E.2d 872, 878-79 (2000) (emphasis added). In Squires v. South Carolina Law Enforcement Division, the Court also specifically indicated,

> [i]t is clear that the Legislature, by the enactment of the statutes here involved, did condemn any devices pertaining to games of chance. **We think it would abort the legislative purpose to hold that an assembled gambling device is the only one that is condemned and subject to seizure and destruction and to permit the subassemblies and component parts, and the dies and molds for the making of such to escape the condemnation of the statutes. To so construe the statutes would lead to a result so plainly absurd that it could not have possibly been intended by the Legislature and such would defeat the legislative intention.**

249 S.C. 609, 612-13, 155 S.E.2d 859, 861 (1967) (emphasis added). Again, both lower courts disregarded or misapplied this jurisprudence and should be reversed. Accordingly, the original Order of Destruction should be reinstated.

3. The circuit court incorrectly applied S.C. Code Ann. § 12-21-2721 in this action despite there being no "violation of Sections 16-19-30, 16-19-40, 16-19-50, or 16-19-130".

Further, the lower courts' reliance on S.C. Code Ann. § 12-21-2721 is completely misplaced and this statute is simply not applicable in any way whatsoever to the case at bar. Determinatively, this action did not arise based on a "any violation of Sections 16-19-30, 16-19-40, 16-19-50, or 16-19-130." Rather, this action arose pursuant to S.C. Code Ann. § 12-21-2710 and S.C. Code Ann. § 12-21-2712, which were created specifically to prohibit gambling and cash payouts for playing gaming devices in South Carolina. *See* 1999 S.C. Act 125 Westside Quik Shop v. Stewart, 341 S.C. 297, 301, 534, S.E.2d 270, 272 (2000) (*overruled on other grounds by* Byrd v. City of Hartsville, 365 S.C. 650, 620 S.E.2d 76 (2005) (acknowledging the repeal § 16-19-60 specifically to remove the exception for non-machine cash payouts). In South Carolina, "the words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Mun. Ass'n of S.C. v. AT & T Commc'ns of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004). By expanding the language of S.C. Code Ann. § 12-21-2721 to cover the instant action, despite its clear inapplicability, the lower courts ran afoul of South Carolina jurisprudence and those decisions are directly contrary to South Carolina law and should be reversed. *See supra.*

Similarly, the fact that the owner of the establishment in question may have violated other provisions of South Carolina gambling laws cannot somehow immunize the device from forfeiture and destruction. Rather, the fact that this device itself was "used for gambling" renders it contraband *per se* in direct violation of § 12-21-2710.

However, it is noteworthy that the owner of the device is not without remedy to pursue the owner of establishment for any breach of any contract in force during the time in question. Regardless, this has no bearing on the illegality of the device. In addition, the lower courts' reliance on Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984) and Alexander Amusement Co. v. State, 246 S.C. 530 144 S.E.2d 718 (1965) was also inappropriate. These cases were each decided based on the statutes as existed prior to 1999 S.C. Act 125. Accordingly, each involves the analysis and interpretation of previous and inapplicable versions of the predecessor statutes to § 12-21-2710. Therefore, the lower courts' opinions should be reversed and the Order of Destruction should be restored.

4. The circuit court's order disregards the existing precedent set forth by the South Carolina Supreme Court in Town of Mount Pleasant v. Chimento, 401 S.C. 522, 737 S.E.2d 830 (2012), which provides that conduct can still be illegal gambling even if skill is the predominant factor in determining the outcome.

