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**Nov 21 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman., Circuit Court Judge

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Appellate Case No. 2024-001762

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South Carolina State Law  
Enforcement Division

Appellant

v.

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

Respondents

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**RECORD ON APPEAL**

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S C State Law Enforcement Division  
PLAINTIFF(S)

Montana Deluxe 2 Machine et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Appellant-Plaintiff's appeal (filed on September 28, 2023) is affirmed. The Court finds no error of law.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/17/2024 .

Montana Deluxe 2 Machine

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Richland Common Pleas

**Case Caption:** S C State Law Enforcement Division VS Montana Deluxe 2 Machine ,  
defendant, et al  
**Case Number:** 2023CP4004886  
**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2024-09-17 14:10:59 page 3 of 3

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 S.C State Law Enforcement Division, )  
 Plaintiff )  
 v. )  
 )  
 A Montana Deluxe 2 machine; and )  
 Video Solutions I, Inc. )  
 Defendants )

IN THE MAGISTRATE’S COURT  
 Case No.: 2022-CV-40107-00687

**ORDER**

This matter came before this court on December 19, 2022 for a post-seizure hearing of an alleged gambling machine. Plaintiff S.C. State Law Enforcement Division (hereinafter, “SLED” or Plaintiff) was represented at the hearing by its General Counsel Adam L. Whitsett. The owner of the device at issue, Video Solutions I, Inc., was represented at the hearing by Attorneys Jim Griffin, Richard Harpootlian, and Frank McMaster. Also present were Fred Honeycutt, owner of the licensed business Tavern on Broad, and his attorney Paul Ferrara; but Honeycutt is not a party to this case or hearing. The court rules in favor of the Defendant.

The court makes the following findings of fact and conclusions of law.

**INTRODUCTION.**

Our General Assembly declared that video poker gambling machines were a scourge in our State, and enacted laws banning them. S.C. Code §12-21-2710. Our S.C. Supreme Court recognized the societal problems involved in the video poker industry, gave to the Legislature the challenge to amend the statute, and upheld the constitutionality of the new 1999 law in Act 125 and reflected in S.C. Code Ann. §12-21-2710. *Westside Quik Shop, Inc. v. Stewart*, 341 S.C. 297, 534 S.E.2d 270 (2000), *overruled on other grounds, Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005). This is not that case.

This is a pinball machine specifically exempted in the same statute §12-21-2710, and in §12-21-2721, which otherwise prohibits video poker, slot machines, and similar video gambling devices. The conduct of the proprietor of the business in this case was unlawful. The conduct of the owner of the machine was not; and the machine itself – a nonpayout in-line pinball game – is not one of the listed prohibited machines in the statute and is specifically exempted by statute.

Therefore, this court rescinds the Order of Destruction and Orders that the machine be returned to defendant VS-I based on the findings and conclusions as contained herein.

### **BACKGROUND.**

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, and owned by Honeycutt.<sup>1</sup> During this inspection, SLED agents observed what they believed to be an illegal gaming device on which individuals gambled and received cash payouts at the bar.

In accordance with S.C. Code Ann. § 12-21-2712, SLED agents seized the device and took it to an appropriate Richland County Magistrate Judge who examined it and issued an Order of Destruction finding that the machine violates South Carolina Code Ann. § 12-21-2710. The said Order, dated April 21, 2022, authorized the destruction of the machine and informed defendants of their right to a post-seizure hearing.

On May 3, 2022, counsel for Defendant filed a timely request and motion for a post-seizure hearing. The matter then was held in abeyance. During this time all of the Richland

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<sup>1</sup> Honeycutt was issued a nuisance citation against his establishment's liquor license. Because he is not a party to this case, he is not bound by any of the stipulations herein.

County magistrates recused themselves. On December 16, 2022, Chief Justice Donald Beatty of the S.C. Supreme Court issued an Order assigning the undersigned magistrate with jurisdiction of this case. In the interim, the Richland County magistrate court had tentatively scheduled a post-seizure hearing with the attorneys for December 19, 2022. The undersigned magistrate conducted such hearing.

At the December 19<sup>th</sup> hearing, counsel for SLED and counsel for Video Solutions I, Inc. (hereinafter, "VS-I"), stipulated to all of the relevant facts so that no testimony was presented to the court. The attorneys presented legal arguments at the hearing regarding the legality or illegality of the device in question and related issues. They also submitted exhibits without objection.

The parties entered into stipulations, in detail below, which included that this pinball game does not dispense money directly to the players, but that the proprietor at the establishment paid cash to players for winnings won by playing the device. However, the owner of the machine submitted into evidence a contract which prohibited cash payouts on the device at the licensed location Tavern on Broad. After the hearing in court, the undersigned judge and parties adjourned for a visual inspection of the machine. No testimony, statements, or arguments, were presented during this visual inspection.

At the conclusion of the December 19<sup>th</sup> hearing, the court granted the parties request to submit post-hearing briefs or proposed Orders to the court, the deadline of which was extended to accommodate the attorneys' other commitments. On March 31, 2023, SLED timely submitted its post-hearing brief and/or proposed Order. On April 4, 2023, attorneys for defendant VS-I timely submitted their post-hearing brief and/or proposed Order. This court took the matter under advisement.

Before providing this court's analysis of the matter, the court now sets forth the exhibits entered into evidence, the stipulations agreed upon between Plaintiff and Defendant, the statutes and case law applicable to this matter, and the arguments presented by counsel.

### **EXHIBITS.**

Plaintiff submitted the following Exhibits, separated by this court into five Exhibits:

(1) PL.Ex.#1. Photographs of the machine and its various games; (2) PL.Ex.#2. Photo of S.C. Dept. of Revenue sticker on the machine; (3) PL.Ex.#3. Counters in the machine; (4) PL.Ex.#4. Photos of the machine in the establishment with sign of "Top Score Will Receive a \$25.00 Bar Tab" and cash money confiscated for cash payouts; (5) PL.Ex.#5. Photos of printed receipts from the machine showing the "High Score" and "Points. No Cash Value. For Amusement Only."

Defendant submitted the following Exhibits: (1) DEF.Ex.#1. Copy of written contract between Defendant VS-I, owner of the machine, and Honeycutt, the proprietor of the business; (2) DEF.Ex.#2. Memorandum Of Understanding between Defendant VS-I and Honeycutt.

All exhibits were submitted and accepted without objection.

### **STIPULATIONS.**

Counsel for the respective parties indicated that there was virtually no dispute as to the underlying facts of this case such that stipulations of the facts were in order in lieu of the presentation of live witnesses. The stipulations, as this court understood them, were as follows.

- The Montana Deluxe 2 is a mechanical game device.
- It is a mechanical pinball game played on a sloping table, the object being to shoot a ball, driven by a spring-operated plunger, up a side passage, causing the ball to roll back down

against pins and through channels that flash or ring, with the goal being that the pinball comes to rest in particular holes on the playing field.

- The player can alter the course of the direction of the ball by actuating one or more levers or flippers causing the lever or flipper to strike the ball.
- The outcome depends upon the player shooting a metal pinball into a particular divot on the playing table.
- It has a “plunger” so that the player has the ability to adjust how hard or soft the pinball is discharged into the game; and it has “flippers” so that the player can operate it by hitting the pinball into the game; and the player can “bump” the machine to affect the play of the pinball but without “tilting” and defaulting the game.
- Video Solutions I, Inc. is the owner of the pinball machine.<sup>2</sup>
- VS-I had a written contract lease with the owner of the business establishment, Honeycutt and Tavern On Broad; and the contract, along with a written memorandum of understanding, specifically prohibited the lessee, Honeycutt, from using the pinball machine for gambling, cash payouts, or other illegal activity.
- Honeycutt as the proprietor of, and/or his designated employees at, Tavern on Broad did in fact award cash payouts to players of the game.
- The player can affect the outcome of the game.

This court offered the parties the opportunity to present any witnesses for any facts to be placed in evidence that were not stipulated to at the court hearing. The parties stated no witness testimony was needed for their respective positions.

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<sup>2</sup> Video Solutions I, Inc. is added as a defendant party because it is the owner of the machine, and as such has standing to contest its seizure and destruction. Rules 9 and 14, Mag.Ct.Rules. Plaintiff acknowledged that VS-I has standing in this matter and is a proper party.

**RELEVANT STATUTES.**

The relevant statutes submitted by the parties include three which address prohibited machines, confiscation, and destruction. They are: S.C. Code Ann. §12-21-2710; §12-21-2712; and §12-21-2721.

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. In other words, it defines "prohibited machines." This law states in its entirety:

SECTION 12-21-2710. Types of machines and devices prohibited by law; penalties.

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. (emphasis added).

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.

[court's note: This following section does not appear relevant to the issues at bar, but is included so that the entire statute, as amended, is set forth herein].

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.

The next code section as submitted by the Plaintiff is S.C. Code Ann. §12-21-2712. It is one of two confiscation and destruction statutes. It reads as follow

SECTION 12-21-2712. Seizure and destruction of unlawful machine, devices, etc.

Any machine, board, or other device prohibited by Section 12-21-2710 must 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 or any other law of this State, direct that it be immediately destroyed.

The next code section as submitted by Defendant is S.C. Code Ann. §12-21-2721. It is the second of the two confiscation and destruction statutes. It reads as follows:

SECTION 12-21-2721. Confiscation of 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.** (emphasis added).

It is noted that the Sections 16-19-30 thru 130, above, are the criminal gambling statutes. Their statutory language is not set forth here because the actual content and language of those criminal statutes are not pertinent to this court's decision.

## RELEVANT CASE LAW.

Our State Supreme Court has spoken at length about the video poker industry, video poker machines and prohibited gaming devices, and other games and gaming devices both legal and illegal. The parties submitted and argued the following cases to the court; or these cases were cited within cases submitted by the parties, and were applicable to this court's analysis.

### Video Poker and Gambling Machine Cases.

The history of the Court's opinions changed over time as the Legislature enacted reforms over the years regarding gambling machines, including amendments to the above statutes.

As early as 1929, the Court affirmed the Legislature's authority to prohibit gambling machines for the general benefit of society. *Harvie v. Heise*, 150 S.C. 277, 148 S.E. 66 (1929). In *Harvie*, the Court found a store's mint-dispensing machine in violation of the gambling statute since the machines also randomly dispensed a brass token. *Id.* 148 S.E. at 68-69. But the brass token could be redeemed for the store's merchandise. *Id.* The Court found that even though the tokens were stamped "no value," that was "a mere subterfuge..." as it was clear from the record in the case that the tokens were exchanged for goods. *Id.* at 69.

In *Squires v. S.C. Law Enforcement Division*, 249 S.C. 609, 155 S.E.2d 859 (1967), in a case of gambling slot machines, the Court held even the machine parts, and dyes/molds used to make parts, are all subject to seizure and destruction. *Id.* 249 S.C. at 613, 155 S.E.2d at 861. Some of the slot machines were fully complete while others were in stages of repair or assembly, and thus inoperable. *Id.* at 610-11, 155 S.E.2d at 859-60. But that was immaterial to the Court's decision: "The statute does not require that the gambling devices be operative or in complete repair before they are subject to seizure and destruction." *Id.* at 612, 155 S.E.2d at 860. Thus, all component parts of an illegal gambling device are also illegal. *Id.* at 612-13, 155 S.E.2d at 861.

In *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991), the Court construed a gambling statute, §16-19-40, where the video poker machine did not dispense the cash payout, instead the proprietor did. *Blackmon*, 304 S.C. 271-72, 403 S.E.2d at 660-61. The Court found that there was obviously an anomaly in the law: the gambling statute at that time prohibited the machine from making the cash payout, but not the owner of the business where the machine was located and operated. *Id.* at 271-72, 403 S.E.2d at 660-61. That was the anomaly: barring a machine from making the payout but not making it unlawful for the human to make the cash payout. *Id.* at 274, 403 S.E.2d at 662. The Court held that a criminal charge could not stand against the business owner making the cash payouts. *Id.* The Court invited the Legislature to address what was essentially a “loophole” in the law allowing video poker. *Id.* Ultimately the Legislature did so in 1999 with Act 125.

In the interim, in *State v. Four Video Slot Machines*, 317 S.C. 397, 453 S.E.2d 896 (1995), the Court affirmed a magistrate’s Order of confiscation and destruction of a “Lucky 8” slot machine. *Id.* 317 S.C. at 398, 453 S.E.2d at 897. The Court found that “The ‘Lucky 8 Line’ machine is clearly a slot machine.” *Id.* at 399, 453 S.E.2d at 897. The Court held that the statute made slot machines illegal by their definition as slot machines. *Id.* at 400, 453 S.E.2d at 898.

In *State v. One Coin-Operated Video Game Machine*, 321 S.C. 176, 467 S.E.2d 443 (1996), the Court again held that a slot machine confiscated by law enforcement under the earlier version of §12-21-2710 was lawfully subject to destruction under the magistrate court’s Order. *One Coin*, 321 S.C. at 177, 467 S.E.2d at 444. The “Cherry Master” was nothing more than another slot machine and similar to the machine in *Four Video* which the Court had declared illegal. *Id.* at 178, 467 S.E.2d at 444 citing *Four Video*, *supra*. The defense argument in *One Coin* focused on the “extensive licensing and regulatory scheme” of another statute which had been passed in the

interim to regulate video poker.<sup>3</sup> *Id.* at 177-78, 467 S.E.2d at 444-45. But the Court held that licensing and regulatory requirements do not make an illegal machine a legal one. *Id.* at 179, 467 S.E.2d at 445.

In 1999, the Legislature passed Act 125, it was signed by the Governor, and the mandated prohibitions on video poker and other devices went into effect on July 1, 2000. In a series of decisions, the Court then addressed the new Act 125 of which §12-21-2710, above, is a part and defined what constitutes a prohibited machine.

In *Joytime Distributors & Amusement Co., Inc. v. State*, 338 S.C. 634, 528 S.E.2d 647 (1999), the Court analyzed the new statute on an expedited schedule. The Court upheld the major parts of the statute outlawing the video poker gambling industry. *Id.* 338 S.C. at 653, 528 S.E.2d at 657. But the Court ruled that a voter referendum on video poker was an unconstitutional delegation of power; although that section of the Act was severable and so did not affect the other legitimate and constitutional portions of the statute. *Id.* at 643, 528 S.E.2d at 652.

In *Westside Quik Shop, Inc. v. Stewart*, 341 S.C. 297, 534 S.E.2d 270 (2000), *overruled on other grounds by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005),<sup>4</sup> the Court again addressed video poker. The Court upheld the statutory scheme which made the mere possession of video poker and gambling devices illegal, and that such machines were subject to forfeiture and destruction without compensation. *Id.* 341 S.C. at 306, 534 S.E.2d at 274-75.

In *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 525 S.E.2d 872 (2000), the Court upheld a magistrate's Order to destroy video slot machines, again identified as

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<sup>3</sup> Video Game Machines Act. S.C. Code Ann. §12-21-2770 to -2808, later repealed in Act 125.

<sup>4</sup> *Byrd* overruled *Westside* to the extent that *Westside* applied two separate U.S. Supreme Court tests to determine whether a taking had occurred under the 5<sup>th</sup> Amendment, U.S. Const.; and only one test under the "*Penn Central*" analysis was now controlling. *Byrd*, 365 S.C. at 80, 620 S.E.2d at 658, Fn.9. Otherwise, the core holding of *Westside* is still good law.

the “Cherry Master” and “8-Liner,” but the facts were slightly different than *Four Video* or *One Coin*. The difference in *192 Coin-Op.* involved the machines being in storage, and not in actual use at an establishment open to the public; and, the machines were not even operational as they were in stages of repair or assembly. *Id.* 338 S.C. at 176, 525 S.E.2d 876. The Court found it immaterial that the machines were not operational: the machines were prohibited by the §12-21-2710 statute. *192 Coin-Op.*, at 184-85, 525 S.E.2d at 877. The machines were “contraband” and thus illegal *per se*. *Id.* at 189, 525 S.E.2d at 879.

Several years after the initial flurry of video poker cases from the enactment of Act 125, the Supreme Court addressed newly raised issues yet involving the same types of video poker machines or gaming devices covered by §12-21-2710.

In *Sun Light Prepaid Phonocard Co. v. State*, 360 S.C. 49, 600 S.E.2d 61 (2004), the Court held that a “Lucky Shamrock” machine which sold prepaid long distance telephone cards was a gambling device because attached to the cards was a game piece with a chance to win a cash prize. *Id.* 360 S.C. at 50-51, 600 S.E.2d at 62-63. The cards provided a legitimate 2 minutes of long distance phone service. *Id.* at 52, 600 S.E.2d at 63. But the court found that the long distance minutes were “mere surplusage” to the actual gambling portion of the machine and held the “pull-tabs” to be illegal. *Id.* at 55, 600 S.E.2d at 64.

In *Mims Amusement Co. v. S.C. Law Enforcement Division*, 366 S.C. 141, 621 S.E.2d 344 (2005), the Court addressed whether due process required a jury trial before an Order of destruction could be implemented against a video poker machine. *Id.* 366 S.C. at 145, 621 S.E.2d at 345. It does not. *Id.* at 155, 621 S.E.2d at 351. The Court explained there are “...two classes of contraband subject to forfeiture by statute...” identified as “contraband *per se*” and “derivative contraband.” *Id.* at 149-50, 621 S.E.2d at 348. Contraband *per se* are items that are by statute

“illegal to possess and not susceptible of ownership. *Id.* This includes illegal narcotic drugs such as heroin, cocaine, unlawful firearms, and of course gambling devices. *Id.* Derivative contraband are items which may be subject to forfeiture because they were used in committing a crime but are not in and of themselves illegal to possess. *Id.* This category includes vehicles, cash money, lawful firearms, hunting or fishing gear, or even real property. The Court held that for contraband *per se*, a magistrate bench trial is sufficient due process, but for derivative contraband a jury trial would be required when requested for the protection of innocent third-party owners of the property. *Id.*

In *Ward v. West Oil Co.*, 387 S.C. 268, 692 S.E.2d 516 (2010), the Court reviewed a “Pots Of Gold” gaming machine which sold “pull-tab” tickets where patrons could win prizes or cash. *Id.* 387 S.C. at 270, 692 S.E.2d at 517-18. In this breach of contract case the owner of the gaming machines sued the owner of the various business establishments leasing the machines. *Id.* at 270, 692 S.E.2d at 517-18. The Court held that since the “pull-tab” games were illegal under the §12-21-2710 statute, then the contract was void as an illegal contract even though the contract had been entered into before the change in the law. *Ward*, at 274, 279, 692 S.E.2d at 519, 522.

In *Union County Sheriff's Office v. Henderson*, 395 S.C. 516, 719 S.E.2d 665 (2011), a confidential informant played one of seven video gambling machines. *Id.* 395 S.C. at 518-19, 719 S.E.2d at 666. The defense argued that law enforcement could not show which of the seven machines the informant had actually played and that some of the machines were inoperable. *Id.* The court found those facts immaterial, but including the fact that the hard drive of each machine showed they had been played multiple times, and held that the burden of proof was on the owner of the machines to show that the machines were not gambling devices. *Id.* The Court stated 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 machines, or even their component parts, is unlawful.” *Union County* at 519-20, 719 S.E.2d at 666, citing *192 Coin-Op, supra*.

Finally, two older cases submitted to this court do involve the confiscation and destruction of pinball machines, but this was well before the enactment of §12-21-2710 and its predecessor statutes which exempted pinball machines. The main holdings of these two cases remain. In *State v. Appley*, 207 S.C. 284, 35 S.E.2d 835 (1945), the Court upheld the defendant’s criminal conviction for gambling using a pinball machine, holding that the mere possession or ownership of the illegal machine was in and of itself illegal akin at the time to other gambling devices. *Id.* 207 S.C. at 289, 35 S.E.2d 836-37. In *Alexander v. Martin*, 192 S.C. 176, 6 S.E. 20 (1939), the Court held that the State Tax Commission licensing of the illegal (at that time) pinball machines did not render them lawful: “...licensing ... cannot make a lawful machine out of a gambling device...” *Id.* 6 S.E.at 24. It is noted that *192 Coin-Op.*, 338 S.C. at 189, 525 S.E.2d 879, and *Squires*, 249 S.C. at 612, 155 S.E.2d at 860, both cite *Appley* for its core holding; and *One Coin*, 321 S.C. at 180, 467 S.E.2d at 445, does the same as to *Martin*.<sup>5</sup>

#### Pinball Machine Cases.

There are only two (2) cases by the Court specifically about in-line pinball machines.

In *Alexander Amusement Co. v. State*, 246 S.C. 530, 144 S.E.2d 718 (1965), the owner of the pinball machines leased them to other businesses. *Id.* 246 S.C. at 532, 144 S.E.2d at 719. Players could win a free game on the machine. *Id.* An undercover law enforcement agent played the pinball machine, and then, in exchange of his free game, the agent requested a cash payout from the owner of the business – the lessee of the machine. *Id.* The owner of the pinball machine

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<sup>5</sup> Even Plaintiff’s counsel did not argue that *Appley* and *Martin* could be construed as “pinball cases” in SLED’s favor since these two cases precede the language in §12-21-2710. Rather, Plaintiff argued the principle holdings affirmed by *192 Coin-Op, supra*. and *One Coin, supra*.

had no knowledge of the lessee making cash payouts. *Id.* The Court held that the machines were not subject to seizure or confiscation because they were specifically exempted by the statute: "...[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 situation, exemption is not subject to confiscation." *Id.* at 534, 144 S.E.2d at 720.

In *Powell v. Red Carpet Lounge*, 280 S.C. 142, 311 S.E.2d 719 (1984), law enforcement seized pinball game machines. *Id.* 280 S.C. at 144, 311 S.E.2d at 720. There was no evidence that the machines were being used for gambling. *Id.* In finding that the pinball machines were not illegal, the Court applied the exemption language in the predecessor statute<sup>6</sup> to §12-21-2710, which stated – as it does now – that: "...[B]ut the provisions of this section shall not extend to coin operated nonpayout pin tables, in-line pin games and video games with free play feature..." *Powell*, 280 S.C. at 145, 311 S.E.2d at 721.

*Four Video*, 317 S.C. at 399-400, 453 S.E.2d at 898, cites *Powell*, *supra*. by stating that the statutory pinball exemption in *Powell* did not apply to slot machines. *One Coin*, 321 S.C. at 181, 467 S.E.2d at 446, at Fn.1, also cites *Powell* in a footnote that the rationale in *Powell* is not applicable to illegal slot machines.

#### Statutory Construction Cases.

Our Supreme Court has a long history of issuing decisions on statutory construction and the limits placed on the courts to interpret statutory language as enacted by our Legislature. The parties, mainly by Plaintiff, submitted the following cases for this court's edification.

Most recently in *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456

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<sup>6</sup> The predecessor statute was §52-15-10.

(2021), the Court addressed an action brought by a local municipality mandating facemasks in all public schools within the city limits during the Covid pandemic, and to declare unconstitutional a statutory budget provision which prohibited using state funds to promote or impose a facemask mandate. *Id.* 434 S.C. at 209-10, 863 S.E.2d at 457-58. In affirming the legislature’s right to enact statutes that are plainly constitutional, the Court declared: “[T]he General Assembly establishes policy via legislation, it is our solemn duty to uphold that law absent a clear constitutional infirmity.” *Id.* at 213, 863 S.E.2d at 460; *Accord, Richland County School District 2 v. Lucas*, 434 S.C. 299, 302, 862 S.E.2d 920, 922 (2021). The Court’s role “... is limited and ‘we do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly’.” *Id.* at 306-07, 862 S.E.2d at 924. (citation omitted).

In *Senate by & through Leatherman v. McMaster*, 425 S.C. 315, 821 S.E.2d 908 (2018), the Court addressed the Governor’s authority to make a recess appointment to a State board where the State Senate did not act on the nomination during its regular session, and so the Governor made the appointment in July after the Senate had recessed. *Id.* 425 S.C. at 317-18, 821 S.E.2d at 909. The Court first noted it was acting carefully with restraint and with respect for the other branches of State government: “Our role is to rule upon this controversy with requisite restraint, with a keen eye focused upon our one and only responsibility – to interpret (the statute) in accordance with our rules of statutory construction.” *Id.* 425 S.C. at 317, 821 S.E.2d at 909. In ruling in favor of the Governor’s authority under a specific statute for such power, the Court stated: “...’[W]e read the statute as a whole and in a manner consonant and in harmony with its purpose. We therefore should not concentrate on isolated phrases within the statute... [W]e 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.” *Id.* at 322, 821 S.E.2d at 912. (citations omitted).

In *Ward v. West Oil Co., supra.*, as noted above in 2010, the Court held the contract itself was illegal as between the owner of the gambling machines and the lessee because the machines themselves were illegal under the change in the state law §12-21-2710. *Ward*, at 274, 279, 692 S.E.2d at 519, 522. In applying its rules of statutory construction to the statute, the Court declared: “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning. 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.” *Id.* at 273, 692 S.E.2d at 519. (citations omitted).

In *Lancaster County Bar Association v. S.C. Commission on Indigent Defense*, 380 S.C. 219, 670 S.E.2d 371 (2008), the Court reviewed the statute for selecting the Circuit Public Defender Selection Panel in each Circuit. *Id.* 380 S.C. at 220, 670 S.E.2d at 371-72. In the Sixth Circuit for Lancaster, Chester, and Fairfield Counties, the Court found that each County was entitled to at least one representative on the Selection Panel, and to rule otherwise, as Plaintiffs sought, would result in Lancaster County having all the representatives and the other two Counties none. *Id.* The Court concluded that it would not interpret a statute to lead to an “absurd result that could not have been intended by the legislature.” *Id.* at 222, 670 S.E.2d at 373.