The circuit court also committed reversible error in disregarding the precedent set by the South Carolina Supreme Court precedent in Town of Mount Pleasant v. Chimento, 401 S.C. 522, 737 S.E.2d 830 (2012). In that case, the South Carolina Supreme Court updated South Carolina's "statutory" definition of gambling in the case Town of Mount Pleasant v. Chimento**,** 401 S.C. 522, 737 S.E.2d 830 (2012), *reh'g denied* (Jan. 10, 2013). In Chimento, the Supreme Court indicated that the "statutory meaning of the word 'gambling' in South Carolina includes games in which skill outweighs chance." *Id*. at 837. The Supreme Court specifically acknowledged that, "[w]hether an activity is gaming/gambling is not dependent upon the relative roles of chance and skill, but whether there is money or something of value wagered on the game's outcome." *Id*. at 838. As such, the determination as to whether the machine at issue in this action is an illegal gambling device turns on the definition of wager. Merriam-Webster's dictionary defines wager as "something (a sum of money) risked on an uncertain event."[1]

The undisputed facts and stipulations in this matter indicate that individuals can and did put money into this machine for the chance to win cash prizes. As such, regardless of any argument regarding skill versus chance, the placement of money into this machine risked on the uncertain event that a player will get a "bingo" resulting in the payment of money constitutes a wager and is thus considered illegal gambling rendering this device illegal in South Carolina. *See Id*.

[1] http://www.merriam-webster.com/dictionary/wager.

This machine also has other features of a gambling device. It has multiple hard meters, which are an accounting system set up to specifically track the money inserted into this machine and to specifically track the money paid out by this machine. An accounting system to track payouts is clear evidence of illegal gambling. Further, the evidence submitted indicates that no change was provided regarding winnings on this device. As such, this is a machine or device licensed pursuant to S.C. Code Ann. § 12-21-2720 and used for gambling in violation of the law.

South Carolina law and jurisprudence has long acknowledged the unique treatment of gaming machines in forfeiture actions. *See* Mims Amusement Co. v. S.C. L. Enf't Div., 366 S.C. 141, 156, 621 S.E.2d 344, 351 (2005). ("The owner of a video game machine seized by law enforcement authorities does not have a constitutional right to a jury trial in a civil forfeiture proceeding to determine whether the machine is an illegal gambling device because the device, at the moment of seizure, is deemed an item of contraband *per se*."). This unique treatment is mandated because of the history of video poker in South Carolina, "which mushroomed from a rather clandestine and inauspicious beginning in 1986 into a multi-billion-dollar business by its demise in July 2000" that ultimately "wreaked havoc" on South Carolina. Mims Amusement Co. v. S.C. L. Enf't Div., 366 S.C. 141, 146–47, 621 S.E.2d 344, 346–47 (2005); Town of Mount Pleasant v. Chimento, 401 S.C. 522, 537–38, 737 S.E.2d 830, 840 (2012) (Toal concurrence).

Appellant acknowledges the difficult burden this presents to gaming machine owners. However, the havoc wreaked on South Carolina by video poker, which directly led to the 1999 amendments to § 12-21-2710 demands this standard. Former Chief Justice

Toal articulated this sentiment and the devastating impact that removing critical South Carolina gambling prohibitions would have in South Carolina. She noted that this

> would also open the door wide to *all* heretofore illegal gaming practices in this state, including video poker. *See* S.C. Code Ann. § 16–19–40(g) (proscribing the playing of "any machine or device ... used for gambling purposes"). Because of this very real consequence, I am concerned that striking this critical language from the statute would beget, as elucidated by the General Assembly in 1816 when amending section 16–191–40, the "impoverishment of many people, corruption of the morals and manners of youth, ... the tendency which is vice, misery and crime, as examples in this state have abundantly proven." These dire concerns resonate as much today as they did nearly 200 years ago. I do not need to remind any person of the havoc wreaked upon this State as a result of the "pernicious" practice of video poker. Although there are other sound provisions outlawing video poker, *see* S.C. Code Ann. §§ 1221–2710, 2712 (2000), I am loathe to strike the critical language from the general ban on gaming in the event that it guts these provisions, and consequently, South Carolina's longstanding prohibition against gambling.

Town of Mount Pleasant v. Chimento, 401 S.C. 522, 537–38, 737 S.E.2d 830, 840 (2012). While Chief Justice Toal was articulating the concerns with invalidating S.C. Code Ann. § 16-19-40, this same concern exists in this present action should § 12-21-2710 be interpreted to allow individuals to receive cash payouts for the play of this device yet the device not be subject to forfeiture and destruction. Again, the specific intent of the South Carolina Legislature was to prohibit cash payouts for credits earned by play of gaming devices regardless of whether the payouts came from the device or from the establishment and forfeiture and destruction serve this purpose. *See* 1999 S.C. Act 125. The lower court decisions do not comport with or harmonize with this intent and does not render illegal behavior unprofitable. Rather, the lower courts immunized an illegal device and returned it for future illegal use.

The South Carolina Supreme Court has also long acknowledged that,

> [i]n no field of reprehensible endeavor has the ingenuity of man been more exerted than in the invention of devices to comply with the letter but to do violence to the spirit and thwart the beneficent objects and purposes of the laws designed to suppress the vice of gambling. Be it said to the credit of the expounders of the law that such fruits of inventive genius have been allowed by the courts to accomplish no greater result than that of demonstrating the inaccuracy and insufficiency of some of the old definitions of gambling that were made before the advent of the era of greatly expanded, diversified and cunning mechanical inventions.

Harvie v. Heise, 150 S.C. 277, 148 S.E. 66, 69 (1929).

The circuit court's interpretation of § 12-21-2710 to allow a "cunning mechanical invention" to facilitate cash payouts is contrary to the specific intent of the South Carolina Legislature and, without reversal, opens the door to the dire concerns of the havoc wreaked upon this State as a result of the "pernicious" practice of video poker. The Supreme Court in *Chimento* sought to avoid this outcome. Restoring the Order of Destruction avoids this outcome. Unfortunately, the lower courts disregarded former Chief Justice Toal's warnings from *Chimento* and issued decisions that facilitate this dire outcome. These decisions, which do not follow the binding Supreme Court precedent must be reversed. *See* Daniels v. City of Goose Creek, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (Ct. App. 1993); (recognizing decisions of the Supreme Court bind as precedent); S.C. Const. Art. V, § 9. Accordingly, the Order of Destruction should be reinstated.

5. The circuit court applied an incorrect legal analysis to determine whether this machine violated South Carolina law.

Gambling on electronic devices has plagued South Carolina for decades. To combat this scourge, the South Carolina Legislature enacted, and South Carolina courts have interpreted South Carolina laws to specifically outlaw devices on which individuals pay money for the chance to win cash prizes. The South Carolina Supreme Court has acknowledged that "[g]aming devices in general have long been recognized as legitimately within the police power of the State to control or take by forfeiture" and that "[g]aming machines have been illegal and subject to forfeiture as contraband in this state since the 1930s." Mims Amusement Co. v. S. Carolina Law Enforcement Div., 366 S.C. 141, 147, 621 S.E.2d 344, 347 (2005).

In addition, the South Carolina Supreme Court has noted that it "consistently has deferred to the Legislature's determination of which gaming devices must be sacrificed for the public welfare. Furthermore, forfeiture serves a deterrent purpose both by preventing the further illicit use of the property and by imposing an economic penalty, thereby rendering the illegal behavior unprofitable. *Id. citing* Bennis v. Michigan, 516 U.S. 442, 452 (1996); Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 686-87 (1974) (emphasis added). The trial court's order noting the "obvious" illegality of the payouts on this device, but requiring the return of the device, disregards the deterrent purpose that South Carolina's gaming machine forfeiture laws were specifically enacted to accomplish. For decades, South Carolina law has been interpreted and applied to outlaw the "mere possession" of certain types of machines, including all machines on which individuals ***CAN*** gamble and on which they receive cash payouts. *See* State v. 192 Coin-Operated Video

Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000). The trial court's decision is contrary to this established and binding jurisprudence and should thus be reversed.

S.C. Code Ann. § 12-21-2710 is the South Carolina Legislature's determination of the types of machines and devices that are illegal to possess or operate in South Carolina.