In *Municipal Association of S.C. v. AT & T Communications of the Southern States, Inc.*, 361 S.C. 576, 606 S.E.2d 468 (2004), municipalities sued AT&T for late penalties on business

tax licenses and the Court ruled in their favor finding the legislature had properly granted certain powers to the towns and cities. *Id.* 361 S.C. at 577, 606 S.E.2d at 469. “[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” *Id.* at 580, 606 S.E.2d at 470.

In *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 577 S.E.2d 202 (2003), the Court set aside the tax sale of a yacht where the county Treasurer failed to strictly comply with the levy statute requiring a specific kind of notice to the owner of the boat prior to the public auction tax sale. *Id.* 353 S.C. at 33-34, 577 S.E.2d at 203-04. In analyzing the tax levy statute, the Court stated: “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Id.* at 39, 577 S.E.2d at 207. (citation omitted).

In *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994), in reviewing the eviction statute over a lease for a theater where the breach was trivial (late payment of increased rental amount though tenant continued to pay the base rate), the Court affirmed the trial judge’s denial of the eviction. *Id.* 312 S.C. at 274-76, 440 S.E.2d at 366. “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.” *Id.* 312 S.C. at 275, 440 S.E.2d at 366.

In *State v. Blackmon, supra.*, the video poker “loophole” case discussed above, in 1991 the Court rendered its decision years prior to the 1999 passage of Act 125 which subsequently prohibited video poker in its entirety. In applying its rules of statutory construction, the Court stated: “It is well established that in interpreting a statute, the court’s primary function is to ascertain the intention of the legislature. When the terms of the statute are clear and unambiguous,

the court must apply them according to their literal meaning” *Id.* at 273, 403 S.E.2d at 662 (citations omitted).

Finally, in *Greenville Baseball v. Bearden*, 200 S.C. 363, 20 S.E.2d 813 (1942), the Court interpreted a war-time (WWII) statute regulating baseball games and other activities on Sundays. *Id.* 20 S.E.2d at 815. The Court recognized that where the true intention of the legislature is not found in the literal meaning of the statutory language, then the Court must strive to carry out the legislature’s true aim by finding “the real purpose and intent of the lawmakers...” *Id.* 20 S.E.2d at 815. “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers.” *Id.* at 815-16.

#### **ARGUMENTS PRESENTED BY COUNSEL.**

The court summarizes the arguments of counsel for Plaintiff and Defendant as presented at the December 19, 2023 court hearing, and from their written submissions to this court.

#### **Plaintiff presented the following arguments.**

Plaintiff submitted that this gaming device is one in which the player inserts coins or money, pulls a plunger launching a ball into the field of play. There are nine options of different games. There are flippers on the machine, hitting the ball upwards and the ball then goes in a hole which lights up a number on the video screen back-board. The player can win a ticket that prints out of the machine with a high score. The player can turn in the ticket at the restaurant bar for a cash prize. It is also a function of the device that the player could choose not to use the flippers and the game would proceed in a random manner.

Plaintiff presented the main issue as this: Is it the intent of the S.C. legislature to allow cash payouts on machines in South Carolina? Worded another way, does S.C. law allow individuals

to gamble and allow a cash payout on a machine in SC? Plaintiff submits the answer to both is no, and the case law is clear in outlawing gambling machines in our State. Plaintiff further submits that the defense argument is that the machine did not make the cash payout and a person was making the cash payout – which is the same argument made by proponents in the video poker era that the machine allowed a “free play” but humans were making the cash payouts. Meaning that back in that era the gambling statute of §16-19-60 allowed machines that did not do the dispensing of money. The *Blackmon* Court observed that it seems like gambling but §16-19-60 allowed it.

Plaintiff states the legislature changed the law in 1999 in Act 125, effective in 2000, making cash payouts illegal and that the Legislature set forth in the title of Act 125 its legislative purpose:

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;....

Furthermore, Plaintiff points out that the legislature repealed the language in the gambling statute contained in *Blackmon* which had allowed a machine if the machine itself didn't pay out money. *Blackmon* addressed video poker: a loophole existed in the statute because the machine didn't make the payout so it was still a nonpayout machine; the payout came from an actual

human at the establishment. The legislature ultimately changed the law thereby making payouts of any sort illegal in Act 125 enacted in 1999.

Plaintiff addressed Defendant's argument that §12-21-2710 has an exemption, or "carve-out" for pinball machines in this section of the statute: "...but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or..." Plaintiff argues that the critical word in §12-21-2710 for the exemption for pinball machines is this: "nonpayout." In other words, Plaintiff submits that nonpayout pinball machines are legal. But Plaintiff argues that by the proprietor making cash payouts takes this pinball machine out of the statutory exemption because it becomes a machine that actually does payout. Plaintiff also argues that another passage in §12-21-2710 makes this pinball machine illegal because it was used for gambling: "...or any machine or device licensed pursuant to Section §12-21-2720 and used for gambling..."

Plaintiff argues that the *Alexander Amusement Co.* case was based on an old version of the §12-21-2710 statute. The term "any machine or device licensed under Section 12-21-2720 and used for gambling" did not exist in the statute at the time *Alexander Amusement Co.* was decided. Plaintiff argues that §12-21-2710 is the gambling forfeiture statute.

In response to Defendant's submission of §12-21-2721 – which also exempts from confiscation lawfully licensed machines that are used for unlawful conduct in the gambling statutes – Plaintiff argues that §12-21-2721 is a separate statute dealing with separate conduct. It does not include "the used for gambling" language in §12-21-2710. Plaintiff states that noticeably absent from the carve-out in the §12-21-2710 statute is any reference to the gambling statute of §16-19-30 or -40 or -50 or -130. Plaintiff argues this case is not here on a violation of those gambling statutes, and that those gambling statutes cover a myriad of other conduct but that §12-21-2721 is separate and apart from the gambling statutes. So Plaintiff states it is not relying on

§12-21-2721, but rather relying on §12-21-2710.

Plaintiff argues that the legislature intended to outlaw “any device” capable of gambling: that Act 125 repealed the provisions of §16-19-60 which had allowed non-machine cash payouts addressing the “loophole” in *Blackmon*. (i.e. – payouts made by the human instead of the machine). Plaintiff, while relying in its written submission on numerous cases from the Court, emphasized in its argument *Westside Quik Shop, supra.*, and *192 Coin-Op., supra.* Plaintiff argues that according to *192 Coin-Op.*, a case interpreting Act 125 and its §12-21-2710 part, that Defendant’s argument is the same as made by the appellant in that case, which the Court denied, and is applicable here, to which Plaintiff quoted from *192 Coin-Op.*, at 188-89, 525 S.E.2d at 878-79 (citations omitted; emphasis in original):

The substance of appellant’s argument is that ... 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 pacman; therefore the machine itself should not be considered illegal... Although ... machines have changed ... the substance of the statute has not. The relevant portions of the current version outlaw the same conduct as its predecessor. ...If the General Assembly considered *Squires* outdated, it could have changed the statute to outlaw only the operation, not the mere possession, of gambling machines when it last amended the statute... 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. The circuit court correctly ruled possession of these machines is illegal, regardless of their intended use or operation.

Thus, Plaintiff argues that the machine in this case is contraband *per se*, subject to confiscation and destruction. In other words, Plaintiff argues that one can put different functionality on this machine, but if it is capable of being used illegally then the machine is illegal. In a hypothetical posed by this court, if a Pacman™ machine was leased to a business and that business owner used the Pacman machine for gambling, then such machine would be

*per se* illegal, subject to forfeiture and destruction. In other hypotheticals such as the innocent owner of a vehicle where a suspect borrows and uses the vehicle for an illegal purpose without the owner's knowledge of the illegal activity – such as selling illegal drugs from the vehicle – Plaintiff submitted that the innocent third-party seizure statutes and the illegal gambling devices are totally separate statutes. Plaintiff submitted that the illegal gaming machine laws are simply different based on the legislature's determination to eradicate illegal gaming devices.

Plaintiff argues that the legislature considered the “innocent owner” problem, and decided not to apply that common standard when it came to gambling machines. Plaintiff argues the “innocent owner” provision does not apply to gaming machines. Plaintiff argues that any machine used for gambling is subject to destruction, per the unique statute in §12-27-2710. Plaintiff submits that the §12-27-2710 statute treats gaming machines differently and it is a unique forfeiture process: Any machine that is put out for play, if it is used for gambling then it is subject to forfeiture; and it puts the onus on the machine owner, including the innocent owner.

Plaintiff does not stipulate that this pinball machine is an otherwise legal machine. Plaintiff asserts that this machine is a device also capable of letting the player play keno or bingo – both of which are specifically prohibited by §12-21-2710. Although Plaintiff acknowledged that the issue of cash payouts by the proprietor was more concerning. Plaintiff submitted that §12-21-2710 designated certain games illegal and also identified certain devices as illegal. Plaintiff argued that this pinball machine had games identical to a bingo device. Plaintiff stated that if the player lets the ball go to whatever hole or spot it lands in without playing or doing anything with the machine, then it is just like bingo or keno – the player is not required to do anything other than let the ball go and see what happens, where it lands, so that is the same functionality as bingo and/or keno.

As for the ALJ decision submitted by Defendant, Plaintiff argues that case dealt with licensing and has no impact as to whether this machine is legal or illegal. In other words, Plaintiff argues that tax licensing doesn't affect the determination in this case.

Plaintiff submitted in its written brief and materials that the main intent of the legislature was to ban all gambling machine devices, and to allow for their confiscation and destruction. Plaintiff submitted that the rules of statutory construction mandate that outcome in this case.

Defendant presented the following arguments.

Defendant argues that both §12-21-2710 and §12-21-2721 provide an exemption and protection for their client's pinball machine.

Defendant submits that the first portion of §12-21-2710 defines what are prohibited gambling machines or devices to possess or use: "It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated ... any ... slot machine, or any video game machine with a free play feature ... for the play of poker, blackjack, keno, lotto, bingo, or craps, or any machine or device ... used for gambling..." Defendant submits the next portion of §12-21-2710 then exempts and provides a "carve-out" for pinball machines: "...but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or..." Defendant argues this carve-out language exempts this pinball machine from confiscation and destruction. Moreover, Defendant argues this §12-21-2710 statute in and of itself is not a confiscation and seizure statute.

Defendant argues that §12-27-2721 also provides a specific statutory exemption for this pinball machine: "Coin-operated machines or devices licensed pursuant to Section 12-21-2720 are not subject to confiscation ...due to any violation of ... [the gambling statutes]" *Id.* Defendant argues this statute independently prohibits the confiscation and destruction of this

pinball machine. Indeed, Defendant argues that it is as simple as that, as to both these sections of §12-21-2710 carve-out part and the additional exemption in §12-21-2721.

Defendant submits that this matter turns on the fact that the restaurant/bar-owner made the cash payouts, the machine itself did not, and that the owner of the pinball machine had no knowledge of this and in fact had a contract and memorandum of understanding with the bar owner that the machine would not be used for cash payouts or any unlawful purposes. Defendant points out that the ticket printed out of the machine reads: "For Amusement Only / No Cash Value." Defendant argues what became illegal via Act 125 was video poker and other gambling devices whether the machine or the human made the payout. Defendant submits that the carve-out language in §12-21-2710 was not changed in Act 125 in 1999.

Defendant argues Act 125 in the portion of §12-21-2710 still carved-out the in-line pin games. Defendant submits the issue is this: Does the proprietor in this case making a cash payout to players when the owner of the machine had no knowledge or consent in that unlawful practice render the machine subject to confiscation and destruction. Defendant submits the answer is "No," because of the "but..." clause in §12-21-2710 and the protection of §12-21-2721. Defendant argues that what changed in Act 125 with the change in the law was this: video poker was deemed illegal; that the statute specifically defined gambling machines which specifically did not include mechanical pinball machines; that the gambling machines were illegal to possess or use regardless if the machine made the payout or the human; and that any person who makes the cash payouts is engaged in gambling and can be prosecuted.

Defendant addresses Plaintiff's argument that §12-21-2721 is not applicable here because, according to Plaintiff, this is not a gambling prosecution so that Plaintiff is not proceeding here under §12-21-2721, but is instead proceeding under §12-21-2710 and §12-21-

2712. Defendant argues that gambling is at the heart of this case because it is the proprietor's unlawful gambling acts that led Plaintiff to seize this machine and subject it to destruction. Defendant argues §12-21-2721 is directly applicable since it references the gambling statutes and specifically states machines seized due to gambling which are otherwise legal devices are not subject to seizure and destruction. Defendant argues that only those machines defined as prohibited in §12-21-2710 can be seized and destroyed, and pinball machines by definition in the statute are not prohibited machines.

Defendant argues that *Alexander Amusement Co.* and *Powell* both specifically address the legality of pinball machines and the exemptions claimed here in the statutes. Defendant submits that neither *Alexander* nor *Powell* have been overruled and are still valid law.

Defendant contests Plaintiff's characterization of the pinball machine in this case. Plaintiff argues that Plaintiff has mischaracterized that a player "wins a prize." Defendant submits that what the player gets is a free game if the player is successful in playing the game. Defendant submits that the outcome in the game depends on the player shooting the ball into a particular hole or divit: So the player guides the ball either with the flippers or by moving the machine without a "tilt," which defaults that ball or game. Defendant submits the Montana Deluxe 2 is an inline pin game, in other words a standard pinball machine with a nonpayout feature.

Defendant argues the importance of an Administrative Law Court decision which identified this exact type of pinball machine as a "Class II" gaming device for a license of \$500 and related taxing purposes. *SCDOR v. Scott Sheets, d/b/a S&S Amusements*, 96-ALJ-17-390 CC (Nov. 1996). For example, under the prior Video Game Act the "Pot 'O Gold" games, then allowed, were Class III machines with a much higher license fee of \$5,000. Defendant submits the importance of that ALJ decision is that a Class III machine is like a bingo machine because

it doesn't have flippers and is not a mechanical game; but that the Class II device is defined as a mechanical game.

Defendant submitted in its written brief and materials that the statutes of §12-21-2710 and §12-21-2721 both exempt this mechanical pinball machine, and that the statutes are plainly worded to establish this exemption. Defendant submitted that *Alexander Amusement Co.* and *Powell* both control the decision in this case and have not been overruled.

### **ISSUE AND COURT'S RULING.**

The specific issue to be determined by this court is: Whether the Montana Deluxe 2 gaming machine seized in this case is a prohibited machine pursuant to the applicable statutes and thereby subject to destruction? This court determines that this machine is not a prohibited machine and thus not subject to destruction, either under the applicable statutes or case law from the S.C. Supreme Court. It is a mechanical pinball nonpayout machine, not a video game, and is exempted from destruction by statute and case law.

“At a post-seizure hearing, the burden is on the owner of the *res* to show why the seized property should not be forfeited and destroyed.” *Union County Sheriff's Office*, 395 S.C. 519, 719 S.E.2d at 666 *citing 192 Coin-Op. supra*. Therefore, the actual owner of this gaming machine, and only the actual owner of this device VS-I, bears the burden of proof or has standing in this matter. The owner of Tavern on Broad has no standing to challenge the seizure or forfeiture of the device in question. *Id.*

Defendant VS-I as the owner of the device has met the burden of proof by a preponderance of the evidence. “A preponderance of the evidence is evidence which convinces the fact finder as to its truth.” *Pascoe v. Wilson*, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016),

citing *Gorecki v. Gorecki*, 387 S.C. 626, 633, 693 S.E.2d 419, 422 (Ct. App. 2010). It has also long been defined as the “greater weight of evidence.” *Hutchinson v. City of Florence*, 189 S.C. 123, 200 S.E. 73 (1938). This court reaches that fact-finding and conclusion of law based upon the following analysis of the applicable statutes and case law.

### ANALYSIS.

This court agrees with Plaintiff that our S.C Legislature fully intended and has laid out in the statutes they have passed that gambling machines are illegal in this State, and that even mere possession of such machines authorizes confiscation and destruction. S.C. Code §12-21-2710 and §12-21-2712.

The Supreme Court has clearly communicated the scourge that was video poker and gambling in our State in affirming these same statutes. *Town of Mount Pleasant v. Chimento*, 401 S.C. 522, 737 S.E.2d 830 (2012); *Mims Amusement Co., supra.*; *Westside Quik Shop, supra.*; *Joytime, supra.* “Gaming machines have been illegal and subject to forfeiture as contraband in this state since the 1930’s. This Court has deferred to the Legislature’s determination of which gaming devices must be sacrificed for the *public welfare.*” *Mims Amusement Co.*, 366 S.C. at 147, 621 S.E.2d at 347 (internal citation omitted; emphasis supplied). “...[O]ur State witnessed the dramatic growth of video gaming into a multi-billion dollar industry that became the subject of much public debate.” *Westside Quik Shop*, 341 S.C. at 300, 534 S.E.2d 270 at 272. “Because the General Assembly was unable to agree on comprehensive video gaming legislation, the Governor, by Executive Order, called an extra session of the General Assembly...” *Joytime*, 338 S.C. at 638, 528 S.E.2d at 649. “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.” *Chimento*, 401 S.C. at 537, 737 S.E.2d at 840 (Toal, C.J., concurring).

Plaintiff argues that the overriding intent of the legislature as discerned from the applicable statutory language is to prohibit and eradicate gambling devices and the havoc said machines wreak upon our society’s general welfare. S.C. Code §12-21-2710, §12-21-2712; *See generally* Act 125, Preamble (1999). This court agrees. More importantly, and binding on this court, the S.C. Supreme Court agrees. *Chimento, supra.*; *Sun Light, supra.*; *Westside Quik Shop, supra.*; *et. al.* Yet as stated above in this court’s Introduction, this case is not those cases.

This court now addresses Plaintiff’s separate arguments each in turn.

The main cases as submitted to this court in support of finding the pinball machine in this case to be an illegal gambling device do not address pinball machines at all. They address video poker machines. *Joytime, supra.*; *Westside Quick Shop., supra.*; *Mims Amusement Co., supra.*; and *Union County Sheriff’s Office, supra.* They address slot machines. *Squires, supra.*; *Four Video Slot Machines, supra.*; *One Coin-Op., supra.*; and *192 Coin-Op., supra.* They address other video gambling devices with payouts. *West Oil Co., supra.* (“Pots Of Gold” pull-tab tickets); *Sunlight, supra.* (long distance telephone cards with game piece attached); and *Harvie, supra.* (vending machine with brass tokens).

Two older cases, *Appley supra.* and *Alexander v. Martin, supra.* decided in 1945 and 1939 respectively when pinball machines were actually illegal per an earlier statute, have been supplanted by the current applicable statutes. Of course, *Appley* is still valid for its holding that mere possession of a gambling machine, and not just its use, is illegal. *Id.* 207 S.C. at 289, 35 S.E.2d at 836-37; *Accord, 192 Coin-Op.*, 338 S.C. at 189, 525 S.E.2d 879; *Squires*, 249 S.C. at 612, 155 S.E.2d at 860. Likewise, *Martin* is still valid for its holding that the mere licensing and

regulation of a machine does not make an illegal machine into a legal one. *Id.* 6 S.E. at 24; *Accord, One Coin*, 321 S.C. at 180, 467 S.E.2d at 445.<sup>7</sup>

The two cases on point as they specifically address pinball machines are *Alexander Amusement Co., supra.* and *Powell, supra.* Indeed, the facts in *Alexander Amusement Co.* are identical with the facts in this case.

...[P]laintiff is engaged in the business of supplying amusement devices for operation in retail business establishments. The equipment is furnished upon a lease arrangement with the retailer... plaintiff leased to various business establishments ... certain coin-operated pin tables. The pin tables were so constructed that upon their successful manipulation free games were allowed as registered on the machine.

An undercover agent ... played the machines ... accumulating a number of free games ... The agent then requested and obtained from the operators of the establishments payment in cash based on the number of free games to his credit ... The plaintiff had no connection with the day-to-day operation of the pin tables other than to service them upon call and had no knowledge of the transaction between the ... business proprietors and the officer ...

*Id.* 246 S.C. at 532, 144 S.E.2d at 719.

Plaintiff argues that the State did not charge the proprietor here, Honeycutt, with any gambling offense, and that law enforcement in the *Alexander Amusement Co.* case did charge the proprietors with gambling.<sup>8</sup> It is as they say, a distinction without a difference under these facts. SLED agents discovered the Defendant's pinball machine was being used for gambling by

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<sup>7</sup> The court finds unpersuasive the fact this machine is licensed and taxed by certain criteria with the S.C. Dept. of Revenue, *See SCDOR v. Scott Sheets, d/b/a S&S Amusements*, 96-ALJ-17-390 CC (Nov. 1996). Thus *Martin* and *One Coin* control on this point.

<sup>8</sup> The question was not reached in this case as to "What if?" it was Honeycutt's own pinball machine and he was using it for gambling. It would appear he could not "hide" behind the case law and statutes to avoid destruction of *his* machine: "...[W]e think that the printing of the notices upon the brass checks, that they are of 'no value' and are intended solely for the amusement of the customer, is a mere subterfuge ... intended only to apparently satisfy the letter of the law, while violating its spirit." *Harvie*, 148 S.E. at 69. In this case, there is no evidence that Defendant had any knowledge of Honeycutt's actions.

Honeycutt in Honeycutt's establishment and that was their primary reason for confiscating it and in this action seeking its destruction. To argue that the gambling statutes are not invoked here is to ignore the facts presented here.

Thus, the facts as set forth above make *Alexander Amusement Co.* directly on point here, and are indisputably identical. In the predecessor statute to §12-21-2710, the Court in *Alexander Amusement Co.* ruled:

It is clear that the devices permitted to be confiscated ... are limited to those ... in violation of 'any other law of this State.' [The] Section ... makes it '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, punch board, pull board or other device' ... but specifically exempts from such prohibition 'coin-operated nonpayout pin tables with free play feature'."

... 'the 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 statutation' exemption is not subject to confiscation.

*Id.* 246 S.C. at 533-34, 144 S.E.2d at 720.

Plaintiff is correct that this was a predecessor statute to Act 125 and thus to §12-21-2710 in its current form. But the statutory exemption at issue in *Alexander Amusement Co.*, 246 S.C. at 533-34, 144 S.E.2d at 720, is the same statutory exemption now codified in §12-21-2710. Yet in a search of the subsequent history for *Alexander Amusement Co.*, this court has discovered that the Court has not overruled it nor limited it despite the opportunity since its decision to do so, including post-Act 125 cases. *Westside Quik Shop, supra.*; *192 Coin-Op., supra.*; *Mims Amusement Co., supra.*; *et.al.* Nor has the Court overruled or limited the other modern pinball case of *Powell, supra.*

The Court in *Powell* revisited the matter involving pinball machines and found them not to be illegal. *Id.* 280 S.C. at 145-46, 311 S.E.2d at 721. It is acknowledged that *Powell* dealt with

the mere possession of pinball machines and there was no allegation that the machines had been used for any gambling. *Id.* at 144, 146, 311 S.E.2d at 720, 721. Nonetheless, the same general exemption wording in the statute existed at the time of the *Powell* decision as is now embodied in the current form of §12-21-2710. The statute then (in 1984) read: “But the provisions of this section shall not extend to coin-operated nonpayout pin tables with free play features...” *Powell* at 144, 311 S.E.2d at 720. The statute (as enacted in 1999) now reads: “...[B]ut the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, ...” §12-21-2710.

The majority in *Four Video Slot Machines*<sup>9</sup> did not address *Alexander Amusement Co.*, but it did state that §12-21-2710 specifically exempted in-line pinball machines. “The statute exempts three specific types of machines: (1) coin operated nonpayout pin tables; (2) in-line pin games...”<sup>10</sup> *Four Video*, 317 S.C. at 399, 453 S.E.2d at 897. Again, while this is a predecessor statute to the current §12-21-2710, the specific exemptions cited here remain in its current form.

The legislature, as with our Court, is aware of *Alexander Amusement Co.* and *Powell*. They are both also certainly aware of these two cases being cited with some favor in the subsequent cases of *Four Video Slot Machines* and *One Coin*. Yet the specific exemptions in §12-21-2710 and §12-21-2721 remain, and their interpretation with the exemption also remains intact. “The legislature is presumed to be aware of this Court’s interpretation of its statutes. (there is a basic presumption the legislature has knowledge of judicial decisions construing legislation when later

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<sup>9</sup> The dissent in *Four Video Slot Machines*, 317 S.C. at 401, 453 S.E.2d at 898, cites to *Alexander Amusement Co.*, regarding the interpretation of a provision in §12-21-2710 which is inapplicable here: “video games with free play features.” The majority in *Four Video* does not address *Alexander Amusement Co.* at all.

<sup>10</sup> The third statutory exemption is not relevant to the issues here.

statutes are enacted concerning related subjects.) If the General Assembly considered [a case]<sup>11</sup> outdated, it could have changed the statute to outlaw [it]...” *192 Coin-Op.*, 338 S.C. at 188, 525 S.E.2d at 879 (internal citations omitted). Or, the Court could have certainly overruled or modified the prior cases as to pinball machines. Like the Legislature, the Court has not done so. It is not up to this humble court to do it for them. While this court is sympathetic with Plaintiff’s position and argument, this court cannot extend its authority or rulings where it does not belong.