> 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 or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, 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.
>
> Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for a period of not more than one year, or both.
>
> This section does not apply to the development, manufacture, processing, selling, possessing, provision of technical aid, or transporting of any printed materials, gaming equipment, devices, or other materials, software, or hardware used or designated for use in out-of-state jurisdictions by a gaming device manufacturer. A gaming device manufacturer is a manufacturing entity that is in good standing with the South Carolina Secretary of State's Office, is registered with the United States Department of Justice Gambling Device Registration Unit, is authorized to do business in the State of South Carolina, and has all appropriate business licensure and zoning authorization necessary to operate a manufacturing facility in the jurisdiction in which the manufacturing facility is located. Any transportation of gaming devices authorized in this section must comply with all applicable federal laws. This section may not be construed so as to prohibit communications between persons in this State and persons involved with such legal lotteries or gaming devices relative to such printed

> materials, equipment, devices, or other materials, software, or hardware. (emphasis added).

In interpreting this statute, as with all statutes, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003).

And, the true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). In Westside Quik Shop v. Stewart, the South Carolina Supreme Court acknowledged the "true aim and intent" of § 12-21-2710 indicating:

> [f]inally in an extra session called by the Governor in June 1999 S.C. Act No. 125 providing for a November referendum to be held statewide to decide the fate of video gaming. Voters would be asked whether cash payouts for video gaming machines should continue to be allowed after June 30, 2000. If voters answered "no," Part 1 of the Act would become effective July 1, 2000. **This part of the Act repeals § 16-19-60, which allows nonmachine cash payouts, and amends S.C. Code Ann. § 12-21-2710 (2000) to remove the exception for video gaming machines, thereby rendering the possession of these machines illegal**…. Further, under S.C. Code Ann. § 12-21-2712 (2000), these machines are then subject to forfeiture and destruction by the State.... Before the referendum was held, an action was brought challenging its constitutionality. After taking the case in our original jurisdiction in October 1999, this Court struck down the referendum, but severed it from the remaining parts of the Act. Specifically, we found Part I, which bans the possession or operation of these machines, to be a free standing legislative enactment and therefore valid. Joytime Distrib. and Amusement Co. v. State, 338 S.C. 364, 528 S.E.2d 647 (1999). **Accordingly, on July 1, [2000] under § 12-21-2710 and -2712, these machines will become contraband subject to forfeiture and destruction regardless of their use or operability.**

341 S.C. 297, 301-2, 534 S.E.2d 270, 272 (2000). (emphasis added). The Supreme Court has also indicated that

> The plain language of the statute makes clear the legislature's intent to outlaw mere possession of such machines. The statute makes it unlawful "for any person to keep on his premises *or* operate" certain gambling machines. S.C.Code Ann. § 12–21–2710 (Supp.1998) (emphasis added);

> *see also* State v. Appley, 207 S.C. 284, 288, 35 S.E.2d 835, 836 (1945) (possession of a machine is a violation in itself, separate from the crime of operation). **The circuit court correctly ruled possession of these machines is illegal, regardless of their intended use or operation.**

338 S.C. at 187-89, 525 S.E.2d at 878-79 (2000) (emphasis added). In addition, the introductory language of 1999 S.C. Act 125 provides the clearest and most unequivocal proof of the intent of the South Carolina Legislature when passing this law.

Simply put, § 12-21-2710 was **"ENACTED FOR THE PURPOSE OF PROHIBITING CASH PAYOUTS FOR CREDITS EARNED ON VIDEO GAME MACHINES ON AND AFTER JULY 1, 2000**;…." 1999 Act 125. (emphasis added). Notably, this legislation specifically addressed and prohibited cash payouts for the play of machines – even those that were not in fact paid out by the machine itself. In truth, this legislation was intended to and did in fact close the "video poker" loophole that allowed payouts so long as the machine itself did not make the payment. Any argument or reliance to the contrary is simply wrong. Accordingly, there is and can be no doubt whatsoever that the South Carolina Legislature amended § 12-21-2710 in 1999 specifically to prohibit the illegal cash payouts on gaming machines like the machine at issue in this action. However, despite finding "obvious" illegal payouts being made for the play of the device, the lower courts refused to order its forfeiture and destruction.

In interpreting § 12-21-2710, "we must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" Senate by & through Leatherman v. McMaster, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018). Moreover, "[a]ll rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably

discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). The lower court decisions not subservient to the legislative intent and these interpretations were not construed in light of the intended purpose of the statute – to prohibit cash payouts on gaming machines. In furtherance of the South Carolina Legislature's longstanding prohibition on gambling devices in South Carolina, the South Carolina Supreme Court has long interpreted § 12-21-2710 to prohibit even the mere possession of devices on which individuals can gamble.

The Supreme Court has also long held that

> an allegedly illegal video gaming machine is deemed an unlawful gambling device at the moment of seizure, *i.e.,* the machine is contraband *per se* because it is illegal to possess and not susceptible of ownership. Moreover, this conclusion is appropriate in light of South Carolina's long-established statutory prohibitions on the ownership or use of specified gambling devices, including video gambling devices developed in recent years. *See Johnson [v. Collins Entertainment Co.],* 88 F.Supp.2d [499]…502 n. 1 [D.S.C. 1999)] ("[l]egislation designed to control 'the mischiefs of gambling' was enacted by the South Carolina colonial legislature in 1712").

Mims Amusement Co. v. S. Carolina Law Enforcement Div., 366 S.C. 141, 154, 621 S.E.2d 344 (2005). The evidence at the post-seizure hearing demonstrated not only the capability of gambling; but actual wagering, gambling, and cash payouts on the seized device. Accordingly, it is subject to forfeiture and destruction and the Order of Destruction should be restored.

CONCLUSION

The intent of the South Carolina Legislature's passage of 1999 S.C. Act 125 is clear and unequivocal – to prohibit cash payouts for the play of gaming devices in South Carolina. As the South Carolina Supreme Court noted in Wilson ex rel. State v. City of Columbia, "[w]here, as here, the General Assembly establishes policy via legislation, it is our solemn duty to uphold that law absent a clear constitutional infirmity." 434 S.C. 206, 213, 863 S.E.2d 456, 460 (2021). Additionally, "[w]e do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly." Richland Cnty. Sch. Dist. 2 v. Lucas, 434 S.C. 299, 306–07, 862 S.E.2d 920, 924 (2021) (quoting Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996)). The South Carolina Supreme Court has also long acknowledged that,

> [i]n no field of reprehensible endeavor has the ingenuity of man been more exerted than in the invention of devices to comply with the letter but to do violence to the spirit and thwart the beneficent objects and purposes of the laws designed to suppress the vice of gambling. Be it said to the credit of the expounders of the law that such fruits of inventive genius have been allowed by the courts to accomplish no greater result than that of demonstrating the inaccuracy and insufficiency of some of the old definitions of gambling that were made before the advent of the era of greatly expanded, diversified and cunning mechanical inventions.

Harvie v. Heise, 150 S.C. 277, 148 S.E. 66, 69 (1929). The gaming machine industry has and will likely continue to go to great lengths to attempt to violate the spirit and the intent of South Carolina's anti-gaming and anti-gambling laws. However, such attempts were rejected by the South Carolina Supreme Court in 1929 and throughout South Carolina's history, and they should also be similarly rejected in this case. The lower courts did not. Rather, the lower court orders do violence to the spirit and thwarts the beneficent objects and purposes of the laws designed to suppress the vice of gambling in South Carolina.

Only forfeiture and destruction of this contraband *per se* device serves as a deterrent and prevents its further illicit use.

Therefore, Appellant SLED asks that this Court reverse the lower court decisions in their entirety, affirm the previous Order of Destruction signed in this matter, find that the illegal gaming machine on which "obviously" illegal cash payouts were made violates not only the plain language of § 12-21-2710 but also the spirit and the intent of this law, and order that this illegal gambling device be destroyed.

Respectfully Submitted,

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May 19, 2025

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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

South Carolina State Law Enforcement Division — Appellant

v.

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

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CERTIFICATE OF COUNSEL

The undersigned certifies that the foregoing Final Brief of Appellant complies with Rule 211(b), SCACR.

May 19, 2025

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PROOF OF SERVICE

I hereby certify that I served the **Final Brief of Appellant** on the Respondents by sending a copy of the same to all counsel of record using each counsel's primary email address listed in the Attorney Information System (AIS) as noted below:

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