Plaintiff argues that the statutory language exempting nonpayout pin tables or nonpayout in-line pin games (i.e. pinball machines) does not apply to this machine because it was making cash payouts through the proprietor. Plaintiff seeks to remove the statutory exemption for this pinball machine because it was being used for gambling. However, it is not so clear that an otherwise exempt machine suddenly moves it from one section of the statute making it legal, to another section of the statute making it illegal. In *Four Video, supra.*, while analyzing the statute and finding slot machines were not exempted, the Court unequivocally declared nonpayout pinball machines lawful and not subject to confiscation or destruction: “The statute exempts three specific types of machines: (1) coin operated nonpayout pin tables; (2) in-line pin games...” *Id.* 317 S.C. at 399, 453 S.E.2d at 897. It can get no clearer than that. *See also, Powell*, 280 S.C. at 144-45, 311 S.E.2d at 720. The statute “...declares certain coin-operated machines illegal. It exempts however, certain machines as follows: ‘But the provisions of this section shall not extend to coin-operated nonpayout pin tables with free play feature...’” *Id.* at 144, 311 S.E.2d at 720).

The Legislature could have added an “unless...” clause if it wanted to – such as “unless used for gambling...”, but did not. It is not so axiomatic that because a lessee uses the otherwise nonpayout in-line pin game – which the pinball machine in this case is – for gambling, without

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<sup>11</sup> The case discussed in this quotation was *Squires, supra.*

the owner's knowledge or consent, that the machine then becomes illegal. The case law and statute itself say otherwise quite plainly. This is not the *Blackmon* case all over again, where an anomaly existed in the law. The Legislature has made a specific exemption for pinball machines that do not themselves payout cash or other illicit prize; and has chosen not to insert an "unless" or exception for a pinball machine that is used by another person unlawfully for gambling.

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. This court is certainly required to implement the Legislature's intention to ban, confiscate and order destruction of the listed gambling machines in the statute (i.e. – video poker machines, slot machines, etc.). This court is not authorized to insert its own preferences into the statute where none exist, and where the Court's prior interpretations have firmly recognized the exemption. "...[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Municipal Ass'n of S.C.*, 361 S.C. at 580, 606 S.E.2d at 470. This court will not expand the statute's operation absent specific guidance from the Court.

Plaintiff argues it is not proceeding under §12-21-2721, the second of the two confiscation and destruction statutes, since it is not charging anyone with gambling. Instead, Plaintiff argues it is proceeding under §12-21-2712, the first of the two confiscation statutes which makes no mention of any gambling. Plaintiff then states it is proceeding under §12-21-2710 which declares and defines certain machines as "prohibited," meaning illegal *per se*. It is clear that §12-21-2710 is not itself a confiscation or forfeiture statute. Plaintiff's argument is that

this pinball machine is subject to seizure and destruction pursuant to §12-21-2710 and §12-21-2712 in two respects.

First, as a defined illegal *per se* device as “[A]ny machine or device licensed pursuant to Section §12-21-2720 and used for gambling ...” Thus the argument is that because there was a cash payout by the proprietor of the business, the machine does not fall within the later exemption in §12-21-2710 for pinball machines – because the machine in this case cannot be a “nonpayout” machine by definition when there are cash payouts. Second, Plaintiff argues at least two of the optional games on the machine are keno and bingo, both specifically defined in §12-21-2710 as prohibited games: “[F]or the play of ...keno...bingo...”

The court declines to adopt Plaintiff’s rationale. First, the statute specifically exempts nonpayout pinball machines. 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 S.C. at 322, 821 S.E.2d at 912.

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.<sup>12</sup> 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

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<sup>12</sup> The available pinball games on this machine are: Super One Ball; Golden Game; Random Game; Triple Barrell; Euro One Ball; Lucky Ball; Break The Safe; Crazy Wheel; Lucky Ball II.

optional games that a player may select. In reviewing the audio transcript of the court hearing there is no stipulation, description, explanation, or fact submitted to support this assertion of “keno” or “bingo” games on the machine. Plaintiff asserted that if a player simply launches the ball and then does nothing then it is in essence a bingo or keno game, and thus illegal. An assertion, though, is not evidence. Quite frankly, this court has never heard nor seen of a player in a pinball game doing what Plaintiff suggests – launching the ball and then doing ... nothing. While that is certainly possible, a hypothetical possibility does not a gambling machine make. Still, the court is left with no evidence to support the Plaintiff’s statement in this regard that this machine is capable of illegal bingo or keno. The claim is neither presented nor preserved.

Next, while Plaintiff may elect to not proceed under §12-21-2721, defendant seeks its protective provisions. In a criminal case, the State certainly has the right to elect which statutes it seeks for an indictment and prosecution. In a civil case as this, a party does not necessarily get to elect one statute over another – Defendant has claimed §12-21-2721 as a defense, and as such this court must consider it. There is an obvious violation of gambling with this machine in this case – by the proprietor. It was stipulated to by the parties. Even if it had not been stipulated to and testimony had been presented, it is obvious from the SLED Agents investigation as witnessed in the photograph exhibits, *See* PL.Ex.#4 and 5, that the proprietor was engaged in unlawful gambling with this pinball machine. Our Supreme Court has certainly not issued a decision extending the law that far as to pinball machines and in fact has done the opposite in *Alexander Amusement Co.* and *Powell*. The scourge eradicated by Act 125 in 1999, and affirmed by the Court in *Westside, supra.*, was video poker, slot machines, and other video games programmed for gambling which led to severe and deleterious effects on our society in this State. This court will not extend the application of the statute where the Court has not done so.

In reviewing the statute, it is important to review its parts section by section. In its first part §12-21-2710 lists the prohibited types of machines as determined by the Legislature:

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... (emphasis supplied).

Plaintiff submits that “any machine or device licensed pursuant to Section 12-21-2720 and used for gambling” renders this pinball machine illegal *per se* – because it was used by the proprietor, Honeycutt, for gambling. Plaintiff submits this phrase, “any machine...” is a forfeiture clause and was not in the predecessor statute when *Alexander Amusement Co.* was decided. Plaintiff submits then that the exemption statute, below, is inapplicable here.

The exemption clause is the next part of §12-21-2710:

**... but the provisions of this section do not extend to coin-operated nonpayout in 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 supplied).

Defendant submits this exemption clause is a specific “carve-out” (i.e.–exemption), by the Legislature. The phrase “any machine...used for gambling” does not override the carve-out because the “but the provisions of this section do not extend...” comes after the “any machine...” phraseology. So the exemption must be given meaning and efficacy in context of the entire statute. *Senate by & through Leatherman, supra.* This carve-out clause was in the predecessor statute when *Alexander Amusement Co.* was decided and the Court affirmatively recognized this

exemption in that decision and again in *Powell*. Although the statute in *Alexander Amusement Co.* did not have the “any machine...” language, this court does not find that persuasive: to rule otherwise would make the “but the provisions of this section...” clause a nullity. *Senate by & through Leatherman, supra*.

Furthermore, it does not appear to this court that the video gambling statutes and State Supreme Court case law have superseded *Alexander Amusement Co.* or *Powell*. The statute outlawing video poker and other gambling machines, §12-21-2710, still contains the language allowing pinball machines in the “but the provisions of this section...” Nor can Plaintiff point to a single Supreme Court case addressing video poker that has overruled *Alexander Amusement Co.* or *Powell*. Pointedly, the Supreme Court case law does overrule prior cases which inadequately addressed video poker machines prior to the legislative enactments. By way of example, the Court took the opportunity to overrule a 1932 case. *192 Coin-Op.*, 338 S.C. at 196, 525 S.E.2d at 883, *overruling State v. Kizer*, 164 S.C. 383, 162 S.E. 444 (1932)(*Kizer* overruled to the extent it did not allow for a judicial hearing for owner of seized personal property deemed illegal and subject to destruction); *Accord, Westside*, 341 S.C. at 304, 534 S.E.2d at 273. None of the video poker, slot machine, or video game gambling machine cases address or question the primary holding in *Alexander Amusement Co.* or *Powell*, both of which recognize and affirm the exemption carve-out clause. To this court then, it appears that *Alexander Amusement Co.* and *Powell* are still good law. As such, they are binding on this court.

This court is bound by the South Carolina Supreme Court cases until otherwise overruled by the Court. This court will not on its own declare a State Supreme Court case like *Alexander Amusement Co.* or *Powell* no longer valid while the Court has not done so itself though it had opportunity to do so during the heyday of discussion and legislative enactments surrounding

video poker. If the Court decides to revisit *Alexander Amusement Co.* or *Powell*, that of course is within their prerogative. It is not within the prerogative of this court to do so. This court can only adhere strictly to the law as it is currently given. The Court has made it clear that pinball machines are not *per se* illegal as are video poker machines or other video gambling machines.

The final relevant part of §12-21-2710 lists the criminal penalty:

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.

The State can clearly charge the proprietor Honeycutt and potentially his employees along with the customers who participated in the unlawful scheme and conduct.

This court agrees and acknowledges that cash payouts on video gaming machines are strictly illegal and can be criminally prosecuted. *Westside Quik Shop, supra.; et. al.* This court agrees and acknowledges that the mere possession of such prohibited machines is illegal and they can be confiscated and destroyed. *Id.; 192 Coin-Op., supra.; Appley, supra.* This court agrees and acknowledges that the Legislature has legitimate police power to outlaw, control and/or take by forfeiture illegal gaming machines. *Mims Amusement Co. v. S. Carolina Law Enforcement Div., supra.* This court agrees and acknowledges that the Legislature acted with a specific intent, and the Court affirmed, to outlaw video poker, slot machines, and video game gambling devices. Act 125, Preamble (1999); *Joytime, supra.; Westside Quik Shop, supra.*

If the item seized were a video poker machine, slot machine, or any other video game device used for gambling, this court would not hesitate in examining it, and pursuant to statute and the applicable law, issue an Order destroying it. Again, this is not that case.

Therefore, this court pursuant to the statutes S.C. Code §12-21-2710, §2712, and §2721, has examined the machine and the law, and this pinball machine in and of itself is not unlawful

though the business owner as a lessee of the machine used it for unlawful purposes. It is a mechanical device covered by the exemptions in both §12-21-2710 and §2721. The backboard, or upright portion of the pinball machine which shows the different game options and scoring is in video format. But the game itself is a mechanical pinball machine. It is not a video game. The backboard lights up and has video game features. But the backboard does not control any part of the game. This court finds and concludes that this machine is a mechanical pinball device as a nonpayout in-line pin &/or nonpayout pin table game. As such, it is exempted by S.C. Supreme Court case law and statutes as set forth herein.

### CONCLUSION

This court has taken seriously its task of reading and reviewing all of the applicable statutes and case law and applying same in a scrupulous manner. This court favors neither side, but the law. This court could be wrong. Plaintiff's arguments are meritorious. But it is this court's humble view that the statutes speak plainly and the case law is also clear. The appellate court(s) may certainly take another view. But it is not this court's purview to overrule or even slightly limit *Alexander Amusement Co., supra; Powell, supra;* or the two cases which cited them with favor, *Four Video, supra.*, and *One Coin, supra.* It may well be that all four of these cases have passed their expiration dates since they were decided before Act 125 and the post-Act 125 cases from *Westside Quick Shop, supra.*, and *192 Coin-Op., supra.*, through to *Sun Light, supra.*, *Mims Amusement Co., supra.*, and *Ward West Oil, supra., et. al.* But that is not for this court to say. This court is bound by the precedent established by our Court until otherwise instructed. Nor can this court merely "distinguish" cases such as *Alexander Amusement Co.*, since it is on-point with the same facts in this case.

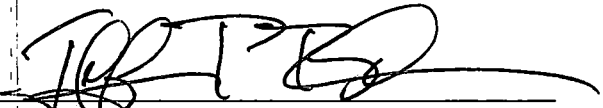
This court is asked to infer an extension of the statute §12-21-2710 based on the case law cited herein regarding video poker machines, slot machines, and video game gambling devices. *Westside Quik Shop, supra.; Joytime, supra.; 192 Coin-Op. supra.; et.al.* This court cannot, and will not, make such an inference where the Court itself has not done so, and the statute itself does not do so. Plaintiff is of course free to continue its good faith and well-developed position to the appellate courts since the case turns on interpretation of the law. But it is not the province of this humble court to announce changes in precedent to the higher Court. *Alexander Amusement Co.* and *Powell* are still valid law and have not been specifically overruled or limited or even questioned by the Court.

Finally, this court has endeavored to apply the Legislature's statutes strictly without reading more or less into them. It has reviewed every case submitted to it including those on statutory construction. This court cannot 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) (internal citation omitted).

IT IS THEREFORE ORDERED that the Order of Destruction previously issued in this case is hereby reversed and vacated. Plaintiff is hereby Ordered to return the machine confiscated in this case to Defendant. In the event that Plaintiff timely appeals (as is likely given the circumstances of this case and the stakes at issue), then this court's Order shall be held in abeyance, and Plaintiff shall take all reasonable efforts to adequately preserve said machine until final Orders of any Appellate Court(s) as may be issued in this case.

AND IT IS SO ORDERED.

August 17, 2023  
St. Matthews, S.C.

  
\_\_\_\_\_  
Jeffrey P. Bloom, Calhoun County Magistrate  
Appointed by Designation S.C. Supreme Court

STATE OF SOUTH CAROLINA )

2022CV4010700687

CASE NUMBER

COUNTY OF RICHLAND )

South Carolina Law Enforcement )  
Division )

IN THE MAGISTRATES COURT

Plaintiff )

Vs )

ORDER OF DESTRUCTION/  
NOTICE OF POST SEIZURE  
HEARING

(1) Montana Deluxe 2; Gambling )  
Machines )

Defendant )

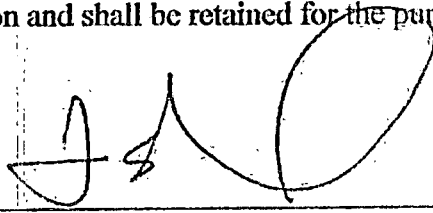
Pursuant to S.C. Code Ann. §12-21-2712, the above listed machine was seized on April 20, 2022, from Tavern on Broad at 7949 Broad River Road, Suite 90, Irmo SC 29063 by the Plaintiff and brought before me on April 21, 2022, for examination to determine if the machine is prohibited pursuant to S.C. Code Ann. §12-21-2710.

Upon careful examination of the machine, I find the machine to be: vending or slot machine, or a 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 S.C. Code Ann. §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.

I find that the Defendant's machines is in violation of S.C. Code Ann. §12-21-2710 and do hereby order its destruction. **The Defendant has 15 days from the date of receipt of this Order to request a Post Seizure Hearing to contest the illegality of the machine. Otherwise, the machine will be destroyed.**

Pursuant to state law, the State Law Enforcement Division is authorized to retain, expend, and carry forward all monies associated with illegal gaming devices seized by the Division, once orders of destruction and awarding of these monies have been received from a court of competent jurisdiction. I find that \$5,344.00 was seized by the Division and shall be retained for the purposes provided by the law.

**AND IT IS SO ORDERED.**



Judge Timothy C Emdond  
Upper Township Magistrate  
7615A Wilson Blvd  
Columbia, SC 29203  
803-576-2570

April 21, 2022

MV166

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE MAGISTRATE’S COURT  
Case No.: 2022CV4010700687

S.C State Law Enforcement Division, )  
 )  
v. )  
 )  
1 Montana Deluxe 2; Gambling Machine )  
 )  
Defendant. )

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**MEMORANDUM IN SUPPORT  
OF DESTRUCTION**

**BACKGROUND**

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. During this inspection, SLED agents observed evidence illegal gambling and an illegal gaming device.

In accordance with S.C. Code Ann. § 12-21-2712, SLED agents seized this illegal device and took it to an appropriate Richland County Magistrate Judge who examined it and issued an Order of Destruction finding that the machine violates South Carolina Code Ann. § 12-21-2710 (“§ 12-21-2710”). This order also authorized the destruction of the machine. However, a post-seizure hearing was requested.

**BURDEN OF PROOF**

“At a post-seizure hearing, the burden is on the owner of the *res* [the machine] 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); State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000). Therefore, the actual owner of this gaming machine, and only the actual owner of this device, bears the burden of proof or has standing in this matter. However, based on the following, the owner cannot meet this burden:

## HISTORY AND APPLICABILITY SECTION 12-21-2710

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) *citing* Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 303, 534 S.E.2d 270, 273 (2000); Lawton v. Steele, 152 U.S. 133, 136 (1894).

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.* at 304, 534 S.E.2d at 273 *citing* Bennis v. Michigan, 516 U.S. 442, 452 (1996); Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 686-87 (1974).

The South Carolina Supreme Court has also indicated that when analyzing machines and devices pursuant to § 12-21-2710, courts should “**look behind the name and style of the device to ascertain its true character.**” Ward v. W. Oil Co., Inc., 387 S.C. 268, 278, 692 S.E.2d 516, 522 (2010) *citing* 38 C.J.S. Gaming § 10 (Supp. 2010) (emphasis added).

Further, in South Carolina, a “**machine is a gambling device where its operation is such that, although the player in any event will receive something, he stands a chance to win something in addition.**” Harvie v. Heise, 150 S.C. 277, 148 S.E. 66, 68 (1929) *quoting* 27 C. J. 989 (emphasis added).

Section 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. The full text of the statute is set out below:

**SECTION 12-21-2710. Types of machines and devices prohibited by law; penalties.**

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.

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). The South Carolina Supreme Court acknowledged the South Carolina Legislature’s true aim and intent in passing § 12-21-2710 in Westside Quik Shop v. Stewart, 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). 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 to the contrary is inaccurate.

Further, as far back as 1939, the South Carolina Supreme Court acknowledged that, “[i]t is clear that the law [§ 12-21-2710 and its predecessors] condemns any devices pertaining to games of chance, of whatever name or kind....” Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20, 23 (1939) (emphasis added). In 1967, the South Carolina Supreme Court again recognized, “[i]t is clear that the Legislature, by the enactment of the statutes here involved [Sections 5—621 and 5—622 of the Code, which are the predecessor statutes to Sections 12-21-2710 and 12-21-2712], did condemn any devices pertaining to games of chance.” Squires v. South Carolina Law Enforcement Division, 249 S.C. 609, 612-13, 155 S.E.2d 859, 861 (1967) (emphasis added). Accordingly, it is unquestionable that the intent of the South Carolina Legislature in enacting § 12-21-2710 and its predecessor statutes was to specifically prohibit the possession of all devices pertaining to games of chance of whatever name or kind, and all machines that are, or can be used as gambling machines in this state.

The South Carolina Supreme Court has also ruled that even if a machine may be capable of being operated in a lawful manner or, in fact might be completely inoperable, the legislature clearly intended to outlaw even **the mere possession** or storage of certain types of machines themselves, “**regardless of their intended use or operation.**” State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 190, 525 S.E.2d 872, 880 (2000) (emphasis added) (noting that “§ 12–21–2710 clearly makes mere possession of described machines unlawful.”). As such, as acknowledged by the South Carolina Supreme Court, all video gaming machines, like the machine before this Court, are illegal to possess in South Carolina, “regardless of their use or operability.” Further, while the evidence and testimony in this matter will demonstrate that this machine violates § 12-21-2710 in multiple ways, any single capability or use of a machine that violates § 12-21-2710 is sufficient to uphold the Order of Destruction in this matter.

## **THE DEVICE AT ISSUE IN THIS ACTION VIOLATES § 12-21-2710**

When analyzing the true nature, use, and character of the device seized in this matter, the evidence and testimony presented will clearly demonstrate that this device is illegal to possess pursuant to § 12-21-2710 in multiple ways.

### **1. Device Operated by a Slot in which is Deposited a Coin or Thing of Value for the Play of Bingo or Keno**

This device is an illegal device operated by a slot in which is deposited a coin or thing of value for the play of bingo and keno in violation of § 12-21-2710. 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.

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 lights up 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. This is not a legal pin table or pinball machine in South Carolina. Rather, this machine is a device operated by a slot in which is deposited a coin or thing of value for the play of bingo and/or keno in violation of § 12-21-2710.

In addition, as will be discussed more fully below, this machine does not meet the exception set forth in § 12-21-2710 for “non-payout pin tables” or “non-payout in line pin games” (i.e. traditional pin ball machines) because the evidence and testimony will demonstrate that there were in fact pay outs for winnings on this machine.

## **2. Illegal Gambling Device**

This machine is also an illegal gambling device prohibited by South Carolina law. The evidence and testimony will demonstrate that not only was this machine capable of paying out winnings to players, but also that cash payouts were paid to players from this machine. Notably, this machine shows the credits and the “cash” available to be collected and indicates “Press the R Button to Collect Plays”. Now, interestingly, this machine goes through the ruse of claiming to offer only “winning plays”, but the evidence and testimony will establish that patrons were paid the cash amount equivalent to the plays. SLED will provide evidence of numerous cash payouts from the play of this device, including payouts in excess of \$100.00. As such, this is a gambling device. *See Harvie v. Heise*, 150 S.C. 277, 148 S.E. 66, 68 (1929) *quoting* 27 C. J. 989 (a “machine is a gambling device where its operation is such that, although the player in any event will receive something, he stands a chance to win something in addition.”). There is no doubt whatsoever that players stand a chance to win cash payouts *i.e.* something of value for the play of this device.

In addition, in late 2012, 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."<sup>1</sup> It is axiomatic that players put money into this machine on the chance that the machine will provide the player with the uncertain event of randomly generated winning combinations of BINGO or Keno that will win the player money. 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 lucky enough to have a BINGO or keno resulting in the payment of money constitutes a wager and is thus considered illegal gambling in South Carolina. *See Id.*

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, this device does not appear to give change. As such, this is a machine or device licensed pursuant to Section 12-21-2720 and used for gambling in violation of the laws of the State of South Carolina.

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<sup>1</sup> <http://www.merriam-webster.com/dictionary/wager>.

### 3. Illegal Free Play Feature Machine

This machine is also a video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value in violation of S.C. Code Ann. § 12-21-2710. A historical background of the video poker laws demonstrates such. In 2005, the South Carolina Supreme Court noted,

For nearly seventy years, gaming machines have been illegal in this State and subject to forfeiture as contraband. In 1931, the General Assembly enacted a comprehensive statute outlawing the possession of all forms of gambling devices, including vending machines that could be operated as gambling devices. 1931 S.C. Act No. 368. In 1982, however, the General Assembly enacted an exemption for “video games with free play feature” which were a relatively recent technological development. 1982 S.C. Act No. 466.

Westside Quik Shop v. Stewart, 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).

However, this “free play feature” exemption was removed by the Legislature

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.**

*Id.* (emphasis added).

Therefore, as of the year 2000, South Carolina law has prohibited any and all video game machines with a free play feature operated by a slot in which is deposited a coin or thing of value. The evidence in this case will show that this device offers “free play features” that award a player “free plays”. These “free plays” allow the player to play without the player having to wager any more of the player’s money. This functionality is unquestionably a “free play feature”. As such, the existence of this functionality - standing alone - renders this device illegal in South Carolina.

#### **4. Device Pertaining to Games of Chance of Whatever Name or Kind**

In addition, the true nature and character this machine is that it is a “device pertaining to games of chance of whatever name or kind.” Chance ultimately dictates the outcome of each single play on this machine. As noted above, this device offers nine different chance game boards, which simulate bingo and keno. The fact that the selection of the numbers comes from the use of a plunger and a metal ball as opposed to a bucket or hopper filled with balls is of no consequence. Chance still predominates because a player’s knowledge, skill, dexterity, or abilities absolutely cannot improve the overall result because it all comes down to luck. Simply put, skill cannot overcome chance on this device. As such, chance predominates on these machines and it is an illegal device pertaining to games of chance of whatever name or kind.

The fact that there are also nine different games separates this machine from traditional pinball machines or even in-line pin games. The player selects between nine different “boards” seeking to get lucky enough to with the jackpots offered thereon – whether it’s “breaking the safe” or the “crazy wheel”. In every instance, the device randomly sets the available prizes on the game and the player’s “luck” ultimately determines the outcome. As such, this is a device, which offers 9 different games of chance, is an illegal device in South Carolina.

## CONTRABAND PER SE

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. 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, the machine at issue in this action, which is also the subject of § 12-21-2710’s prohibition is contraband *per se* and illegal to possess regardless of its intended, capable, or possible uses.

### COMPONENT PARTS

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 Co. 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 acknowledged the history of 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). Therefore, even though the machine at issue in this action may not be operational at this time, the parts that comprise this illegal machine are themselves illegal to possess in South Carolina. As such, any argument that the machine is not operable or that this machine may have other lawful uses is of no consequence.

## **A LICENSING SCHEME CANNOT LEGALIZE ILLEGAL DEVICES.**

Moreover, regardless of whether or not this machine has South Carolina Department of Revenue stickers, it is still illegal to possess. The South Carolina Supreme Court has clearly ruled that “[u]nder longstanding precedent in this state, licensing schemes do not render legal products or devices that are illegal under other provisions of state law.” State v. One Coin-Operated Video Game, 321 S.C. 176, 467 S.E.2d 443, 445 (1995); *see also* Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20, 24 (1939). As such, regardless of whether this machine was licensed by the South Carolina Department of Revenue, the machine, which directly violates § 12-21-2710, is illegal to possess in South Carolina.

In addition, South Carolina Code Ann. § 12-21-2736 states that “[t]he issuance of a license under the provisions of this article by the department does not make lawful the operation of any gambling machine or device, the operation of which is made unlawful under the laws of this State.” Because of this provision, the Department of Revenue does not inspect machines prior to the issuance of a license. Rather, upon the payment of the appropriate amount, the Department issues licenses to applicants to be placed on whatever machine the applicant desires. As such, the licensure of a machine has no bearing on the machine’s illegality.

Rather, South Carolina law clearly contemplates licensed machines being illegal. Specifically, S.C. Code Ann. § 12-21-2710 addresses this issue by clearly stating that “any machine or device licensed pursuant to Section 12-21-2720 and used for gambling” is illegal in South Carolina. This section would have no meaning whatsoever if licensure was the end of the analysis. It is not. The evidence in this matter will establish that this device was licensed pursuant to Section 12-21-2720 and used for gambling. As such, it is prohibited.

## PAYOUTS

The evidence and testimony will reveal that the owner of this machine and the owner of the location from which it was seized paid out cash winnings on this machine. However, should there be any argument that such payouts were made by providing merchandise instead of cash, this would not affect the outcome in this matter. Notably, despite evidence of cash payouts, the machines has a sign that says “Top Score will Receive a \$25.00 Bar Tab”. Despite being a ruse, whether the payout is cash, a gift card, or a bar tab is of no consequence. Rather, the South Carolina Legislature specifically repealed S.C. Code Ann. § 16-19-60, which allowed nonmachine cash payouts prior to the year 2000. Notably, prior to its repeal, S.C. Code Ann. § 16-19-60 stated that the gambling prohibitions in South Carolina were limited to machines that actually disbursed money directly to players. However, the South Carolina Legislature specifically repealed this provision with 1999 S.C. Act 125. In Westside Quik Shop v. Stewart, the South Carolina Supreme Court specifically acknowledged this repeal stating that 1999 S.C. Act 125 “repeals § 16-19-60, which allows nonmachine cash payouts, and amended S.C. Code Ann. § 12-21-2710 (2000) to remove the exception for video gaming machines, thereby rendering the possession of these machines illegal....” 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)). Accordingly, South Carolina law is clear, any payout of any kind, is prohibited, and payouts of merchandise do not render a machine any less illegal. In addition, the South Carolina Supreme Court has long held that standing a chance to receive “something” in addition to the original wager constitutes gambling. *See Harvie v. Heise*, 150 S.C. 277, 148 S.E. 66, 68 (1929) *quoting* 27 C. J. 989 (a “machine is a gambling device where its operation is such that, although the player in any event will receive something, he stands a chance to win something in addition.”).

## CONCLUSION

The South Carolina Supreme Court has 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) *quoting* Moberly v. Deskin, 169 Mo. App. 672, 155 S. W. 842 (1913). 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 with the use "cunning mechanical inventions". 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.

Therefore, for the foregoing reasons and all others that will be set forth at the hearing on this matter; SLED asks that this Court uphold the previous Order of Destruction signed in this matter, find that the illegal gambling machine at issue in this action violates both the plain language of § 12-21-2710 and the spirit of this law and the intent of this law, and order that this illegal gaming machine be destroyed.

[SIGNATURE PAGE ATTACHED]

Respectfully submitted,

s/Adam L. Whitsett

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ATTORNEY FOR SLED

Columbia, South Carolina

December 15, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

2022CV4010700687  
**CASE NUMBER**

South Carolina Law Enforcement  
Division  
Plaintiff,

**PRE-TRIAL BRIEF**

v.

(1) Montana Deluxe 2; Gambling  
Machines,  
Defendant.

UPPER TOWNSHIP  
2022 MAY -3 PM 12:05  
MAGISTRATE'S OFFICE

INTRODUCTION

Video Solutions I, Inc., (VS) the owner of a Montana De Luxe 2 amusement device seized on April 20, 2022 from the Tavern on Broad, hereby submits this Pre-Trial Brief for the Court's consideration at the post-seizure hearing being requested. This Court issued a preliminary order of destruction on April 21, 2022 finding that the machine violates S.C. Code Section 12-21-2710. For the reasons set forth herein, VS requests that the Court vacate its Order of Destruction and order that the machine and proceeds seized from the machine be returned.

MONTANA DE LUXE 2

The Montana De Luxe 2 is a mechanical pin game played on a sloping table, the object being to shoot a ball, driven by a spring-operated plunger, up a side passage, causing the ball to roll back down against pins and through channels that flash or ring, with the goal being that the pin ball comes to rest in particular holes on the playing field. In addition, the player can alter the course of direction of the ball by actuating one or more levers or flippers causing the lever or flipper to strike the ball. The outcome depends upon the player shooting a pinball into a particular divot on the playing table.

The Montana De Luxe 2 is an in-line pin game like many older in-line pin games that have been legally operated in South Carolina. The original in line pin games play exactly like the new Montana De Luxe 2. The only difference is that the header on the Montana De Luxe 2 has two LED monitors instead of light bulbs.

The original in-line pin games had only two or three games available for play. In fact, DOR Revenue agents have historically referred to in-line pin games as "bingo" games. See *SCDOR v. Scott Sheets, d/b/a S&S Amusements* 96-ALJ-17-390 CC (attached). The Montana De Luxe 2 has nine games available for play. The games either simulate a multi ball skill shot game or a single ball skill shot games of various types. The games are listed as follows: golden game, random game, super one ball, triple barrel, euro one ball, lucky ball, break the safe, crazy wheel, and lucky ball 2. Players can control the speed the to achieve a winning outcome.

#### LEGAL ANALYSIS

The Montana De Luxe 2 is a mechanical in-line pin game which is excluded from the list of devices identified in S.C. Code Section 12-21-2710 that are unlawful to possess in South Carolina.

Section 2710 states:

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 non-payout 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.

S.C. Code Ann. § 12-21-2710 (emphasis added).

In addition, South Carolina Code Section 12-21-2720 expressly provides for the licensing of in-line pin games with either a Type 2 or Type 3 license. Section 2720 provides:

(A) Every person who maintains for use or permits the use of, on a place or premises occupied by him, one or more of the following machines or devices shall apply for and procure from the South Carolina Department of Revenue a license effective for two years for the privilege of making use of the machine in South Carolina and shall pay for the license a tax of fifty dollars for each machine in item (1), two hundred dollars for each machine in item (2), and four thousand dollars for each machine in item (3):

(2) a machine for the playing of amusements or video games, without free play feature, or machines of the crane type operated by a slot in which is deposited a coin or thing of value and 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. A machine required to be licensed under this item is exempt from the license fee if an admissions tax is imposed.

(3) a machine of the non-payout type, or in-line pin game, operated by a slot in which is deposited a coin or thing of value except machines 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.

S.C. Code Ann. § 12-21-2720

As is evident by the highlighted language in Section 2720, the distinction between Type 2 and Type 3 in-line pin games under the South Carolina licensing provision is the existence levers or flippers operated by a player by which the course of the balls may be altered or changed.

In *SCDOR v. Scott Sheets, d/b/a S&S Amusements 96-ALJ-17-390 CC* the Administrative Law Court ruled that the Miss Nevada in-line pin game with flippers was a Type 2 machine. The

DOR urged the Court to rule that the Miss Nevada was a Type 3 machine, which at the time was illegal to operate in South Carolina. The Court rejected the DOR's interpretation, concluding that the Miss Nevada met the definition of a Type 2 machine because of the free play feature and flippers that could alter the course of the ball.

The DOR did not appeal the Administrative Law Court's decision. Instead, SC DOR has since adopted this decision in Revenue Ruling 16-4. RR 16-4 provides guidelines for determining the proper license under Section 2720. Under RR 16-4 only in-line pin games without flippers are required to carry a Type III license. Pin table with levers are only required to carry a Type II license regardless of whether the pin table has a free play feature or not.

The South Carolina Department of Revenue Regulation 117-1300.2 defines "free play feature" and reads:

The words "which has a free play feature" shall mean and include any machine which is designed and made with such feature by the manufacturer of such machine, provided however, that where the mechanism constituting a free-play feature has been completely and wholly removed from the machine, and a certificate to that effect is filed at the time of application for license, the machine shall be licensed as one without a free play feature.

SC DOR RR 16-4 further explains that "a free play feature allows a person to play an entire game free of charge where the free game is the same game the person would play if he had paid to play the game. For example, a player may receive a free game after a high score or after a number match where the last number of the player's score matches a number randomly selected by the machine (Score:328,446, Randomly Selected Number :6)."

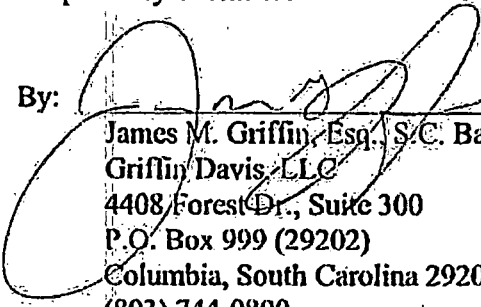
The Montana De Luxe 2 machine meets the criteria for a lawful Type II machine because it is an in-line pin game with levers or flippers. In addition, the Montana De Luxe 2 has a free play feature, whereby a player can win the opportunity to play the same game free of charge.

**CONCLUSION**

Based upon the foregoing, the undersigned respectfully requests order the return of the seized machine to its lawful owner, VS, as well as all proceeds seized inside the machine.

Respectfully Submitted.

By:



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*Attorneys for Video Solutions I, Inc.,*

Columbia, SC  
May 3, 2022

UPPER TOWNSHIP  
2022 MAY -3 PM12:05  
MAGISTRATE'S OFFICE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Magistrate Case No.: 2022CV4010700687
COUNTY OF RICHLAND	)	Civil Action No.:
S.C State Law Enforcement Division,	)	
	)	
Appellant,	)	
v.	)	<b>NOTICE OF CIVIL APPEAL</b>
	)	
A Montana Deluxe 2 machine; and	)	
Video Solutions I, Inc.	)	
	)	
Respondents.	)	
	)	

The South Carolina Law Enforcement Division (SLED) hereby gives notice of appeal of the judgment of Magistrate’s Court in the above action to the Circuit Court of Common Pleas in Richland County. This appeal is made subsequent to notice of the judgment, which was received by the undersigned on the 18<sup>th</sup> day of August 2023.<sup>1</sup>

SLED’s exceptions to the judgement of the Magistrate are set forth as follows:

1. As a matter of legal error, the Magistrate did not effectuate the stated intent of the South Carolina Legislature – the prohibition of cash payouts for credits earned on video game machines – when interpreting S.C. Code Ann. § 12-21-2710 in this action.
2. As a matter of legal error, the Magistrate incorrectly applied South Carolina law and ordered the return of a gaming machine despite undisputed evidence of cash payouts paid for the play of the machine.
3. As a matter of legal error, the Magistrate determined that a machine that prints tickets that were redeemed for cash payouts was a “non-payout” in-line pinball game.
4. As a matter or legal error, the Magistrate applied an incorrect legal analysis to determine whether a machine violated South Carolina law.
5. As a matter of legal error, the Magistrate misinterpreted and misapplied the applicable South Carolina statutes and jurisprudence in this matter.

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<sup>1</sup> SLED acknowledges that it received an unfiled notice of the decision via email on August 18, 2023; however, SLED has never received a filed copy nor has it received notice of the filing of this order.

6. As a matter of legal error, the Magistrate did not correctly apply South Carolina jurisprudence finding that gaming machines, like the machine at issue in this action, are contraband *per se*.
7. As a matter of legal error, the Magistrate 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”.
8. As a matter of legal error, the Magistrate found that the device on which “the proprietor engaged in unlawful gambling” was not subject to seizure and destruction in South Carolina.
9. As a matter of legal error, the Magistrate mischaracterized the machine’s operating features.
10. As a matter of legal error, the Magistrate found that despite the machine having “video game features” and showing “the different game options and scoring...in video format”, it was not a video game.

In conclusion, based on the foregoing, the applicable laws, statutes, and jurisprudence of the State of South Carolina; the specific intent of the South Carolina Legislature to prohibit cash payouts on gaming machines; and the entire record in this matter; the Appellant respectfully requests that the Circuit Court reverse the decision of the Magistrate and find that the machine on which unlawful gambling was engaged is in violation of S.C. Code Ann. § 12-21-2710 and should be forfeited and destroyed.

Respectfully Submitted,

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**ATTORNEY FOR APPELLANT**

September 18, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No.: 2023CP4004886
COUNTY OF RICHLAND	)	
S.C State Law Enforcement Division,	)	
	)	
Appellant,	)	
	)	
v.	)	<b>BRIEF OF APPELLANT</b>
	)	
1 Montana Deluxe 2; Gambling Machine	)	
	)	
Respondents	)	

**INTRODUCTION**

In 1999, the South Carolina Legislature sought to end video poker and cash payouts on video game machines with the passage of 1999 S.C. Act 125. The express and unequivocal intent of 1999 S.C. Act 125 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).**

In fact, “PART I” of this bill is specifically entitled “Prohibition on Payouts”. See 1999 S.C. Act 125.

However, despite this clear and unequivocal legislative mandate and despite the trial court's acknowledgment that there were "obvious" illegal cash payouts made for the play of this machine, the trial court refused to require its forfeiture and destruction. Simply put, the trial court erroneously ordered the return of a machine that was undisputedly used for gambling and that directly facilitated illegal cash payouts to players. This is legal error and should be reversed.

### **FACTUAL BACKGROUND**

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. During this inspection, SLED agents observed what they believed to be an illegal gaming device on which individuals gambled and received cash payouts.

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.

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.

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. *See* Plaintiff’s Exhibit #5 in Attachment C of the Magistrate Court Return. 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. *See* Plaintiff’s Exhibit #3 in Attachment C of the Magistrate Court Return. 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 (“§ 12-21-2710”) and should be forfeit.

## PROCEDURAL BACKGROUND

After viewing the illegal gambling activity on the device, 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 requested a post-seizure hearing, and the hearing was conducted on December 19, 2022.

At the hearing, there was no dispute that cash was paid to players for winnings on this device. 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 Tavern on Broad for cash payouts. These illegal payouts were directly facilitated by device via the “R Button to Collect Plays” and the printed tickets. At the hearing, the Appellant submitted numerous undisputed payout tickets from this device and the cash payouts were undisputed. *See* Plaintiff’s Exhibit #5 in Attachment C of the Magistrate Court Return. Further, the evidence at trial established that the device also tracked the money paid in and the money paid out via the hard meters. *See* Plaintiff’s Exhibit #3 in Attachment C of the Magistrate Court Return. 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. 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. As such, 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. This ruling is in direct contravention of the spirit, intent, and plain language of South Carolina’s anti-gaming machine laws. Accordingly, the Appellant timely initiated this appeal.

## SCOPE OF REVIEW

“At a post-seizure hearing, the burden is on the owner of the *res* [the machine] 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); State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000).

On appeal, the appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judgment of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded.” S.C. Code Ann. § 18-7-20. “In the notice of appeal, the appellant shall state in what particular or particulars he claims the judgment should have been more favorable to him” S.C. Code Ann. § 18-7-30.

“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 of the parties and for errors of law or fact.” S.C. Code Ann. § 18-7-170.

The South Carolina Supreme Court has also indicated that when analyzing machines and devices pursuant to § 12-21-2710, courts should “look behind the name and style of the device to ascertain its true character.” Ward v. W. Oil Co., Inc., 387 S.C. 268, 278, 692 S.E.2d 516, 522 (2010) *citing* 38 C.J.S. Gaming § 10 (Supp. 2010).

Further, in South Carolina, a “machine is a gambling device where its operation is such that, although the player in any event will receive something, he stands a chance to win something in addition.” Harvie v. Heise, 150 S.C. 277, 148 S.E. 66, 68 (1929) *quoting* 27 C. J. 989.

## HISTORY AND APPLICABILITY OF SECTION 12-21-2710

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 trial court 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 trial court’s decision is not subservient to the legislative intent and the trial court’s interpretations were not construed in light of the intended purpose of the statute – to prohibit cash payouts on gaming machines. Therefore, the trial court should be reversed, and the original Order of Destruction should be affirmed such that the illegal gambling device at issue in this action is destroyed.

## ANALYSIS

The Notice of Appeal filed in this matter notes the following deficiencies:

1. **As a matter of legal error, the Magistrate did not effectuate the stated intent of the South Carolina Legislature – the prohibition of cash payouts for credits earned on video game machines – when interpreting S.C. Code Ann. § 12-21-2710 in this action.**
2. **As a matter of legal error, the Magistrate incorrectly applied South Carolina law and ordered the return of a gaming machine despite undisputed evidence of cash payouts paid for the play of the machine.**
3. **As a matter of legal error, the Magistrate determined that a machine that prints tickets that were redeemed for cash payouts was a “non-payout” in-line pinball game.**
4. **As a matter or legal error, the Magistrate applied an incorrect legal analysis to determine whether a machine violated South Carolina law.**
5. **As a matter of legal error, the Magistrate misinterpreted and misapplied the applicable South Carolina statutes and jurisprudence in this matter.**
6. **As a matter of legal error, the Magistrate did not correctly apply South Carolina jurisprudence finding that gaming machines, like the machine at issue in this action, are contraband *per se*.**
7. **As a matter of legal error, the Magistrate 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”.**
8. **As a matter of legal error, the Magistrate found that the device on which “the proprietor engaged in unlawful gambling” was not subject to seizure and destruction in South Carolina.**
9. **As a matter of legal error, the Magistrate mischaracterized the machine’s operating features.**
10. **As a matter of legal error, the Magistrate found that despite the machine having “video game features” and showing “the different game options and scoring...in video format”, it was not a video game.**

As noted above, there is and can be no doubt whatsoever that the South Carolina Legislature amended § 12-21-2710 in 1999 to specifically prohibit cash payouts on gaming machines like the machine at issue in this action. Again, the preamble specifies **“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). The undisputed evidence in this case established that there were cash payouts available and paid for the play of this device. In fact, 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. *See* Plaintiff’s Exhibit #5 in Attachment C of the Magistrate Court Return. The trial court notes that these payouts were stipulated and “obviously” illegal.

Further, the evidence at trial established that this device facilitated the payments by printing tickets and tracking the monies to be paid out. As such, the unchallenged and obvious evidence conclusively proves that this device was “device licensed pursuant to Section 12-21-2720 and used for gambling” in direct contravention of the plain language and clear intent of § 12-21-2710. However, as a matter of legal error, despite acknowledging that the device was illegally used for gambling, the trial court disregarded the Legislative intent, South Carolina jurisprudence, and ordered the return of an undisputed gambling device. This ruling completely disregards the deterrent effect intended by South Carolina’s gaming machine forfeiture laws. *See Mims Amusement Co. v. S. Carolina Law Enforcement Div.*, 366 S.C. 141, 621 S.E.2d 344 (2005). Further, the return of this device will inevitably result in the possibility of its subsequent continued use for illegal gambling. This is legal error and should be reversed.

In addition, the trial court's 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. 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 trial 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 trial court disregarded and/or 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] (“[I]n legislation 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 trial court’s ruling disregards the binding jurisprudence on these 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 Co. 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, the trial court disregarded or misapplied this jurisprudence and should be reversed.

Further, the trial court's reliance on S.C. Code Ann. § 12-21-2721 is completely misplaced and this statute is simply not applicable 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 trial court ran afoul of South Carolina jurisprudence and the decision is directly contrary to South Carolina law. *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 trial court’s 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.

Additionally, any potential argument that that skill outweighs chance on this device does not affect the finding of illegality. In late 2012, 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.”<sup>1</sup>

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<sup>1</sup> <http://www.merriam-webster.com/dictionary/wager>.

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.*

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 trial court’s decision does not comport with or harmonize with this intent and does not render illegal behavior unprofitable. Rather, the trial court immunized an illegal device and returned it for future illegal use.

## 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 trial court did not. Rather, the trial court’s order does 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, for the foregoing reasons and all others that will be set forth at the hearing on this matter; SLED asks that this Court reverse the trial court in its 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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Columbia, South Carolina  
August 21, 2024

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

S.C. State Law Enforcement  
Division,

Civil Action No.: 2023-CP-40-04886

Appellant,

v.

**Defendant/Respondent’s Brief**

A Montana Deluxe 2 machine; and Video  
Solutions I, Inc.,

Respondents.

INTRODUCTION

Defendant/Respondent Video Solutions I, Inc. the owner of the Montana Deluxe 2 game that was seized on by SLED to S.C. Code Section 12-21-2712 hereby submits its response brief to SLED’s appeal of the 40- page ruling of Magistrate Bloom vacating the order of destruction and ordering the return of the machine to Video Solutions I, Inc. and ruling that the machine.

FACTUAL SUMMARY

On December 19, 2022, Magistrate Bloom conducted a post-seizure hearing upon request of Video Solutions I Inc., the owner of a Montana De Luxe 2 pin-ball machine which was seized on August 20, 2022, from the Tavern on Broad, located at 7949 Borad River Road, Suite 90, Irmo, Richland County, South Carolina pursuant to S.C. Code 12-21-2712. Judge Edmonds issued a preliminary order of destruction on April 21, 2022, finding that the machine violates S.C. Code Section 12-21-2710.

The parties stipulated to the following facts in the hearing before Judge Bloom and did not offer any additional testimony:

- The Montana Deluxe 2 is a mechanical game device
- It is a mechanical pinball game played on a sloping table.

- The player can alter the course of the direction 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 that the player has the ability to adjust how hard or soft the pinball is discharged into the game; and it has “flippers” so that the player can operate it by hitting the pinball into the game.
- The player can “bump” the machine to affect the play of the pinball without “tilting” and defaulting the game
- The player can affect the outcome of the game.
- On or about April 20, 2022, when SLED agents were conducting an alcohol inspection at the Tavern on Broad observed evidence of cash payouts made by the proprietor to players of the Montana De Luxe 2 machine and seized the machine.
- For purposes of this hearing, the machine owner and the State stipulated that the proprietor paid out cash from the establishment’s cash register and no cash was dispensed from the machine. This stipulation was without prejudice to the establishment’s owner/operator.

#### ISSUE PRESENTED

IS A MECHANICAL PINBALL GAME OTHERWISE EXEMPT FROM SC CODE SECTION 12-21-2710 SUBJECT TO SEIZURE AND DESTRUCTION UNDER SECTION 12-21-2712 WHEN THE ESTABLISHMENT’S OPERATOR PAID CASH FROM THE REGISTER AND NO CASH WAS DISPENSED FROM THE MACHINE?

#### ARGUMENT

- I. MAGISTRATE JEFF BLOOM CORRECTLY ANSWERED THIS QUESTION IN HIS 40 PAGE ORDER, EXHAUSTIVELY ANALYZING STATUTES AND CONTROLLING SUPREME COUR PRECEDENT

a. THE INLINE PIN TABLE GAME IS NOT SUBJECT TO CONFISCATION  
BECAUSE IT IS USED IN VIOLATION OF THE GAMBLING STATUTES

S.C. Code Section 12-21-2712 directs that any device prohibited by Section 12-21-2710 be seized “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 or any other law of this State, direct that it be immediately destroyed.” The Montana De Luxe 2 is a non-payout mechanical in-line pin game which is excluded from the list of prohibited devices identified in Section 12-21-2710.

Section 2710 states:

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 non-payout 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.

In addition, South Carolina Code Section 12-21-2720 expressly provides for the licensing of in-line pin games with either a Type 2 or Type 3 license. Section 2720 provides:

(A) Every person who maintains for use or permits the use of, on a place or premises occupied by him, one or more of the following machines or devices shall apply for and procure from the South Carolina Department of Revenue a license effective for two years for the privilege of making use of the machine in South Carolina and shall pay for the license a tax of fifty dollars for each machine in item (1), two hundred dollars for each machine in item (2), and four thousand dollars for each machine in item (3):

(2) a machine for the playing of amusements or video games, without free play feature, or machines of the crane type operated by a slot in which is deposited a coin or thing of value and **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.** A machine required to be licensed under this item is exempt from the license fee if an admissions tax is imposed.

(3) a machine of the non-payout type, or **in-line pin game, operated by a slot in which is deposited a coin or thing of value** except machines 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.

S.C. Code Ann. § 12-21-2720

As is evident by the highlighted language in Section 2720, the distinction between Type 2 and Type 3 in-line pin games under the South Carolina licensing provision is the existence levers or flippers operated by a player by which the course of the balls may be altered or changed. In addition, Revenue Ruling 16-4 provides guidelines for determining the proper license under Section 2720. Under RR 16-4 only in-line pin games without flippers are required to carry a Type III license. Pin table with levers are only required to carry a Type II license regardless of whether the pin table has a free play feature or not.

The South Carolina Department of Revenue Regulation 117-1300.2 defines “free play feature” and reads:

The words “which has a free play feature” shall mean and include any machine which is designed and made with such feature by the manufacturer of such machine, provided however, that where the mechanism constituting a free-play feature has been completely and wholly removed from the machine, and a certificate to that effect is filed at the time of application for license, the machine shall be licensed as one without a free play feature.

SC DOR RR 16-4 further explains that “a free play feature allows a person to play an entire game free of charge where the free game is the same game the person would play if he had paid to play the game. For example, a player may receive a free game after a high score or after a number match

where the last number of the player's score matches a number randomly selected by the machine (Score:328,446, Randomly Selected Number :6).”

The Montana De Luxe 2 machine meets the criteria for a lawful Type II machine because it is an in-line pin game with levers or flippers. In addition, the Montana De Luxe 2 has a free play feature, whereby a player can win the opportunity to play the same game free of charge.

Lastly, Section 12-21-2721 excludes coin-operated machines or devices licensed pursuant to Section 12-21-2720 from the confiscation under Section 12-21-2712 due to any violation of the state's gambling laws, Sections 16-19-30, 16-19-40, 16-19-50, or 16-19-130. In Alexander Amusement v State, 246 S.C. 530, 144 S.E.2d 718 (1965) the Court ruled that a device used for gambling could not be confiscated unless it was an unlawful device. Here, the Montana Deluxe machine is lawful to possess and therefore cannot be seized under Section 12-21-2712.

#### CONCLUSION

WHEREFORE, for the reasons stated above, this Court should affirm Judge Bloom's thoughtful ruling.

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Columbia, South Carolina  
 August 21, 2024

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

S.C. State Law Enforcement  
Division,

Civil Action No.: 2023-CP-40-04886

Appellant,

v.

**Defendant/Respondent's Amended Brief**

A Montana Deluxe 2 machine; and Video  
Solutions I, Inc.,

Respondents.

INTRODUCTION

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The parties stipulated to the following facts in the hearing before Judge Bloom and did not offer any additional testimony:

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Section 2710 states:

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 non-payout 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.

In addition, South Carolina Code Section 12-21-2720 expressly provides for the licensing of in-line pin games with either a Type 2 or Type 3 license. Section 2720 provides:

- (A) Every person who maintains for use or permits the use of, on a place or premises occupied by him, one or more of the following machines or devices shall apply for and procure from the South Carolina Department of Revenue a license effective for two years for the privilege of making use of the machine in South Carolina and shall pay for the license a tax of fifty dollars for each machine in item (1), two hundred dollars for each machine in item (2), and four thousand dollars for each machine in item (3):
- (2) a machine for the playing of amusements or video games, without free play feature, or machines of the crane type operated by a slot in which is deposited a coin or thing of value and **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.** A machine required to be licensed under this item is exempt from the license fee if an admissions tax is imposed.

(3) a machine of the non-payout type, or **in-line pin game, operated by a slot in which is deposited a coin or thing of value** except machines 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.

S.C. Code Ann. § 12-21-2720

As is evident by the highlighted language in Section 2720, the distinction between Type 2 and Type 3 in-line pin games under the South Carolina licensing provision is the existence levers or flippers operated by a player by which the course of the balls may be altered or changed. In addition, Revenue Ruling 16-4 provides guidelines for determining the proper license under Section 2720. Under RR 16-4 only in-line pin games without flippers are required to carry a Type III license. Pin table games with levers are only required to carry a Type II license regardless of whether the pin table has a free play feature or not.

The South Carolina Department of Revenue Regulation 117-1300.2 defines “free play feature” and reads:

The words “which has a free play feature” shall mean and include any machine which is designed and made with such feature by the manufacturer of such machine, provided however, that where the mechanism constituting a free-play feature has been completely and wholly removed from the machine, and a certificate to that effect is filed at the time of application for license, the machine shall be licensed as one without a free play feature.

SC DOR RR 16-4 further explains that “a free play feature allows a person to play an entire game free of charge where the free game is the same game the person would play if he had paid to play the game. For example, a player may receive a free game after a high score or after a number match where the last number of the player’s score matches a number randomly selected by the machine (Score:328,446, Randomly Selected Number :6).”

The Montana De Luxe 2 machine meets the criteria for a lawful Type II machine because it is an in-line pin game with levers or flippers. In addition, the Montana De Luxe 2 has a free play feature, whereby a player can win the opportunity to play the same game free of charge.

Lastly, Section 12-21-2721 excludes coin-operated machines or devices licensed pursuant to Section 12-21-2720 from the confiscation under Section 12-21-2712 due to any violation of the state's gambling laws, Sections 16-19-30, 16-19-40, 16-19-50, or 16-19-130. In Alexander Amusement v State, 246 S.C. 530, 144 S.E.2d 718 (1965) the Court ruled that a device used for gambling could not be confiscated unless it was an unlawful device. Here, the Montana De Luxe 2 inline pin table game is lawful to possess and therefore cannot be seized under Section 12-21-2712, even though the location operator paid cash from behind the counter to a patron who won free games.

#### CONCLUSION

For the reasons stated above, this Court should affirm Judge Bloom's thoughtful ruling.

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Columbia, South Carolina  
August 22, 2024

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

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Case No. 2023-CP-40-04886

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S.C. State Law Enforcement  
Division

Appellant,

v.

Montana Deluxe 2 Machine  
and Video Solutions I. Inc.

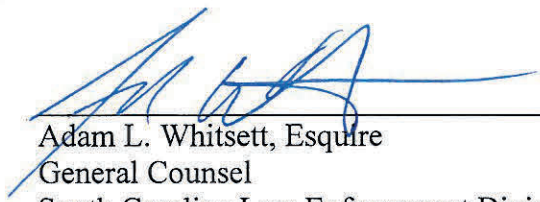
Respondents

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**NOTICE OF APPEAL**

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The South Carolina Law Enforcement Division (identified above as S.C. State Law Enforcement Division) hereby appeals the order of The Honorable Jocelyn Newman dated September 17, 2024. Appellants received electronic notice of the entry of this order on the same date. A copy of the order is attached hereto.



---

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STATE OF SOUTH CAROLINA  
COUNTY OF Richland  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP4004886

S C State Law Enforcement Division  
PLAINTIFF(S)

Montana Deluxe 2 Machine et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

Appellant-Plaintiff's appeal (filed on September 28, 2023) is affirmed. The Court finds no error of law.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/17/2024 .

Montana Deluxe 2 Machine

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

---



Richland Common Pleas

**Case Caption:** S C State Law Enforcement Division VS Montana Deluxe 2 Machine ,  
defendant, et al  
**Case Number:** 2023CP4004886  
**Type:** Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2024-09-17 14:10:59 page 3 of 3

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS  
C.A. NO. 2023-CP-40-04886

S.C. STATE LAW ENFORCEMENT DIVISION

PLAINTIFF,

vs.

1 MONTANA DELUXE, ET AL

DEFENDANTS.

H E A R I N G  
BEFORE THE HONORABLE JOCELYN NEWMAN

DATE: AUGUST 23, 2024  
TIME: N/A  
LOCATION: SOUTH CAROLINA CIRCUIT COURT 5  
TRANSCRIBED BY: KELLEY PRIMM

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ATTORNEY FOR THE DEFENDANT.

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(None marked)

24 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS

25 REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

## 1 P R O C E E D I N G S

2 THE COURT: Good morning, everyone. This is common  
3 pleas, non-jury for Richland County. We've got the appeal  
4 roster today. We're going to start with number two on the  
5 roster, that is 2023-CP-40-04886. *SLED versus Montana Deluxe*  
6 *Two Machine*. Mr. Whitsett, Mr. Griffin -- Mr. Griffin, how  
7 are you?

8 MR. GRIFFIN: I'm good. How are you?

9 THE COURT: I'm just fine. Thanks.

10 MR. GRIFFIN: I am up in Greenville this morning. I  
11 went to the (indiscernible) ceremony.

12 THE COURT: Okay. Nice. I hate that I missed all of  
13 that.

14 MR. GRIFFIN: It was a nice event.

15 THE COURT: Yeah. I want to go to all of them, but, you  
16 know, with them being all around the state, it's just --  
17 that's a lot of traveling.

18 MR. GRIFFIN: Absolutely. That was requested to  
19 contribute. I did. So I wanted to get money for  
20 (indiscernible) nice.

21 THE COURT: Of course. Of course. All right.  
22 Mr. Whitsett, this looks like SLED's appeal.

23 MR. WHITSETT: That's correct, Your Honor.

24 THE COURT: Yes, sir, tell me about this case.

25 MR. WHITSETT: Thank you, Your Honor. May I please the

1 Court? Adam Whitsett, general counselor from SLED, here on  
2 behalf of SLED. It -- just as a matter of housekeeping, we  
3 would certainly incorporate all of the arguments set forth in  
4 the brief that we filed earlier this week.

5 And we are here asking that you reverse the trial  
6 court's decision, and that you declare that the gaming  
7 machine in question is, in fact, illegal, and order its  
8 forfeiture and destruction, in accordance with South Carolina  
9 -- South Carolina law.

10 Ultimately, this case comes down to pretty much  
11 answering one simple question that we feel the trial court  
12 just simply got wrong. Do illegal cash payouts made for the  
13 play of a gaming machine, render the machine illegal?

14 And we think the answer to that question, based on sort  
15 of decades of South Carolina law binding jurisprudence of the  
16 state, is clearly and unequivocally, yes. If you illegally  
17 pay out cash payouts for the play on a device, that device is  
18 illegal and subject to forfeiture and destruction in the  
19 state of South Carolina.

20 The magistrate did not -- the magistrate acknowledged  
21 the obvious illegality of the payouts on the machine.  
22 There's no dispute whether illegal cash payouts were made for  
23 the play of this machine.

24 It was stipulated at trial because there's simply  
25 no -- no argument to the contrary. Yet, the magistrate

1 ordered the return of the machine. And we feel that is just  
2 simply, -- and to get there, the magistrate, while  
3 acknowledging obviously illegal payouts, still found the  
4 machine a non-payout device.

5 And I don't want to be glib or tongue in cheek, you  
6 can't have both. You cannot have an illegal payout and be a  
7 non-payout device at the same time. And think that's just  
8 simply, -- those can't square.

9 And again, there's no dispute whatsoever that there were  
10 illegal payouts on the device. And so we think the law is  
11 incredibly clear here. Now, I'll be the first to concede  
12 that gaming machine law is unique.

13 It's sort of a thing unto itself. And you put a lot of  
14 the traditional -- a lot of the traditional analysis just  
15 don't apply in the gaming machine context. And that's  
16 because when we're looking at sort of how the law came to be,  
17 sort of how the courts have interpreted it over the years,  
18 you have to have the backdrop, you have to have sort of the  
19 legislative history.

20 We have to acknowledge sort of the history of video  
21 poker. We have to acknowledge the history and the  
22 consequences that gambling and gaming machines have had in  
23 this state, because that's where we are, and that's how we  
24 got to where we are with the laws that apply to this case and  
25 with, ultimately, sort of the way the courts have interpreted

1           it consistently over the years.

2           So we have direct legislative guidance, we have direct  
3           judicial decisions. Cash payouts on devices were the  
4           hallmark of video poker. That's what ultimately led to some  
5           of these legislative changes that occurred back in 1999.  
6           They were made specifically, and directly to combat cash  
7           payouts on devices. And that's all done so because of what  
8           video poker was, because of what these cash payouts  
9           represented. We have strict laws, no question.

10          We have strict application of those laws, no question.  
11          But we have those because the legislature in the courts  
12          ultimately recognized the problems that cash payouts and  
13          gambling have on the state.

14          Again, I think Chief Justice Cole, in her concurring  
15          opinion in the town of Mount Pleasant case that's on the page  
16          18 of our brief, sort of touches on the dire consequences and  
17          the impact that these cash payouts, and that these devices  
18          can have on our state, and just the absolute -- sort of the  
19          corruption that it leads to, the devastation that gambling on  
20          devices leads to, the misery, the device, the crime.

21          I mean, let's be clear, these devices prey on the  
22          vulnerable. These devices sort of prey on the addictive  
23          allure of gambling, and easy money, and fast money. And I  
24          think Chief Justice Cole called it the pernicious practice,  
25          you know, and the havoc that was reeked.

1           So we go back to, what's the basis of the law? Why did  
2 the legislature pass this law back in 1999? And I led in my  
3 brief with it, because it is so critically important. In  
4 1999 specifically, this law was passed.

5           The law in question, 12-21-2710, which is the gaming  
6 machine law in this state, was passed. And just -- I'll  
7 quote it "To extend the prohibition on slot machines and  
8 other machines or devices pertaining to games of chance, to  
9 video games with a free play feature, or any other coin  
10 operated machine or device used for gambling, to extend the  
11 seizure and destruction provisions applicable to games of  
12 chance to these expanded prohibitions."

13           So the specific stated intent, was to extend the  
14 historical ban on slot machines and devices pertaining to  
15 games of chance, to these devices that are used for gambling.  
16 And we did all of that for the purpose of prohibiting cash  
17 payouts for credits earned on video game machines on or after  
18 July 1.

19           That's in the express sort of preamble to Act 125 in  
20 1999, which was sort of the bedrock sort of basis for the ban  
21 on video poker, and how we got to where we are with the state  
22 of 12-21-2710, today.

23           This repeal has been noted by courts. *The Westside Quik*  
24 *Shop versus Stewart*. As part of the act, repealed some of  
25 the historical provisions that allowed non-machine cash --

1 cash payouts, amended 2710 to remove the exception for video  
2 game machines, thereby rendering possession of these machines  
3 illegal.

4 You know, on or after July 1, of 2000, the machines are  
5 contraband, subject to forfeiture and destruction regardless  
6 of their use or operability. That's a direct quote from the  
7 South Carolina Supreme Court in the Westside case.

8 So all of these devices are rendered illegal if they are  
9 used for gambling. This machine was unequivocally used for  
10 gambling. It meets the definition of illegality in South  
11 Carolina.

12 And the trial court's order, simply, fails to apply that  
13 law, and fails to apply that standard. I think as I read the  
14 opinion, there's some confusion as to use making a machine  
15 contraband, per se, and I'll agree, the traditional notions  
16 of contraband, when we're talking contraband, per se, and  
17 we're talking derivative contraband, ordinarily, use puts you  
18 in the category of derivative contraband.

19 That's historically the case. But the South Carolina  
20 Supreme Court has said, unequivocally, that use on gaming  
21 machines renders them contraband, per se. That's the  
22 Alexander Amusement case, that I know Mr. Griffin is  
23 intimately familiar with.

24 I think it was his case back in the day. And the  
25 Supreme Court ultimately, sort of unequivocally, ruled that

1 these devices, when used for gambling, are contraband, per  
2 se, and they're, you know, -- the conclusion is appropriate  
3 in the light of South Carolina's long standing and long  
4 established statutory prohibitions on the ownership or use of  
5 specified gambling devices, including video gambling devices  
6 developed in recent years.

7 Ultimately, the finding in the (indiscernible) case  
8 was -- was a conclusion that the seized video game machine  
9 was contraband, per se, in the nature of a roulette wheel and  
10 not derivative contraband, such as a vehicle or parcel.

11 So use equals contraband, per se, in the gaming machine  
12 context. Now, ultimately, I think the magistrate was -- was  
13 sort of -- missed the mark in a couple of different areas. I  
14 think the application of 12-21-2710 is clear.

15 Any device licensed, pursuant to 12-21-2720 and used for  
16 gambling, is illegal. Any device that is operating -- that  
17 is sort of pertaining to games of chance, of whatever name or  
18 kind, is illegal with very limited, strict exceptions.  
19 Pinball machines and vending machines, those exceptions only  
20 apply if there is non-payout, or if the vending machine has a  
21 uniform, fair return for every dollar in certain. That  
22 simply does not and cannot apply in the context of a device  
23 where there is no dispute that there were illegal payouts  
24 made. It just simply does not track.

25 I think there was some -- some -- the argument in this

1 case that -- that opposing Counsel made at the hearing, in  
2 trying to incorporate a different statute. So this statute  
3 is based on the application of 12-21-2710.

4 The magistrates ultimately, sort of incorporated an  
5 analysis of a different statute, 12-21-2721, which does say  
6 coin operated machines and devices are not subject to  
7 confiscation due to a violation of 16-19-30, 16-19-40,  
8 16-19-50, or 16-19-130, other gambling provisions.

9 That has no bearing or application on this case. This  
10 case is based on the application of 12-21-2710. It's based  
11 on the order of destruction that initiated this. When the  
12 machines were seized from the location, they were taken to  
13 the magistrate in accordance with the statute, the magistrate  
14 signed the order of destruction.

15 That's a court administration form. It's form -- you  
16 know, court administration 690, it only references one  
17 statute. It only analyzes one statute. It only applies one  
18 statute, 12-21-2710.

19 And so any reference or acknowledgment of 12-21-2721, is  
20 simply off base. And so when you look at 2710 and the  
21 express prohibition on gambling devices, and the only  
22 exception being non-payout pin tables and non-payout in-line  
23 pin games, -- pinball machines, it simply isn't there.

24 I think you also -- the argument that some of these  
25 older cases, this Alexander Amusement case, and the Powell

1 case, and some of these cases that predated the 1999  
2 amendments, was just off base.

3 The 1999 amendments are clear. The law, as it stands  
4 today, is clear that cash payouts on these devices are  
5 illegal. Now, I know Mr. Griffin is going to stand here and  
6 say, "Well, my client owns the machine, and he didn't make  
7 the cash payouts.

8 The cash payouts were made by the bar." That's a  
9 distinction, without a difference. The payouts on the  
10 devices -- it's the -- it's known, the capability that this  
11 machine can be used for this, the machine's operation itself.

12 So you put money into the device, you pull back on the  
13 lever, it shoots the ball out. Ultimately, for the play, the  
14 machine spits out a ticket. There's only one purpose for the  
15 ticket.

16 Then they take the ticket to the bar and you get paid  
17 out for it. So the payout is based on the play of the  
18 machine. The machine facilitates the payout. The machine  
19 didn't actually spit cash out, it spit out a ticket that you  
20 took to the bar and you got paid out.

21 This was known. This operation is known. This  
22 capability is known. And so, you can't contract that away.  
23 You can't get rid of that functionality. Because we know  
24 that functionality exists, because we know that capability  
25 exists, you can't evade the statute.

1 I submit that's sort of an acknowledgment by the owner  
2 of the machine, that the machine is capable of doing that.  
3 So you have a contract acknowledging that this machine is  
4 capable of paying out.

5 You don't get to evade the statute because of that. So  
6 I mean, we simply -- I think the case law is clear. I think  
7 the application of the law is clear. I think the forfeiture  
8 and destruction are intended to serve as a deterrent for  
9 illegal behavior.

10 I think the case law suggests and mandates that we  
11 acknowledge, -- you know, the deterrent effect is just  
12 undercut completely if we have illegal conduct facilitated by  
13 a machine.

14 Illegal conduct and illegal cash payouts for the play of  
15 the machine, yet we return the machine. It simply does not  
16 correspond. The intent of the legislature is clear, these  
17 devices are not allowed to be used or operated in the state  
18 of South Carolina, if they are used for gambling.

19 We believe that the intent of the legislature controls.  
20 We believe the binding jurisprudence controls, and we think  
21 the magistrate just did not follow either. And we believe  
22 that mandates reversal, and that we would ask that Your Honor  
23 reverse the trial court, order the forfeiture and destruction  
24 of the machine again, obviously illegal payouts.

25 The magistrate found obviously illegal payouts. It

1 simply can't also be a non-payout pin table at the same time.  
2 And so incorporating the arguments that we made in our trial  
3 brief, we would ask that Your Honor reverse the trial court,  
4 uphold the original order of destruction, which is, of  
5 course, based on the application of 12-21-2710, and that you  
6 order the forfeiture and destruction of this machine. Thank  
7 you.

8 THE COURT: Thank you, sir. Mr. Griffin?

9 MR. GRIFFIN: Yeah. Good morning, Your Honor. I agree  
10 completely with Mr. Whitsett's analysis of what the question  
11 is. And the question is, if you take the machine, which  
12 doesn't -- it's a non-payout pin table machine, which is  
13 exempt from the statute, and I'm going to show you that in a  
14 minute.

15 And someone takes that machine and pays cash on it from  
16 behind the bar -- behind the counter, does that make that  
17 machine a payout machine, subject to seizure and forfeiture?  
18 That is the question.

19 And that's the question that Magistrates Bloom, a  
20 trained lawyer, a scholar, in many respects, answered in a 40  
21 page order. I'm going to answer it in four pages today, but  
22 he goes through an exhaustive -- and sometimes exhausting,  
23 analysis of the development of the gambling laws, the machine  
24 laws, and brings them up to date.

25 I left US Attorney's office in January of 1995, right

1 before then, there was a video game machine night that had  
2 been passed and again, a local option, -- there was a local  
3 option vote, that's how I first got introduced to this  
4 industry.

5 I was retained to challenge whether you could do local  
6 option in the state of South Carolina. But -- but the  
7 impetus of the video game machines act in 1994, Your Honor,  
8 was -- was a criminal case, *State v Blackman*, which in the  
9 gambling statutes, there was an exemption for payouts for  
10 free games of earn, or one on a machine.

11 And Mr. Blackman was prosecuted for gambling, and the  
12 Supreme Court analyzed that, that exemption said, no, that  
13 doesn't violate a gambling statute. So off we go with the  
14 experiment of video poker in South Carolina, which we started  
15 with local option.

16 We then -- that -- there was a new statute that,  
17 frankly, went to a statewide option. The Supreme Court threw  
18 that out. And the -- and what -- what ultimately happened  
19 was, we went back to pre Blackman.

20 We went back to pre Blackman. And -- which is -- and  
21 they -- they took out the exemption for -- from the gambling  
22 statute for paying off on the video games or any kind of  
23 game. So that is illegal.

24 That's illegal conduct. Now, Your Honor, I have a short  
25 PowerPoint that I would like to do, if I can share this, --

1 share my webinar window. So let me pull this up. Can you  
2 see that, Your Honor? I don't mean to ---

3 THE COURT: No, you're actually sharing ---

4 MR. GRIFFIN: Uh oh.

5 THE COURT: Your whole screen.

6 MR. GRIFFIN: Okay. Let me go back to share, then.

7 THE COURT: I've never shared my screen. I can't tell  
8 you how to do it, but what I'm seeing is the whole WebEx  
9 screen, I guess, as you see it, rather than your PowerPoint.

10 MR. GRIFFIN: How about now?

11 THE COURT: Yes, there it is.

12 MR. GRIFFIN: Great. So this is my PowerPoint. And the  
13 question that -- I agree with Mr. Whitsett, he's a good  
14 friend of mine, he's a great lawyer, and doing a fine job  
15 arguing this case, which is, unfortunately for him, a losing  
16 case.

17 But the question is, does the in-line pin table game  
18 become a payout game subject to compensation -- confiscation,  
19 when the owner, -- excuse me, when the owner of the location  
20 where the machine is being operated, makes payouts or free  
21 games from behind the counter.

22 Magistrates Bloom in his 40 page order, answered this  
23 question correctly, and the answer is, in-line pin table game  
24 is not subject to confiscation just because it's used in  
25 violation of the gambling statute.

1           So you start with how this machine -- machine was  
2 seized, and what brought us to Magistrate's court. And that  
3 is Section 12-21-2712, which says, any machine, board, or  
4 other device prohibited by 12-21-2710, must be seized by any  
5 law enforcement officer, and at once, taken before any  
6 Magistrate of the county, in which the machine, board, or  
7 devices was seized, you shall immediately examine it, and if  
8 satisfied that it is in violation of 12-21-2710 or any other  
9 law of the state, direct that it be immediately destroyed.  
10 So that's what happened. SLED picked up this machine, they  
11 were in a location, they believed they had evidence of cash  
12 payouts on the machine, and they took it to the magistrate,  
13 and the magistrate issued a preliminary order of seizure and  
14 destruction.

15           My client, -- we filed a post-seizure hearing, which  
16 we're entitled to. And the position we take is, this machine  
17 is an in-line pin game machine, which is not prohibited by  
18 12-21-2710, regardless of its use.

19           And we'll get there. So 12-21-2710 is a -- is a -- is a  
20 pretty wordy statute, and it -- and up until the "but"  
21 clause, -- the "B U T" clause, it outlaws just about  
22 everything that can be used for gambling in South Carolina,  
23 any video game machine with a free play feature operated by  
24 slot, or any other device operated by slot, which is  
25 deposited in coin, blackjack, keno, lotto, bingo, perhaps, or

1 any machine or device licensed, pursuant to 12-21-2710, and  
2 used for gambling, etcetera, etcetera, etcetera, goes on.  
3 But then, the operative clause for this case is, -- but the  
4 provisions of this section, -- and this is Section 2710, do  
5 not extend to coin operated, non-payout pin tables,  
6 in-line pin games, and then it goes on.

7 Your Honor, we agree -- we made factual stipulations in  
8 this case, and the factual stipulations essentially, make  
9 this an agreed upon in-line pin table game. Now, the  
10 question is, payouts, and it's stipulated that -- that the  
11 machine itself, doesn't spit out cash, doesn't spit out  
12 payouts.

13 And the tickets that he's referring to and the record,  
14 you'll see, they say, have -- have no cash value, only for  
15 free games. And then the agreements with the location  
16 operator says, do not pay off. And so the -- it is -- it  
17 doesn't spit out any cash.

18 THE COURT: Okay. Let me ask, this is just a standard,  
19 like, pinball machine?

20 MR. GRIFFIN: Yes, ma'am. It is a (indiscernible).

21 THE COURT: Yeah. Where you can hit it with your hip,  
22 and press -- buttons, and try to ---

23 MR. GRIFFIN: Yeah.

24 THE COURT: --- manipulate -- okay.

25 MR. GRIFFIN: Exactly. And it's a game of skill,

1       frankly. It's a mechanical pinball game played on a sloping  
2       table. The player can alter the course and the direction of  
3       the ball by actuating levers, you know, flippers, Pinball  
4       Wizard kind of stuff. And then ---

5               THE COURT: Let me ask this.

6               MR. GRIFFIN: Sure.

7               THE COURT: Yeah, let me ask this, so -- because I  
8       sometimes feel better in analogies. So if I go to  
9       Dave & Buster's, -- and I don't know, -- I mean, they've got  
10      video games, I don't know if they have pinball machines, and  
11      I don't know if those machines spit out tickets, but several  
12      of the games there do, right?

13              Skee-Ball and things like that. They give you tickets,  
14      which you go and exchange for a stuffed animal, a whistle, or  
15      whatever they do in 2024. I'm naming things that happened in  
16      1985, probably, but -- but you exchange those for things of  
17      value.

18              MR. GRIFFIN: Yes, you do.

19              THE COURT: Is -- is this that scenario, except I'm  
20      taking my tickets to the counter, and for each ticket,  
21      they're giving me \$1? A \$1 bill?

22              MR. GRIFFIN: Well, that's not the purpose of the  
23      tickets. The tickets are for purposes of just, you know,  
24      allowing the patron to come back later and play free games.  
25      But in this situation, the way the machine is set up is,

1 they're not permitted to redeem it for anything.

2 But for Dave & Buster's, Skee-Ball is a perfect example.  
3 The -- the way you get Skee-Ball out from under 12-21-2710  
4 is, it's not a video game machine, it's -- it is -- it's a  
5 game of skill, so it doesn't fall into the category of game  
6 of chance.

7 Now, -- now, -- now, -- frankly, we could have had a  
8 hearing on this to determine whether this is a game of skill,  
9 and it is a game of skill as stipulated, because the last  
10 stipulated fact here says, "The player can affect the outcome  
11 of the game"

12 And -- and so it's -- it's a pinball game, just as you  
13 would see at David & Buster's. And -- and the -- something  
14 popped up here. I'm sorry, Your Honor. The outcome depends  
15 on the player shooting a metal pinball into a particular  
16 divot.

17 It has flippers so that the player can operate it by  
18 hitting the pinball into the game. The player can bump the  
19 machine to affect the play of the pinball without tilting the  
20 game. This is an old school game.

21 This is -- this is what we saw in, you know, pre video  
22 poker days. This is a big, heavy pinball machine, and there  
23 are photos of it in the -- in Magistrates Bloom's return.  
24 So -- and as such, it -- it doesn't -- on all this -- all  
25 this, 2710, outlining everything in the world.

1           But the provisions of this section do not apply to coin  
2           operated, non-payout pin tables -- in-line games. So  
3           then -- then we -- then we come to the ultimate question, by  
4           paying out behind the counter, does it make it a payout  
5           machine rather than non-payout machine?

6           And as Magistrates Bloom found, -- and this question was  
7           answered -- pre video poker statutes. It is *Alexander*  
8           *Amusement Company versus The State of South Carolina*, and it  
9           is spot on.

10          And it controls the ruling in this case, by  
11          Magistrates Bloom and by Your Honor. And in this -- in the  
12          Alexander Amusement case, the Supreme Court said, "Coin  
13          operated, non payout pin tables with free play features could  
14          not be confiscated and destroyed by the state where such  
15          pinball tables were specifically exempt by statute, although  
16          business establishments leasing them, operated them as  
17          gambling devices by paying players for the free games won."  
18          Same thing that happened here.

19          Now, is the statute different? This is language from the  
20          opinion, Your Honor, and the exemption is identical. It  
21          says, -- and statute numbers are different in this section,  
22          5-621, but it says "It makes it unlawful to keep all the  
23          machines, etcetera, games of chance."

24          And that says, "But specifically exempts from such  
25          prohibition, coin operated, non-payout pin tables."

1       *Alexander Amusement versus South Carolina*. The question was,  
2       is it a non-payout pin table when the guy behind the counter  
3       takes cash on it?

4             And the answer by the state Supreme Court, which has  
5       never been overturned, which -- which applies today is, that  
6       the machine itself is not subject to confiscation. "The use  
7       for any such machine for actual gambling might support a  
8       transaction to charge a person with gambling, but the machine  
9       cannot be seized."

10            THE COURT: So that -- so -- right -- so you're -- I  
11       mean, going back to -- I keep using Skee-Ball just because  
12       that's easy, right? So you're saying that, yeah,  
13       Dave & Buster's, it spits out tickets.

14            Those tickets are for some other purpose, whatever you  
15       can get free games or toys or whatever it is, I don't know.  
16       But if someone at the front desk decides that they're going  
17       to give \$1 per ticket, that's illegal conduct, but does not  
18       make the machine itself an illegal contraband, seizeable,  
19       subject to destruction machine.

20            MR. GRIFFIN: 100 percent. That's exactly right.

21            THE COURT: Got it.

22            MR. GRIFFIN: And the three of us are at  
23       Dave & Buster's, you're excellent at Skee-Ball, and  
24       Mr. Whitsett and I decided to bet on whether you can break  
25       100, that, -- you know, -- we -- you know, we may go to jail

1 for gambling, but nothing -- that Skee-Ball machine is still  
2 sitting there.

3 Same thing with pool tables. Same thing with, you know,  
4 any other class two machine. Anybody can gamble on the  
5 outcome. But that doesn't make the machine illegal, subject  
6 to seizure under 12-21-2712.

7 And that -- that is the question. Now, what was not  
8 present in the Alexander Amusement case, is a subsequent  
9 statute that's on the books today, and -- and that is  
10 12-27-20 -- 12-21-2721.

11 And it says just what we talked about, coin operating  
12 machines or devices licensed, pursuant to 12-21-2720, which  
13 is what this machine is licensed. It's class two under  
14 12-21-2720, and I set that out for my brief, are not subject  
15 to confiscation under 12-21-2712, which is how this machine  
16 was seized, due to any violations of -- and these are the  
17 gambling statute, just what we talked about.

18 Now, understand, SLED wants -- wants the law to be  
19 different. They don't want this machine to be exempted from  
20 12-21-2710, but it is. And so their beef is with the  
21 legislature, not with Magistrates Bloom, not with me.

22 But the law is crystal clear, Your Honor. And -- and  
23 like, I think that's four pages. I told you I could do that  
24 in 4 pages, not 40. But -- but it is -- this is a  
25 straightforward statutory analysis.

1           Now, honestly, I looked to see if there are forfeiture  
2 statutes for -- for gambling in South Carolina, just because  
3 you -- if you charge someone with gambling, do you get the  
4 forfeit, you know, stuff? I haven't found it.

5           Maybe there should be. There are a lot of federal  
6 statutes that will pick it up. I haven't seen anything in  
7 the state of South Carolina. But that's not what happened  
8 here.

9           What happened here is, they -- they -- they seized it  
10 under 12-21-2712, which is -- it's device illegal, per se,  
11 but called it violated, 12-21-2710, which we know is a carve  
12 out.

13           12-21-2710 doesn't apply to this because it's a  
14 non-payout pin table machine, meaning it doesn't spit out  
15 cash. And -- and then, -- you know, -- but -- but they want  
16 to make it a payout machine, because the guy behind the  
17 counter paid out.

18           And *Alexander v State* says, that doesn't make it a  
19 payout machine, period. End of story. Not only that, --  
20 well, 21 -- 2721 says you can't confiscate it because the guy  
21 behind the counter gives a cash payout. That's -- that's our  
22 argument. Happy to answer any further questions.

23           THE COURT: No, I think I understand it. Happy to hear  
24 from Mr. Whitsett.

25           MR. WHITSETT: Thank you, Your Honor. Briefly, -- and I

1 do think I'm going to try and share my screen just to  
2 show -- just -- it's not, -- take a little disagreement.  
3 It's not a traditional pinball machine that you would see at  
4 some of those things.

5 And I do think, looking at the machine, it is -- it is  
6 different in terms of what we're talking about. All right.  
7 Does that show the -- do you see the photograph? The --  
8 okay.

9 So this is from the magistrate's return. This is on  
10 page 48 of the magistrate's return, and it's black and white.  
11 I'm sorry about the quality of it. But this is the backdrop  
12 that you see on the -- on the device.

13 And you'll see there's nine -- there's different games  
14 that the player selects, but all of them ultimately bring you  
15 to a similar screening here, where you see all the numbers,  
16 you know, the -- the random numbers up on the backdrop.

17 So these are just the different games. You can see  
18 they're all similar in style. And then the field itself is  
19 not what you traditionally see on a pinball machine, where  
20 you're playing and bouncing and doing all these things.

21 All of the fields have all the different numbers. The  
22 numbers then correspond to the bingo card. So I mean, it's  
23 really more akin to an electronic bingo style game, in that  
24 you use a plunger, it goes into the hole, it lines up here.  
25 You're trying to fill out the bingo card, similarly. So it's

1 not truly a traditional pinball machine in its, -- you know,  
2 sort of application and scope. We certainly -- use a  
3 plunger, you should send the ball, you can bump it.

4 There are flippers, and you're trying to get it in a  
5 hole. You know, I'll touch on the skill arguments in a  
6 moment, because ultimately, -- there -- you also -- this free  
7 play -- the tickets, I submit, you cannot insert the tickets  
8 into the device to play them.

9 The device is played solely by the operation of money.  
10 So these -- this idea of the free play ticket, it doesn't go  
11 back in the machine. You take the ticket, you take it to the  
12 bar, and it's paid.

13 It's not \$1 per ticket, it's based on the winning. It's  
14 based on the amount that you get. And we had, you know,  
15 hundreds of dollars put into this machine, and, you know,  
16 1000s of dollars paid out on it.

17 So this isn't your traditional, you know, kiddie prize  
18 type analysis here, I would argue that skill versus chance  
19 doesn't matter. The law in South Carolina from the Mount  
20 Pleasant (indiscernible) case, says unequivocally, the skill  
21 chance ratio does not matter.

22 It says, is there a wager? Are you putting money in for  
23 the chance to win more money? The answer to that question is  
24 unequivocally, yes, people put money into this machine for  
25 the chance to win money.

1           That takes the skilled chance argument out of it. If it  
2 is used for gambling, people put money in, people make wagers  
3 on it, it is illegal. We directly quoted the Supreme Court  
4 opinion that makes that distinction, and that says "The  
5 definition of gambling in South Carolina includes games in  
6 which skill outweighs chance. If you have a wager, money put  
7 in for the chance to win more money, it is illegal." So  
8 again, I don't think that argument in the skill context,  
9 ultimately holds.

10           THE COURT: So then you would argue, if Dave & Buster's  
11 starts to give \$1 per ticket for the Skee-Ball tickets, then  
12 the Skee-Ball machine is now illegal and can be seized and  
13 destroyed?

14           MR. WHITSETT: If the machine is used for gambling in  
15 that context. If I put money into the Skee-Ball machine for  
16 the chance to win money for the play of the Skee-Ball  
17 machine, I believe that renders it illegal.

18           THE COURT: Even if that's the same machine that's  
19 sitting at transmission arcade, and it -- the mechanism's the  
20 same, it works the same, it spits out tickets just  
21 transmission arcade says, "Okay. Good. Your top winner of  
22 the night. We'll put your name up on the board, rather than  
23 giving you something in exchange for your tickets."

24           The person with the most tickets that night gets a free  
25 beer, or they're queen of the restaurant, or whatever, or

1 king of the restaurant versus -- but it's the same machine,  
2 one of them is an illegal, seizeable machine, and the other  
3 is not?

4 MR. WHITSETT: I think the critical difference that  
5 we're talking about here, is cash payouts. Because the basis  
6 of the law, is cash payouts. And we're -- in this machine,  
7 we have cash payouts. So I don't know that that's a -- the  
8 exact analogy that we're talking about, because ---

9 THE COURT: It is.

10 MR. WHITSETT: --- ultimately to prohibit these cash  
11 payouts, and that's -- that's what we're talking about, and  
12 that's what we have.

13 THE COURT: But I think the analogy is closer -- close  
14 to being on point, because no one's saying that this machine  
15 in question spits out dollar bills. It's not like an ATM  
16 where you're getting cash.

17 You are, in fact, getting a ticket, right? And that  
18 ticket has a value -- and it may print on one ticket. And  
19 frankly, nowadays, I keep talking about these tickets that  
20 Dave & Buster's -- nowadays, they don't give you individual  
21 tickets where you count them up and see how many you have.  
22 It's -- it's actually a credit on your electronic card that  
23 you use, right? So you get one thing that has value,  
24 depending on how the game was played, what your results were  
25 in the game. So is the difference, not in what happens with

1       that payout, so to speak, whether it's translated into cash,  
2       or translated into something else, or translated into  
3       nothing?

4               MR. WHITSETT: I mean, I would take the position that  
5       any payout for the play of the device, renders it illegal.  
6       And in this case, we're talking about cash payouts. And so  
7       we don't even have to go to a kiddie prize analysis or an  
8       amusement analysis.

9               It's -- we're talking about and dealing with cash  
10       payments. So I mean, I do think that puts this device  
11       squarely in the intent of what the legislature was seeking to  
12       prohibit, because we have cash payouts.

13              So, I mean, we're not dealing with the other context.  
14       We can certainly argue them all day, and I do think the law  
15       was designed to protect against a lot of that. And there's  
16       some old historical cases talking about the amusement is a  
17       prize that would sufficiently make a device illegal.

18              But we're not talking about that. We're talking about  
19       cash prizes. The intent of the legislature when passing  
20       these statutes, was to eliminate cash payouts. We get there  
21       in this context by not only having the ability to charge, you  
22       know, with -- with -- with criminal conduct, but the  
23       deterrent effect of forfeiture and destruction of these  
24       machines justifies the -- sort of the analysis. And that's  
25       what we're talking about, and that's what I think,

1 ultimately, the legislature intended with the application of  
2 these statutes.

3 MR. GRIFFIN: Your Honor, that -- the answer to this  
4 case is -- is *Alexander versus State*. That -- that is  
5 (indiscernible). And it's also in 12-21-2720. Mr. Whitsett  
6 keeps -- the (indiscernible) case -- the question there  
7 is -- is Texas Hold'em a game of skill or game of chance, and  
8 the Supreme Court, it doesn't matter if you're wagering on  
9 it.

10 It's a wager. But that's a card game, and it's whether  
11 that violates the gambling statutes. You don't have to  
12 determine what violating the gambling statutes  
13 (indiscernible). We have *Alexander*, 12-21-2721, which says  
14 that doesn't make it illegal to possess.

15 And so -- and you can't seize it up -- you can't seize  
16 it. Under Mr. Whitsett's argument today, we would not have  
17 the golf tournament. We wouldn't have the Darlington 500.  
18 We wouldn't have -- you know, we wouldn't have the Camden  
19 (indiscernible). I mean, that's not the law.

20 MR. WHITSETT: And obviously, I -- there's no devices  
21 used in that. These are coin operated machines and devices.  
22 That is the breadth and scope of 12-21-2710, that's what  
23 we're talking about.

24 That's what we're dealing with in this context. And  
25 we're dealing with the legislative intent behind the passage

1 of 12-21-2710. And the amendments in 1999. And so, you  
2 know, to say that this is going to affect Darlington or a  
3 golf tournament or something, I mean, that's simply just not  
4 -- you can't use 2710 to get there.

5 And maybe nor, is that even, you know, sort of the same.  
6 I do want to touch on Chimento, because Chimento said "The  
7 statutory definition of the word "gambling" in South  
8 Carolina, includes games."

9 So the statutory definition of the word gambling, which  
10 is the word in 2710, devices licensed, pursuant to 2720 and  
11 used for gambling. It's the same word that the Supreme Court  
12 said to analyze and to include this.

13 So I mean, we think when you put money into a device for  
14 the chance to win money, and we do get paid money, that  
15 renders the device itself illegal and subject to forfeiture  
16 and confiscation in South Carolina.

17 MR. GRIFFIN: Except in-line pin games. Pin tables are  
18 carved out in (indiscernible).

19 MR. WHITSETT: Non payout, but again, obvious illegal  
20 payouts.

21 MR. GRIFFIN: We're back to the question that  
22 (indiscernible) this issue.

23 THE COURT: Okay.

24 MR. GRIFFIN: And he hasn't really explained why  
25 *Alexander versus State* doesn't control, but it does.

1           MR. WHITSETT: It was enacted was -- it was a decision  
2 that predated the 1999 amendments, and we have the specific  
3 language in there. So I think the legislative intent with  
4 the passage goes -- that law controls.

5           THE COURT: All right, folks. This is one that I'm  
6 going to take under advisement. I must admit, I did not read  
7 the file in it's entirety, prior to today. Probably because  
8 I didn't look at my docket, and typically, you know, appeals,  
9 I can sort of do them on the fly, but I had no idea there was  
10 a 40 page order from the Magistrate in this case that needed  
11 to be read, and I certainly couldn't do that while you all  
12 are were talking. But I think I understand the arguments.  
13 I'm going to read the order and your briefs, of course, and  
14 I'll let you know something in writing.

15           MR. GRIFFIN: Thank you.

16           MR. WHITSETT: Thank you, Your Honor.

17  
18  
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25

## CERTIFICATE OF TRANSCRIBER

I, Kelley Primm, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 23rd day of August, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 8, 2024

  
Kelley Primm

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

S.C. State Law Enforcement Division )  
Appellant-Plaintiff )

VS. )

A Montana Deluze 2 Machine, and )  
Video Solutions I, Inc. )  
Respondents -Defendants )

IN THE MAGISTRATE COURT  
FOR RICHLAND COUNTY  
Mag.Ct.Case No. 2022-cv-40107-00687

**Civil Appeal No.: 2023-CP-40-04886**

RETURN OF THE CIVIL APPEAL

The attached documents comprise the case file of the Richland County Upper Township Magistrate Court, by and through the Calhoun County St. Matthews Magistrate as designated magistrate judge in this case. As required by Section 18-7-60, SC Code of Laws, this file is transmitted to the Court of Common Pleas as the result of an appeal.

The following documents are attached:

- Summons, Complaint and Proof of Service
- Pretrial Motions and Orders granting or denying
- Jury Strike Proceedings (if applicable)
- Trial proceedings, summary of trial
- Instructions given to jury or denied
- Order of Judgment signed by the Trial Judge
- Post-trial Motions and Orders granting or denying
- All papers and notices of hearings and trial
- Notice of Appeal and date filed with the Court
- Other (describe): Trial Exhibits

2023 OCT -2 AM 9:00  
JENNIFER W. MORRIS  
C. P. & C.S.

RICHLAND COUNTY  
FILED

  
JUDGE Jeffrey P. Bloom

**St. Matthews Magistrate**  
**2833 Old Belleville Road / P O Box 191**  
**St. Matthews, SC 29135**  
**Phone: (803) 874-1112**  
**Fax: (803) 874-1111**

**September 29, 2023**

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 S.C. State Law Enforcement Division )  
 Appellant-Plaintiff )  
 VS. )  
 A Montana Deluze 2 Machine, and )  
 Video Solutions I, Inc. )  
Respondents -Defendants )

IN THE MAGISTRATE COURT  
 FOR RICHLAND COUNTY  
 Mag.Ct.Case No. 2022-cv-40107-00687

**Civil Appeal No.: 2023-CP-40-04886**

MAGISTRATE COURT RETURN

2023 OCT -2 AM 9:03  
 JENNIFER S. MORRIS  
 C. S.P. G.S.  
 RICHLAND COUNTY  
 FILED

ON APPEAL TO THE FIFTH CIRCUIT COURT OF COMMON PLEAS

The St. Matthews, Calhoun County, magistrate court submits this Return on Appeal of the Bench Trial in the above-captioned civil case as the record in this case. On December 19, 2022, the court held a Bench Trial in this case. Appellant S.C. State Law Enforcement Division (“SLED”) was represented by its General Counsel Adam L. Whitsett. Respondents were represented by Jim Griffin, Richard Harpootlian, and Frank McMaster. The undersigned magistrate judge was assigned this case by Order of the S.C. Supreme Court, Hon. Chief Justice Donald W. Beatty, dated December 16, 2022. Appellant brought this case for the seizure and destruction of a pinball gaming machine Montana Deluxe 2, and its owner Video Solutions I, Inc. On August 17, 2023, this court issued an Order finding in favor of Respondents. On September 18, 2023, Respondent filed a timely appeal.

SUMMARY

On April 20, 2022, SLED seized a pinball machine from the premises of a third-party, Tavern On Broad, in Richland County. On April 21, 2022, the presiding magistrate in Richland County issued an Order of Destruction. On May 3, 2022, counsel for Respondent filed a timely motion for a post-seizure hearing. After all of the Richland County magistrates recused themselves, on December 16, 2022 the undersigned magistrate was assigned this case. On December 19, 2022, a hearing was held on this matter.

On August 17, 2023, the undersigned magistrate court issued a detailed Order, making findings of fact and conclusions of law, and including the procedural history of this case, the statutes and case law applied by the court, reference to the exhibits submitted by the parties and related matters. On August 18, 2023, the Order was served

on counsel for Appellant and Respondent via electronic mail by Chief Clerk of Court for the Calhoun County Magistrate Courts Lauren Davis Smith; and service was confirmed by Tierra Hammond, Senior Summary Court Clerk for the Upper Township Magistrate. The magistrate court Order dated August 17, 2023, is incorporated herein and attached, and is submitted as this magistrate court's Return since it sets forth all of the matters in detail as may be needed by the appellate court for its review of this case, along with the Attachments listed below.

I CERTIFY THAT THIS IS A TRUE AND ACCURATE RECORD OF THE COURT IN THIS CASE.

  
Jeffrey P. Bloom – Magistrate

Dated: September 29, 2023  
St. Matthews Magistrate Court  
2833 Old Belleville Road  
St. Matthews, S.C. 29135  
Tele. (803) 874-1112 // Fax (803) 874-1111

THE RECORD IN THIS CASE – ATTACHMENTS:

- [A] Magistrate Court Order of August 17, 2023 [40 pp.]
- [B] Appellant's Notice of Appeal and Certificate of Service [3 pp.]
- [C] Appellant's Exhibits # 1 – 5
- [D] Respondent's Exhibits # 1 – 2
- [E] Respondent's Post-Seizure Request for a Hearing and Pre-Trial Brief dated May 5, 2022 [5 pp.]
- [F] Appellant's Memorandum In Support of Destruction dated December 16, 2023 [17 pp.]
- [G] Richland County magistrate court Order of Destruction / Notice of Post-Seizure Hearing and case file correspondence/documents [9 pp.] (duplicate pages not included but can be submitted on request)

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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

S.C. State Law Enforcement Division )  
Appellant-Plaintiff )

VS. )

A Montana Deluze 2 Machine, and )  
Video Solutions I, Inc. )  
Respondents -Defendants )

IN THE MAGISTRATE COURT  
FOR RICHLAND COUNTY  
Mag.Ct.Case No. 2022-cv-40107-00687

**Civil Appeal No.: 2023-CP-40-04886**

MAGISTRATE COURT RETURN

ATTACHMENT A:

Magistrate Court Order of August 17, 2023 [40 pp.]

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 S.C State Law Enforcement Division, )  
 Plaintiff )  
 v. )  
 )  
 A Montana Deluxe 2 machine; and )  
 Video Solutions I, Inc. )  
 Defendants )

IN THE MAGISTRATE’S COURT  
 Case No.: 2022-CV-40107-00687

**ORDER**

This matter came before this court on December 19, 2022 for a post-seizure hearing of an alleged gambling machine. Plaintiff S.C. State Law Enforcement Division (hereinafter, “SLED” or Plaintiff) was represented at the hearing by its General Counsel Adam L. Whitsett. The owner of the device at issue, Video Solutions I, Inc., was represented at the hearing by Attorneys Jim Griffin, Richard Harpootlian, and Frank McMaster. Also present were Fred Honeycutt, owner of the licensed business Tavern on Broad, and his attorney Paul Ferrara; but Honeycutt is not a party to this case or hearing. The court rules in favor of the Defendant.

The court makes the following findings of fact and conclusions of law.

**INTRODUCTION.**

Our General Assembly declared that video poker gambling machines were a scourge in our State, and enacted laws banning them. S.C. Code §12-21-2710. Our S.C. Supreme Court recognized the societal problems involved in the video poker industry, gave to the Legislature the challenge to amend the statute, and upheld the constitutionality of the new 1999 law in Act 125 and reflected in S.C. Code Ann. §12-21-2710. *Westside Quik Shop, Inc. v. Stewart*, 341 S.C. 297, 534 S.E.2d 270 (2000), *overruled on other grounds, Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005). This is not that case.

This is a pinball machine specifically exempted in the same statute §12-21-2710, and in §12-21-2721, which otherwise prohibits video poker, slot machines, and similar video gambling devices. The conduct of the proprietor of the business in this case was unlawful. The conduct of the owner of the machine was not; and the machine itself – a nonpayout in-line pinball game – is not one of the listed prohibited machines in the statute and is specifically exempted by statute.

Therefore, this court rescinds the Order of Destruction and Orders that the machine be returned to defendant VS-I based on the findings and conclusions as contained herein.

### **BACKGROUND.**

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, and owned by Honeycutt.<sup>1</sup> During this inspection, SLED agents observed what they believed to be an illegal gaming device on which individuals gambled and received cash payouts at the bar.

In accordance with S.C. Code Ann. § 12-21-2712, SLED agents seized the device and took it to an appropriate Richland County Magistrate Judge who examined it and issued an Order of Destruction finding that the machine violates South Carolina Code Ann. § 12-21-2710. The said Order, dated April 21, 2022, authorized the destruction of the machine and informed defendants of their right to a post-seizure hearing.

On May 3, 2022, counsel for Defendant filed a timely request and motion for a post-seizure hearing. The matter then was held in abeyance. During this time all of the Richland

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<sup>1</sup> Honeycutt was issued a nuisance citation against his establishment's liquor license. Because he is not a party to this case, he is not bound by any of the stipulations herein.

County magistrates recused themselves. On December 16, 2022, Chief Justice Donald Beatty of the S.C. Supreme Court issued an Order assigning the undersigned magistrate with jurisdiction of this case. In the interim, the Richland County magistrate court had tentatively scheduled a post-seizure hearing with the attorneys for December 19, 2022. The undersigned magistrate conducted such hearing.

At the December 19<sup>th</sup> hearing, counsel for SLED and counsel for Video Solutions I, Inc. (hereinafter, "VS-I"), stipulated to all of the relevant facts so that no testimony was presented to the court. The attorneys presented legal arguments at the hearing regarding the legality or illegality of the device in question and related issues. They also submitted exhibits without objection.

The parties entered into stipulations, in detail below, which included that this pinball game does not dispense money directly to the players, but that the proprietor at the establishment paid cash to players for winnings won by playing the device. However, the owner of the machine submitted into evidence a contract which prohibited cash payouts on the device at the licensed location Tavern on Broad. After the hearing in court, the undersigned judge and parties adjourned for a visual inspection of the machine. No testimony, statements, or arguments, were presented during this visual inspection.

At the conclusion of the December 19<sup>th</sup> hearing, the court granted the parties request to submit post-hearing briefs or proposed Orders to the court, the deadline of which was extended to accommodate the attorneys' other commitments. On March 31, 2023, SLED timely submitted its post-hearing brief and/or proposed Order. On April 4, 2023, attorneys for defendant VS-I timely submitted their post-hearing brief and/or proposed Order. This court took the matter under advisement.

Before providing this court's analysis of the matter, the court now sets forth the exhibits entered into evidence, the stipulations agreed upon between Plaintiff and Defendant, the statutes and case law applicable to this matter, and the arguments presented by counsel.

### **EXHIBITS.**

Plaintiff submitted the following Exhibits, separated by this court into five Exhibits:

(1) PL.Ex.#1. Photographs of the machine and its various games; (2) PL.Ex.#2. Photo of S.C. Dept. of Revenue sticker on the machine; (3) PL.Ex.#3. Counters in the machine; (4) PL.Ex.#4. Photos of the machine in the establishment with sign of "Top Score Will Receive a \$25.00 Bar Tab" and cash money confiscated for cash payouts; (5) PL.Ex.#5. Photos of printed receipts from the machine showing the "High Score" and "Points. No Cash Value. For Amusement Only."

Defendant submitted the following Exhibits: (1) DEF.Ex.#1. Copy of written contract between Defendant VS-I, owner of the machine, and Honeycutt, the proprietor of the business; (2) DEF.Ex.#2. Memorandum Of Understanding between Defendant VS-I and Honeycutt.

All exhibits were submitted and accepted without objection.

### **STIPULATIONS.**

Counsel for the respective parties indicated that there was virtually no dispute as to the underlying facts of this case such that stipulations of the facts were in order in lieu of the presentation of live witnesses. The stipulations, as this court understood them, were as follows.

- The Montana Deluxe 2 is a mechanical game device.
- It is a mechanical pinball game played on a sloping table, the object being to shoot a ball, driven by a spring-operated plunger, up a side passage, causing the ball to roll back down

against pins and through channels that flash or ring, with the goal being that the pinball comes to rest in particular holes on the playing field.

- The player can alter the course of the direction of the ball by actuating one or more levers or flippers causing the lever or flipper to strike the ball.
- The outcome depends upon the player shooting a metal pinball into a particular divot on the playing table.
- It has a “plunger” so that the player has the ability to adjust how hard or soft the pinball is discharged into the game; and it has “flippers” so that the player can operate it by hitting the pinball into the game; and the player can “bump” the machine to affect the play of the pinball but without “tilting” and defaulting the game.
- Video Solutions I, Inc. is the owner of the pinball machine.<sup>2</sup>
- VS-I had a written contract lease with the owner of the business establishment, Honeycutt and Tavern On Broad; and the contract, along with a written memorandum of understanding, specifically prohibited the lessee, Honeycutt, from using the pinball machine for gambling, cash payouts, or other illegal activity.
- Honeycutt as the proprietor of, and/or his designated employees at, Tavern on Broad did in fact award cash payouts to players of the game.
- The player can affect the outcome of the game.

This court offered the parties the opportunity to present any witnesses for any facts to be placed in evidence that were not stipulated to at the court hearing. The parties stated no witness testimony was needed for their respective positions.

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<sup>2</sup> Video Solutions I, Inc. is added as a defendant party because it is the owner of the machine, and as such has standing to contest its seizure and destruction. Rules 9 and 14, Mag.Ct.Rules. Plaintiff acknowledged that VS-I has standing in this matter and is a proper party.

**RELEVANT STATUTES.**

The relevant statutes submitted by the parties include three which address prohibited machines, confiscation, and destruction. They are: S.C. Code Ann. §12-21-2710; §12-21-2712; and §12-21-2721.

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. In other words, it defines "prohibited machines." This law states in its entirety:

SECTION 12-21-2710. Types of machines and devices prohibited by law; penalties.

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.** (emphasis added).

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.

[court's note: This following section does not appear relevant to the issues at bar, but is included so that the entire statute, as amended, is set forth herein].

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.

The next code section as submitted by the Plaintiff is S.C. Code Ann. §12-21-2712. It is one of two confiscation and destruction statutes. It reads as follow

SECTION 12-21-2712. Seizure and destruction of unlawful machine, devices, etc.

Any machine, board, or other device prohibited by Section 12-21-2710 must 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 or any other law of this State, direct that it be immediately destroyed.

The next code section as submitted by Defendant is S.C. Code Ann. §12-21-2721. It is the second of the two confiscation and destruction statutes. It reads as follows:

SECTION 12-21-2721. Confiscation of 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.** (emphasis added).

It is noted that the Sections 16-19-30 thru 130, above, are the criminal gambling statutes. Their statutory language is not set forth here because the actual content and language of those criminal statutes are not pertinent to this court's decision.

## RELEVANT CASE LAW.

Our State Supreme Court has spoken at length about the video poker industry, video poker machines and prohibited gaming devices, and other games and gaming devices both legal and illegal. The parties submitted and argued the following cases to the court; or these cases were cited within cases submitted by the parties, and were applicable to this court's analysis.

### Video Poker and Gambling Machine Cases.

The history of the Court's opinions changed over time as the Legislature enacted reforms over the years regarding gambling machines, including amendments to the above statutes.

As early as 1929, the Court affirmed the Legislature's authority to prohibit gambling machines for the general benefit of society. *Harvie v. Heise*, 150 S.C. 277, 148 S.E. 66 (1929). In *Harvie*, the Court found a store's mint-dispensing machine in violation of the gambling statute since the machines also randomly dispensed a brass token. *Id.* 148 S.E. at 68-69. But the brass token could be redeemed for the store's merchandise. *Id.* The Court found that even though the tokens were stamped "no value," that was "a mere subterfuge..." as it was clear from the record in the case that the tokens were exchanged for goods. *Id.* at 69.

In *Squires v. S.C. Law Enforcement Division*, 249 S.C. 609, 155 S.E.2d 859 (1967), in a case of gambling slot machines, the Court held even the machine parts, and dyes/molds used to make parts, are all subject to seizure and destruction. *Id.* 249 S.C. at 613, 155 S.E.2d at 861. Some of the slot machines were fully complete while others were in stages of repair or assembly, and thus inoperable. *Id.* at 610-11, 155 S.E.2d at 859-60. But that was immaterial to the Court's decision: "The statute does not require that the gambling devices be operative or in complete repair before they are subject to seizure and destruction." *Id.* at 612, 155 S.E.2d at 860. Thus, all component parts of an illegal gambling device are also illegal. *Id.* at 612-13, 155 S.E.2d at 861.

In *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991), the Court construed a gambling statute, §16-19-40, where the video poker machine did not dispense the cash payout, instead the proprietor did. *Blackmon*, 304 S.C. 271-72, 403 S.E.2d at 660-61. The Court found that there was obviously an anomaly in the law: the gambling statute at that time prohibited the machine from making the cash payout, but not the owner of the business where the machine was located and operated. *Id.* at 271-72, 403 S.E.2d at 660-61. That was the anomaly: barring a machine from making the payout but not making it unlawful for the human to make the cash payout. *Id.* at 274, 403 S.E.2d at 662. The Court held that a criminal charge could not stand against the business owner making the cash payouts. *Id.* The Court invited the Legislature to address what was essentially a “loophole” in the law allowing video poker. *Id.* Ultimately the Legislature did so in 1999 with Act 125.

In the interim, in *State v. Four Video Slot Machines*, 317 S.C. 397, 453 S.E.2d 896 (1995), the Court affirmed a magistrate’s Order of confiscation and destruction of a “Lucky 8” slot machine. *Id.* 317 S.C. at 398, 453 S.E.2d at 897. The Court found that “The ‘Lucky 8 Line’ machine is clearly a slot machine.” *Id.* at 399, 453 S.E.2d at 897. The Court held that the statute made slot machines illegal by their definition as slot machines. *Id.* at 400, 453 S.E.2d at 898.

In *State v. One Coin-Operated Video Game Machine*, 321 S.C. 176, 467 S.E.2d 443 (1996), the Court again held that a slot machine confiscated by law enforcement under the earlier version of §12-21-2710 was lawfully subject to destruction under the magistrate court’s Order. *One Coin*, 321 S.C. at 177, 467 S.E.2d at 444. The “Cherry Master” was nothing more than another slot machine and similar to the machine in *Four Video* which the Court had declared illegal. *Id.* at 178, 467 S.E.2d at 444 citing *Four Video*, *supra*. The defense argument in *One Coin* focused on the “extensive licensing and regulatory scheme” of another statute which had been passed in the

interim to regulate video poker.<sup>3</sup> *Id.* at 177-78, 467 S.E.2d at 444-45. But the Court held that licensing and regulatory requirements do not make an illegal machine a legal one. *Id.* at 179, 467 S.E.2d at 445.

In 1999, the Legislature passed Act 125, it was signed by the Governor, and the mandated prohibitions on video poker and other devices went into effect on July 1, 2000. In a series of decisions, the Court then addressed the new Act 125 of which §12-21-2710, above, is a part and defined what constitutes a prohibited machine.

In *Joytime Distributors & Amusement Co., Inc. v. State*, 338 S.C. 634, 528 S.E.2d 647 (1999), the Court analyzed the new statute on an expedited schedule. The Court upheld the major parts of the statute outlawing the video poker gambling industry. *Id.* 338 S.C. at 653, 528 S.E.2d at 657. But the Court ruled that a voter referendum on video poker was an unconstitutional delegation of power; although that section of the Act was severable and so did not affect the other legitimate and constitutional portions of the statute. *Id.* at 643, 528 S.E.2d at 652.

In *Westside Quik Shop, Inc. v. Stewart*, 341 S.C. 297, 534 S.E.2d 270 (2000), *overruled on other grounds by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005),<sup>4</sup> the Court again addressed video poker. The Court upheld the statutory scheme which made the mere possession of video poker and gambling devices illegal, and that such machines were subject to forfeiture and destruction without compensation. *Id.* 341 S.C. at 306, 534 S.E.2d at 274-75.

In *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 525 S.E.2d 872 (2000), the Court upheld a magistrate's Order to destroy video slot machines, again identified as

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<sup>3</sup> Video Game Machines Act. S.C. Code Ann. §12-21-2770 to -2808, later repealed in Act 125.

<sup>4</sup> *Byrd* overruled *Westside* to the extent that *Westside* applied two separate U.S. Supreme Court tests to determine whether a taking had occurred under the 5<sup>th</sup> Amendment, U.S. Const.; and only one test under the "*Penn Central*" analysis was now controlling. *Byrd*, 365 S.C. at 80, 620 S.E.2d at 658, Fn.9. Otherwise, the core holding of *Westside* is still good law.

the “Cherry Master” and “8-Liner,” but the facts were slightly different than *Four Video* or *One Coin*. The difference in *192 Coin-Op.* involved the machines being in storage, and not in actual use at an establishment open to the public; and, the machines were not even operational as they were in stages of repair or assembly. *Id.* 338 S.C. at 176, 525 S.E.2d 876. The Court found it immaterial that the machines were not operational: the machines were prohibited by the §12-21-2710 statute. *192 Coin-Op.*, at 184-85, 525 S.E.2d at 877. The machines were “contraband” and thus illegal *per se*. *Id.* at 189, 525 S.E.2d at 879.

Several years after the initial flurry of video poker cases from the enactment of Act 125, the Supreme Court addressed newly raised issues yet involving the same types of video poker machines or gaming devices covered by §12-21-2710.

In *Sun Light Prepaid Phonocard Co. v. State*, 360 S.C. 49, 600 S.E.2d 61 (2004), the Court held that a “Lucky Shamrock” machine which sold prepaid long distance telephone cards was a gambling device because attached to the cards was a game piece with a chance to win a cash prize. *Id.* 360 S.C. at 50-51, 600 S.E.2d at 62-63. The cards provided a legitimate 2 minutes of long distance phone service. *Id.* at 52, 600 S.E.2d at 63. But the court found that the long distance minutes were “mere surplusage” to the actual gambling portion of the machine and held the “pull-tabs” to be illegal. *Id.* at 55, 600 S.E.2d at 64.

In *Mims Amusement Co. v. S.C. Law Enforcement Division*, 366 S.C. 141, 621 S.E.2d 344 (2005), the Court addressed whether due process required a jury trial before an Order of destruction could be implemented against a video poker machine. *Id.* 366 S.C. at 145, 621 S.E.2d at 345. It does not. *Id.* at 155, 621 S.E.2d at 351. The Court explained there are “...two classes of contraband subject to forfeiture by statute...” identified as “contraband *per se*” and “derivative contraband.” *Id.* at 149-50, 621 S.E.2d at 348. Contraband *per se* are items that are by statute

“illegal to possess and not susceptible of ownership. *Id.* This includes illegal narcotic drugs such as heroin, cocaine, unlawful firearms, and of course gambling devices. *Id.* Derivative contraband are items which may be subject to forfeiture because they were used in committing a crime but are not in and of themselves illegal to possess. *Id.* This category includes vehicles, cash money, lawful firearms, hunting or fishing gear, or even real property. The Court held that for contraband *per se*, a magistrate bench trial is sufficient due process, but for derivative contraband a jury trial would be required when requested for the protection of innocent third-party owners of the property. *Id.*

In *Ward v. West Oil Co.*, 387 S.C. 268, 692 S.E.2d 516 (2010), the Court reviewed a “Pots Of Gold” gaming machine which sold “pull-tab” tickets where patrons could win prizes or cash. *Id.* 387 S.C. at 270, 692 S.E.2d at 517-18. In this breach of contract case the owner of the gaming machines sued the owner of the various business establishments leasing the machines. *Id.* at 270, 692 S.E.2d at 517-18. The Court held that since the “pull-tab” games were illegal under the §12-21-2710 statute, then the contract was void as an illegal contract even though the contract had been entered into before the change in the law. *Ward*, at 274, 279, 692 S.E.2d at 519, 522.

In *Union County Sheriff's Office v. Henderson*, 395 S.C. 516, 719 S.E.2d 665 (2011), a confidential informant played one of seven video gambling machines. *Id.* 395 S.C. at 518-19, 719 S.E.2d at 666. The defense argued that law enforcement could not show which of the seven machines the informant had actually played and that some of the machines were inoperable. *Id.* The court found those facts immaterial, but including the fact that the hard drive of each machine showed they had been played multiple times, and held that the burden of proof was on the owner of the machines to show that the machines were not gambling devices. *Id.* The Court stated 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 machines, or even their component parts, is unlawful.” *Union County* at 519-20, 719 S.E.2d at 666, citing *192 Coin-Op, supra*.

Finally, two older cases submitted to this court do involve the confiscation and destruction of pinball machines, but this was well before the enactment of §12-21-2710 and its predecessor statutes which exempted pinball machines. The main holdings of these two cases remain. In *State v. Appley*, 207 S.C. 284, 35 S.E.2d 835 (1945), the Court upheld the defendant’s criminal conviction for gambling using a pinball machine, holding that the mere possession or ownership of the illegal machine was in and of itself illegal akin at the time to other gambling devices. *Id.* 207 S.C. at 289, 35 S.E.2d 836-37. In *Alexander v. Martin*, 192 S.C. 176, 6 S.E. 20 (1939), the Court held that the State Tax Commission licensing of the illegal (at that time) pinball machines did not render them lawful: “...licensing ... cannot make a lawful machine out of a gambling device...” *Id.* 6 S.E.at 24. It is noted that *192 Coin-Op.*, 338 S.C. at 189, 525 S.E.2d 879, and *Squires*, 249 S.C. at 612, 155 S.E.2d at 860, both cite *Appley* for its core holding; and *One Coin*, 321 S.C. at 180, 467 S.E.2d at 445, does the same as to *Martin*.<sup>5</sup>

#### Pinball Machine Cases.

There are only two (2) cases by the Court specifically about in-line pinball machines.

In *Alexander Amusement Co. v. State*, 246 S.C. 530, 144 S.E.2d 718 (1965), the owner of the pinball machines leased them to other businesses. *Id.* 246 S.C. at 532, 144 S.E.2d at 719. Players could win a free game on the machine. *Id.* An undercover law enforcement agent played the pinball machine, and then, in exchange of his free game, the agent requested a cash payout from the owner of the business – the lessee of the machine. *Id.* The owner of the pinball machine

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<sup>5</sup> Even Plaintiff’s counsel did not argue that *Appley* and *Martin* could be construed as “pinball cases” in SLED’s favor since these two cases precede the language in §12-21-2710. Rather, Plaintiff argued the principle holdings affirmed by *192 Coin-Op, supra*. and *One Coin, supra*.

had no knowledge of the lessee making cash payouts. *Id.* The Court held that the machines were not subject to seizure or confiscation because they were specifically exempted by the statute: "...[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 situation, exemption is not subject to confiscation." *Id.* at 534, 144 S.E.2d at 720.

In *Powell v. Red Carpet Lounge*, 280 S.C. 142, 311 S.E.2d 719 (1984), law enforcement seized pinball game machines. *Id.* 280 S.C. at 144, 311 S.E.2d at 720. There was no evidence that the machines were being used for gambling. *Id.* In finding that the pinball machines were not illegal, the Court applied the exemption language in the predecessor statute<sup>6</sup> to §12-21-2710, which stated – as it does now – that: "...[B]ut the provisions of this section shall not extend to coin operated nonpayout pin tables, in-line pin games and video games with free play feature..." *Powell*, 280 S.C. at 145, 311 S.E.2d at 721.

*Four Video*, 317 S.C. at 399-400, 453 S.E.2d at 898, cites *Powell*, *supra*. by stating that the statutory pinball exemption in *Powell* did not apply to slot machines. *One Coin*, 321 S.C. at 181, 467 S.E.2d at 446, at Fn.1, also cites *Powell* in a footnote that the rationale in *Powell* is not applicable to illegal slot machines.

#### Statutory Construction Cases.

Our Supreme Court has a long history of issuing decisions on statutory construction and the limits placed on the courts to interpret statutory language as enacted by our Legislature. The parties, mainly by Plaintiff, submitted the following cases for this court's edification.

Most recently in *Wilson ex rel. State v. City of Columbia*, 434 S.C. 206, 863 S.E.2d 456

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<sup>6</sup> The predecessor statute was §52-15-10.

(2021), the Court addressed an action brought by a local municipality mandating facemasks in all public schools within the city limits during the Covid pandemic, and to declare unconstitutional a statutory budget provision which prohibited using state funds to promote or impose a facemask mandate. *Id.* 434 S.C. at 209-10, 863 S.E.2d at 457-58. In affirming the legislature’s right to enact statutes that are plainly constitutional, the Court declared: “[T]he General Assembly establishes policy via legislation, it is our solemn duty to uphold that law absent a clear constitutional infirmity.” *Id.* at 213, 863 S.E.2d at 460; *Accord, Richland County School District 2 v. Lucas*, 434 S.C. 299, 302, 862 S.E.2d 920, 922 (2021). The Court’s role “... is limited and ‘we do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly’.” *Id.* at 306-07, 862 S.E.2d at 924. (citation omitted).

In *Senate by & through Leatherman v. McMaster*, 425 S.C. 315, 821 S.E.2d 908 (2018), the Court addressed the Governor’s authority to make a recess appointment to a State board where the State Senate did not act on the nomination during its regular session, and so the Governor made the appointment in July after the Senate had recessed. *Id.* 425 S.C. at 317-18, 821 S.E.2d at 909. The Court first noted it was acting carefully with restraint and with respect for the other branches of State government: “Our role is to rule upon this controversy with requisite restraint, with a keen eye focused upon our one and only responsibility – to interpret (the statute) in accordance with our rules of statutory construction.” *Id.* 425 S.C. at 317, 821 S.E.2d at 909. In ruling in favor of the Governor’s authority under a specific statute for such power, the Court stated: “...’[W]e read the statute as a whole and in a manner consonant and in harmony with its purpose. We therefore should not concentrate on isolated phrases within the statute... [W]e 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.” *Id.* at 322, 821 S.E.2d at 912. (citations omitted).

In *Ward v. West Oil Co., supra.*, as noted above in 2010, the Court held the contract itself was illegal as between the owner of the gambling machines and the lessee because the machines themselves were illegal under the change in the state law §12-21-2710. *Ward*, at 274, 279, 692 S.E.2d at 519, 522. In applying its rules of statutory construction to the statute, the Court declared: “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the Court has no right to look for or impose another meaning. 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.” *Id.* at 273, 692 S.E.2d at 519. (citations omitted).

In *Lancaster County Bar Association v. S.C. Commission on Indigent Defense*, 380 S.C. 219, 670 S.E.2d 371 (2008), the Court reviewed the statute for selecting the Circuit Public Defender Selection Panel in each Circuit. *Id.* 380 S.C. at 220, 670 S.E.2d at 371-72. In the Sixth Circuit for Lancaster, Chester, and Fairfield Counties, the Court found that each County was entitled to at least one representative on the Selection Panel, and to rule otherwise, as Plaintiffs sought, would result in Lancaster County having all the representatives and the other two Counties none. *Id.* The Court concluded that it would not interpret a statute to lead to an “absurd result that could not have been intended by the legislature.” *Id.* at 222, 670 S.E.2d at 373.

In *Municipal Association of S.C. v. AT & T Communications of the Southern States, Inc.*, 361 S.C. 576, 606 S.E.2d 468 (2004), municipalities sued AT&T for late penalties on business

tax licenses and the Court ruled in their favor finding the legislature had properly granted certain powers to the towns and cities. *Id.* 361 S.C. at 577, 606 S.E.2d at 469. “[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation.” *Id.* at 580, 606 S.E.2d at 470.

In *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 577 S.E.2d 202 (2003), the Court set aside the tax sale of a yacht where the county Treasurer failed to strictly comply with the levy statute requiring a specific kind of notice to the owner of the boat prior to the public auction tax sale. *Id.* 353 S.C. at 33-34, 577 S.E.2d at 203-04. In analyzing the tax levy statute, the Court stated: “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Id.* at 39, 577 S.E.2d at 207. (citation omitted).

In *Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 440 S.E.2d 364 (1994), in reviewing the eviction statute over a lease for a theater where the breach was trivial (late payment of increased rental amount though tenant continued to pay the base rate), the Court affirmed the trial judge’s denial of the eviction. *Id.* 312 S.C. at 274-76, 440 S.E.2d at 366. “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.” *Id.* 312 S.C. at 275, 440 S.E.2d at 366.

In *State v. Blackmon, supra.*, the video poker “loophole” case discussed above, in 1991 the Court rendered its decision years prior to the 1999 passage of Act 125 which subsequently prohibited video poker in its entirety. In applying its rules of statutory construction, the Court stated: “It is well established that in interpreting a statute, the court’s primary function is to ascertain the intention of the legislature. When the terms of the statute are clear and unambiguous,

the court must apply them according to their literal meaning” *Id.* at 273, 403 S.E.2d at 662 (citations omitted).

Finally, in *Greenville Baseball v. Bearden*, 200 S.C. 363, 20 S.E.2d 813 (1942), the Court interpreted a war-time (WWII) statute regulating baseball games and other activities on Sundays. *Id.* 20 S.E.2d at 815. The Court recognized that where the true intention of the legislature is not found in the literal meaning of the statutory language, then the Court must strive to carry out the legislature’s true aim by finding “the real purpose and intent of the lawmakers...” *Id.* 20 S.E.2d at 815. “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers.” *Id.* at 815-16.

#### **ARGUMENTS PRESENTED BY COUNSEL.**

The court summarizes the arguments of counsel for Plaintiff and Defendant as presented at the December 19, 2023 court hearing, and from their written submissions to this court.

#### **Plaintiff presented the following arguments.**

Plaintiff submitted that this gaming device is one in which the player inserts coins or money, pulls a plunger launching a ball into the field of play. There are nine options of different games. There are flippers on the machine, hitting the ball upwards and the ball then goes in a hole which lights up a number on the video screen back-board. The player can win a ticket that prints out of the machine with a high score. The player can turn in the ticket at the restaurant bar for a cash prize. It is also a function of the device that the player could choose not to use the flippers and the game would proceed in a random manner.

Plaintiff presented the main issue as this: Is it the intent of the S.C. legislature to allow cash payouts on machines in South Carolina? Worded another way, does S.C. law allow individuals

to gamble and allow a cash payout on a machine in SC? Plaintiff submits the answer to both is no, and the case law is clear in outlawing gambling machines in our State. Plaintiff further submits that the defense argument is that the machine did not make the cash payout and a person was making the cash payout – which is the same argument made by proponents in the video poker era that the machine allowed a “free play” but humans were making the cash payouts. Meaning that back in that era the gambling statute of §16-19-60 allowed machines that did not do the dispensing of money. The *Blackmon* Court observed that it seems like gambling but §16-19-60 allowed it.

Plaintiff states the legislature changed the law in 1999 in Act 125, effective in 2000, making cash payouts illegal and that the Legislature set forth in the title of Act 125 its legislative purpose:

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;....

Furthermore, Plaintiff points out that the legislature repealed the language in the gambling statute contained in *Blackmon* which had allowed a machine if the machine itself didn't pay out money. *Blackmon* addressed video poker: a loophole existed in the statute because the machine didn't make the payout so it was still a nonpayout machine; the payout came from an actual

human at the establishment. The legislature ultimately changed the law thereby making payouts of any sort illegal in Act 125 enacted in 1999.

Plaintiff addressed Defendant's argument that §12-21-2710 has an exemption, or "carve-out" for pinball machines in this section of the statute: "...but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or..." Plaintiff argues that the critical word in §12-21-2710 for the exemption for pinball machines is this: "nonpayout." In other words, Plaintiff submits that nonpayout pinball machines are legal. But Plaintiff argues that by the proprietor making cash payouts takes this pinball machine out of the statutory exemption because it becomes a machine that actually does payout. Plaintiff also argues that another passage in §12-21-2710 makes this pinball machine illegal because it was used for gambling: "...or any machine or device licensed pursuant to Section §12-21-2720 and used for gambling..."

Plaintiff argues that the *Alexander Amusement Co.* case was based on an old version of the §12-21-2710 statute. The term "any machine or device licensed under Section 12-21-2720 and used for gambling" did not exist in the statute at the time *Alexander Amusement Co.* was decided. Plaintiff argues that §12-21-2710 is the gambling forfeiture statute.

In response to Defendant's submission of §12-21-2721 – which also exempts from confiscation lawfully licensed machines that are used for unlawful conduct in the gambling statutes – Plaintiff argues that §12-21-2721 is a separate statute dealing with separate conduct. It does not include "the used for gambling" language in §12-21-2710. Plaintiff states that noticeably absent from the carve-out in the §12-21-2710 statute is any reference to the gambling statute of §16-19-30 or -40 or -50 or -130. Plaintiff argues this case is not here on a violation of those gambling statutes, and that those gambling statutes cover a myriad of other conduct but that §12-21-2721 is separate and apart from the gambling statutes. So Plaintiff states it is not relying on

§12-21-2721, but rather relying on §12-21-2710.

Plaintiff argues that the legislature intended to outlaw “any device” capable of gambling: that Act 125 repealed the provisions of §16-19-60 which had allowed non-machine cash payouts addressing the “loophole” in *Blackmon*. (i.e. – payouts made by the human instead of the machine). Plaintiff, while relying in its written submission on numerous cases from the Court, emphasized in its argument *Westside Quik Shop, supra.*, and *192 Coin-Op., supra.* Plaintiff argues that according to *192 Coin-Op.*, a case interpreting Act 125 and its §12-21-2710 part, that Defendant’s argument is the same as made by the appellant in that case, which the Court denied, and is applicable here, to which Plaintiff quoted from *192 Coin-Op.*, at 188-89, 525 S.E.2d at 878-79 (citations omitted; emphasis in original):

The substance of appellant’s argument is that ... 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 pacman; therefore the machine itself should not be considered illegal... Although ... machines have changed ... the substance of the statute has not. The relevant portions of the current version outlaw the same conduct as its predecessor. ...If the General Assembly considered *Squires* outdated, it could have changed the statute to outlaw only the operation, not the mere possession, of gambling machines when it last amended the statute... 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. The circuit court correctly ruled possession of these machines is illegal, regardless of their intended use or operation.

Thus, Plaintiff argues that the machine in this case is contraband *per se*, subject to confiscation and destruction. In other words, Plaintiff argues that one can put different functionality on this machine, but if it is capable of being used illegally then the machine is illegal. In a hypothetical posed by this court, if a Pacman™ machine was leased to a business and that business owner used the Pacman machine for gambling, then such machine would be

*per se* illegal, subject to forfeiture and destruction. In other hypotheticals such as the innocent owner of a vehicle where a suspect borrows and uses the vehicle for an illegal purpose without the owner's knowledge of the illegal activity – such as selling illegal drugs from the vehicle – Plaintiff submitted that the innocent third-party seizure statutes and the illegal gambling devices are totally separate statutes. Plaintiff submitted that the illegal gaming machine laws are simply different based on the legislature's determination to eradicate illegal gaming devices.

Plaintiff argues that the legislature considered the “innocent owner” problem, and decided not to apply that common standard when it came to gambling machines. Plaintiff argues the “innocent owner” provision does not apply to gaming machines. Plaintiff argues that any machine used for gambling is subject to destruction, per the unique statute in §12-27-2710. Plaintiff submits that the §12-27-2710 statute treats gaming machines differently and it is a unique forfeiture process: Any machine that is put out for play, if it is used for gambling then it is subject to forfeiture; and it puts the onus on the machine owner, including the innocent owner.

Plaintiff does not stipulate that this pinball machine is an otherwise legal machine. Plaintiff asserts that this machine is a device also capable of letting the player play keno or bingo – both of which are specifically prohibited by §12-21-2710. Although Plaintiff acknowledged that the issue of cash payouts by the proprietor was more concerning. Plaintiff submitted that §12-21-2710 designated certain games illegal and also identified certain devices as illegal. Plaintiff argued that this pinball machine had games identical to a bingo device. Plaintiff stated that if the player lets the ball go to whatever hole or spot it lands in without playing or doing anything with the machine, then it is just like bingo or keno – the player is not required to do anything other than let the ball go and see what happens, where it lands, so that is the same functionality as bingo and/or keno.

As for the ALJ decision submitted by Defendant, Plaintiff argues that case dealt with licensing and has no impact as to whether this machine is legal or illegal. In other words, Plaintiff argues that tax licensing doesn't affect the determination in this case.

Plaintiff submitted in its written brief and materials that the main intent of the legislature was to ban all gambling machine devices, and to allow for their confiscation and destruction. Plaintiff submitted that the rules of statutory construction mandate that outcome in this case.

Defendant presented the following arguments.

Defendant argues that both §12-21-2710 and §12-21-2721 provide an exemption and protection for their client's pinball machine.

Defendant submits that the first portion of §12-21-2710 defines what are prohibited gambling machines or devices to possess or use: "It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated ... any ... slot machine, or any video game machine with a free play feature ... for the play of poker, blackjack, keno, lotto, bingo, or craps, or any machine or device ... used for gambling..." Defendant submits the next portion of §12-21-2710 then exempts and provides a "carve-out" for pinball machines: "...but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or..." Defendant argues this carve-out language exempts this pinball machine from confiscation and destruction. Moreover, Defendant argues this §12-21-2710 statute in and of itself is not a confiscation and seizure statute.

Defendant argues that §12-27-2721 also provides a specific statutory exemption for this pinball machine: "Coin-operated machines or devices licensed pursuant to Section 12-21-2720 are not subject to confiscation ...due to any violation of ... [the gambling statutes]" *Id.* Defendant argues this statute independently prohibits the confiscation and destruction of this

pinball machine. Indeed, Defendant argues that it is as simple as that, as to both these sections of §12-21-2710 carve-out part and the additional exemption in §12-21-2721.

Defendant submits that this matter turns on the fact that the restaurant/bar-owner made the cash payouts, the machine itself did not, and that the owner of the pinball machine had no knowledge of this and in fact had a contract and memorandum of understanding with the bar owner that the machine would not be used for cash payouts or any unlawful purposes. Defendant points out that the ticket printed out of the machine reads: "For Amusement Only / No Cash Value." Defendant argues what became illegal via Act 125 was video poker and other gambling devices whether the machine or the human made the payout. Defendant submits that the carve-out language in §12-21-2710 was not changed in Act 125 in 1999.

Defendant argues Act 125 in the portion of §12-21-2710 still carved-out the in-line pin games. Defendant submits the issue is this: Does the proprietor in this case making a cash payout to players when the owner of the machine had no knowledge or consent in that unlawful practice render the machine subject to confiscation and destruction. Defendant submits the answer is "No," because of the "but..." clause in §12-21-2710 and the protection of §12-21-2721. Defendant argues that what changed in Act 125 with the change in the law was this: video poker was deemed illegal; that the statute specifically defined gambling machines which specifically did not include mechanical pinball machines; that the gambling machines were illegal to possess or use regardless if the machine made the payout or the human; and that any person who makes the cash payouts is engaged in gambling and can be prosecuted.

Defendant addresses Plaintiff's argument that §12-21-2721 is not applicable here because, according to Plaintiff, this is not a gambling prosecution so that Plaintiff is not proceeding here under §12-21-2721, but is instead proceeding under §12-21-2710 and §12-21-

2712. Defendant argues that gambling is at the heart of this case because it is the proprietor's unlawful gambling acts that led Plaintiff to seize this machine and subject it to destruction. Defendant argues §12-21-2721 is directly applicable since it references the gambling statutes and specifically states machines seized due to gambling which are otherwise legal devices are not subject to seizure and destruction. Defendant argues that only those machines defined as prohibited in §12-21-2710 can be seized and destroyed, and pinball machines by definition in the statute are not prohibited machines.

Defendant argues that *Alexander Amusement Co.* and *Powell* both specifically address the legality of pinball machines and the exemptions claimed here in the statutes. Defendant submits that neither *Alexander* nor *Powell* have been overruled and are still valid law.

Defendant contests Plaintiff's characterization of the pinball machine in this case. Plaintiff argues that Plaintiff has mischaracterized that a player "wins a prize." Defendant submits that what the player gets is a free game if the player is successful in playing the game. Defendant submits that the outcome in the game depends on the player shooting the ball into a particular hole or divit: So the player guides the ball either with the flippers or by moving the machine without a "tilt," which defaults that ball or game. Defendant submits the Montana Deluxe 2 is an inline pin game, in other words a standard pinball machine with a nonpayout feature.

Defendant argues the importance of an Administrative Law Court decision which identified this exact type of pinball machine as a "Class II" gaming device for a license of \$500 and related taxing purposes. *SCDOR v. Scott Sheets, d/b/a S&S Amusements*, 96-ALJ-17-390 CC (Nov. 1996). For example, under the prior Video Game Act the "Pot 'O Gold" games, then allowed, were Class III machines with a much higher license fee of \$5,000. Defendant submits the importance of that ALJ decision is that a Class III machine is like a bingo machine because

it doesn't have flippers and is not a mechanical game; but that the Class II device is defined as a mechanical game.

Defendant submitted in its written brief and materials that the statutes of §12-21-2710 and §12-21-2721 both exempt this mechanical pinball machine, and that the statutes are plainly worded to establish this exemption. Defendant submitted that *Alexander Amusement Co.* and *Powell* both control the decision in this case and have not been overruled.

### **ISSUE AND COURT'S RULING.**

The specific issue to be determined by this court is: Whether the Montana Deluxe 2 gaming machine seized in this case is a prohibited machine pursuant to the applicable statutes and thereby subject to destruction? This court determines that this machine is not a prohibited machine and thus not subject to destruction, either under the applicable statutes or case law from the S.C. Supreme Court. It is a mechanical pinball nonpayout machine, not a video game, and is exempted from destruction by statute and case law.

“At a post-seizure hearing, the burden is on the owner of the *res* to show why the seized property should not be forfeited and destroyed.” *Union County Sheriff's Office*, 395 S.C. 519, 719 S.E.2d at 666 *citing 192 Coin-Op. supra*. Therefore, the actual owner of this gaming machine, and only the actual owner of this device VS-I, bears the burden of proof or has standing in this matter. The owner of Tavern on Broad has no standing to challenge the seizure or forfeiture of the device in question. *Id.*

Defendant VS-I as the owner of the device has met the burden of proof by a preponderance of the evidence. “A preponderance of the evidence is evidence which convinces the fact finder as to its truth.” *Pascoe v. Wilson*, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016),

citing *Gorecki v. Gorecki*, 387 S.C. 626, 633, 693 S.E.2d 419, 422 (Ct. App. 2010). It has also long been defined as the “greater weight of evidence.” *Hutchinson v. City of Florence*, 189 S.C. 123, 200 S.E. 73 (1938). This court reaches that fact-finding and conclusion of law based upon the following analysis of the applicable statutes and case law.

### ANALYSIS.

This court agrees with Plaintiff that our S.C Legislature fully intended and has laid out in the statutes they have passed that gambling machines are illegal in this State, and that even mere possession of such machines authorizes confiscation and destruction. S.C. Code §12-21-2710 and §12-21-2712.

The Supreme Court has clearly communicated the scourge that was video poker and gambling in our State in affirming these same statutes. *Town of Mount Pleasant v. Chimento*, 401 S.C. 522, 737 S.E.2d 830 (2012); *Mims Amusement Co., supra.*; *Westside Quik Shop, supra.*; *Joytime, supra.* “Gaming machines have been illegal and subject to forfeiture as contraband in this state since the 1930’s. This Court has deferred to the Legislature’s determination of which gaming devices must be sacrificed for the *public welfare.*” *Mims Amusement Co.*, 366 S.C. at 147, 621 S.E.2d at 347 (internal citation omitted; emphasis supplied). “...[O]ur State witnessed the dramatic growth of video gaming into a multi-billion dollar industry that became the subject of much public debate.” *Westside Quik Shop*, 341 S.C. at 300, 534 S.E.2d 270 at 272. “Because the General Assembly was unable to agree on comprehensive video gaming legislation, the Governor, by Executive Order, called an extra session of the General Assembly...” *Joytime*, 338 S.C. at 638, 528 S.E.2d at 649. “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.” *Chimento*, 401 S.C. at 537, 737 S.E.2d at 840 (Toal, C.J., concurring).

Plaintiff argues that the overriding intent of the legislature as discerned from the applicable statutory language is to prohibit and eradicate gambling devices and the havoc said machines wreak upon our society’s general welfare. S.C. Code §12-21-2710, §12-21-2712; *See generally* Act 125, Preamble (1999). This court agrees. More importantly, and binding on this court, the S.C. Supreme Court agrees. *Chimento, supra.*; *Sun Light, supra.*; *Westside Quik Shop, supra.*; *et. al.* Yet as stated above in this court’s Introduction, this case is not those cases.

This court now addresses Plaintiff’s separate arguments each in turn.

The main cases as submitted to this court in support of finding the pinball machine in this case to be an illegal gambling device do not address pinball machines at all. They address video poker machines. *Joytime, supra.*; *Westside Quick Shop., supra.*; *Mims Amusement Co., supra.*; and *Union County Sheriff’s Office, supra.* They address slot machines. *Squires, supra.*; *Four Video Slot Machines, supra.*; *One Coin-Op., supra.*; and *192 Coin-Op., supra.* They address other video gambling devices with payouts. *West Oil Co., supra.* (“Pots Of Gold” pull-tab tickets); *Sunlight, supra.* (long distance telephone cards with game piece attached); and *Harvie, supra.* (vending machine with brass tokens).

Two older cases, *Appley supra.* and *Alexander v. Martin, supra.* decided in 1945 and 1939 respectively when pinball machines were actually illegal per an earlier statute, have been supplanted by the current applicable statutes. Of course, *Appley* is still valid for its holding that mere possession of a gambling machine, and not just its use, is illegal. *Id.* 207 S.C. at 289, 35 S.E.2d at 836-37; *Accord, 192 Coin-Op.*, 338 S.C. at 189, 525 S.E.2d 879; *Squires*, 249 S.C. at 612, 155 S.E.2d at 860. Likewise, *Martin* is still valid for its holding that the mere licensing and

regulation of a machine does not make an illegal machine into a legal one. *Id.* 6 S.E. at 24; *Accord, One Coin*, 321 S.C. at 180, 467 S.E.2d at 445.<sup>7</sup>

The two cases on point as they specifically address pinball machines are *Alexander Amusement Co., supra.* and *Powell, supra.* Indeed, the facts in *Alexander Amusement Co.* are identical with the facts in this case.

...[P]laintiff is engaged in the business of supplying amusement devices for operation in retail business establishments. The equipment is furnished upon a lease arrangement with the retailer... plaintiff leased to various business establishments ... certain coin-operated pin tables. The pin tables were so constructed that upon their successful manipulation free games were allowed as registered on the machine.

An undercover agent ... played the machines ... accumulating a number of free games ... The agent then requested and obtained from the operators of the establishments payment in cash based on the number of free games to his credit ... The plaintiff had no connection with the day-to-day operation of the pin tables other than to service them upon call and had no knowledge of the transaction between the ... business proprietors and the officer ...

*Id.* 246 S.C. at 532, 144 S.E.2d at 719.

Plaintiff argues that the State did not charge the proprietor here, Honeycutt, with any gambling offense, and that law enforcement in the *Alexander Amusement Co.* case did charge the proprietors with gambling.<sup>8</sup> It is as they say, a distinction without a difference under these facts. SLED agents discovered the Defendant's pinball machine was being used for gambling by

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<sup>7</sup> The court finds unpersuasive the fact this machine is licensed and taxed by certain criteria with the S.C. Dept. of Revenue, *See SCDOR v. Scott Sheets, d/b/a S&S Amusements*, 96-ALJ-17-390 CC (Nov. 1996). Thus *Martin* and *One Coin* control on this point.

<sup>8</sup> The question was not reached in this case as to "What if?" it was Honeycutt's own pinball machine and he was using it for gambling. It would appear he could not "hide" behind the case law and statutes to avoid destruction of *his* machine: "...[W]e think that the printing of the notices upon the brass checks, that they are of 'no value' and are intended solely for the amusement of the customer, is a mere subterfuge ... intended only to apparently satisfy the letter of the law, while violating its spirit." *Harvie*, 148 S.E. at 69. In this case, there is no evidence that Defendant had any knowledge of Honeycutt's actions.

Honeycutt in Honeycutt's establishment and that was their primary reason for confiscating it and in this action seeking its destruction. To argue that the gambling statutes are not invoked here is to ignore the facts presented here.

Thus, the facts as set forth above make *Alexander Amusement Co.* directly on point here, and are indisputably identical. In the predecessor statute to §12-21-2710, the Court in *Alexander Amusement Co.* ruled:

It is clear that the devices permitted to be confiscated ... are limited to those ... in violation of 'any other law of this State.' [The] Section ... makes it '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, punch board, pull board or other device' ... but specifically exempts from such prohibition 'coin-operated nonpayout pin tables with free play feature'."

... 'the 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 statutation' exemption is not subject to confiscation.

*Id.* 246 S.C. at 533-34, 144 S.E.2d at 720.

Plaintiff is correct that this was a predecessor statute to Act 125 and thus to §12-21-2710 in its current form. But the statutory exemption at issue in *Alexander Amusement Co.*, 246 S.C. at 533-34, 144 S.E.2d at 720, is the same statutory exemption now codified in §12-21-2710. Yet in a search of the subsequent history for *Alexander Amusement Co.*, this court has discovered that the Court has not overruled it nor limited it despite the opportunity since its decision to do so, including post-Act 125 cases. *Westside Quik Shop, supra.*; *192 Coin-Op., supra.*; *Mims Amusement Co., supra.*; *et.al.* Nor has the Court overruled or limited the other modern pinball case of *Powell, supra.*

The Court in *Powell* revisited the matter involving pinball machines and found them not to be illegal. *Id.* 280 S.C. at 145-46, 311 S.E.2d at 721. It is acknowledged that *Powell* dealt with

the mere possession of pinball machines and there was no allegation that the machines had been used for any gambling. *Id.* at 144, 146, 311 S.E.2d at 720, 721. Nonetheless, the same general exemption wording in the statute existed at the time of the *Powell* decision as is now embodied in the current form of §12-21-2710. The statute then (in 1984) read: “But the provisions of this section shall not extend to coin-operated nonpayout pin tables with free play features...” *Powell* at 144, 311 S.E.2d at 720. The statute (as enacted in 1999) now reads: “...[B]ut the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, ...” §12-21-2710.

The majority in *Four Video Slot Machines*<sup>9</sup> did not address *Alexander Amusement Co.*, but it did state that §12-21-2710 specifically exempted in-line pinball machines. “The statute exempts three specific types of machines: (1) coin operated nonpayout pin tables; (2) in-line pin games...”<sup>10</sup> *Four Video*, 317 S.C. at 399, 453 S.E.2d at 897. Again, while this is a predecessor statute to the current §12-21-2710, the specific exemptions cited here remain in its current form.

The legislature, as with our Court, is aware of *Alexander Amusement Co.* and *Powell*. They are both also certainly aware of these two cases being cited with some favor in the subsequent cases of *Four Video Slot Machines* and *One Coin*. Yet the specific exemptions in §12-21-2710 and §12-21-2721 remain, and their interpretation with the exemption also remains intact. “The legislature is presumed to be aware of this Court’s interpretation of its statutes. (there is a basic presumption the legislature has knowledge of judicial decisions construing legislation when later

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<sup>9</sup> The dissent in *Four Video Slot Machines*, 317 S.C. at 401, 453 S.E.2d at 898, cites to *Alexander Amusement Co.*, regarding the interpretation of a provision in §12-21-2710 which is inapplicable here: “video games with free play features.” The majority in *Four Video* does not address *Alexander Amusement Co.* at all.

<sup>10</sup> The third statutory exemption is not relevant to the issues here.

statutes are enacted concerning related subjects.) If the General Assembly considered [a case]<sup>11</sup> outdated, it could have changed the statute to outlaw [it]...” *192 Coin-Op.*, 338 S.C. at 188, 525 S.E.2d at 879 (internal citations omitted). Or, the Court could have certainly overruled or modified the prior cases as to pinball machines. Like the Legislature, the Court has not done so. It is not up to this humble court to do it for them. While this court is sympathetic with Plaintiff’s position and argument, this court cannot extend its authority or rulings where it does not belong.

Plaintiff argues that the statutory language exempting nonpayout pin tables or nonpayout in-line pin games (i.e. pinball machines) does not apply to this machine because it was making cash payouts through the proprietor. Plaintiff seeks to remove the statutory exemption for this pinball machine because it was being used for gambling. However, it is not so clear that an otherwise exempt machine suddenly moves it from one section of the statute making it legal, to another section of the statute making it illegal. In *Four Video, supra.*, while analyzing the statute and finding slot machines were not exempted, the Court unequivocally declared nonpayout pinball machines lawful and not subject to confiscation or destruction: “The statute exempts three specific types of machines: (1) coin operated nonpayout pin tables; (2) in-line pin games...” *Id.* 317 S.C. at 399, 453 S.E.2d at 897. It can get no clearer than that. *See also, Powell*, 280 S.C. at 144-45, 311 S.E.2d at 720. The statute “...declares certain coin-operated machines illegal. It exempts however, certain machines as follows: ‘But the provisions of this section shall not extend to coin-operated nonpayout pin tables with free play feature...’” *Id.* at 144, 311 S.E.2d at 720).

The Legislature could have added an “unless...” clause if it wanted to – such as “unless used for gambling...”, but did not. It is not so axiomatic that because a lessee uses the otherwise nonpayout in-line pin game – which the pinball machine in this case is – for gambling, without

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<sup>11</sup> The case discussed in this quotation was *Squires, supra.*

the owner's knowledge or consent, that the machine then becomes illegal. The case law and statute itself say otherwise quite plainly. This is not the *Blackmon* case all over again, where an anomaly existed in the law. The Legislature has made a specific exemption for pinball machines that do not themselves payout cash or other illicit prize; and has chosen not to insert an "unless" or exception for a pinball machine that is used by another person unlawfully for gambling.

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. This court is certainly required to implement the Legislature's intention to ban, confiscate and order destruction of the listed gambling machines in the statute (i.e. – video poker machines, slot machines, etc.). This court is not authorized to insert its own preferences into the statute where none exist, and where the Court's prior interpretations have firmly recognized the exemption. "...[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Municipal Ass'n of S.C.*, 361 S.C. at 580, 606 S.E.2d at 470. This court will not expand the statute's operation absent specific guidance from the Court.

Plaintiff argues it is not proceeding under §12-21-2721, the second of the two confiscation and destruction statutes, since it is not charging anyone with gambling. Instead, Plaintiff argues it is proceeding under §12-21-2712, the first of the two confiscation statutes which makes no mention of any gambling. Plaintiff then states it is proceeding under §12-21-2710 which declares and defines certain machines as "prohibited," meaning illegal *per se*. It is clear that §12-21-2710 is not itself a confiscation or forfeiture statute. Plaintiff's argument is that

this pinball machine is subject to seizure and destruction pursuant to §12-21-2710 and §12-21-2712 in two respects.

First, as a defined illegal *per se* device as “[A]ny machine or device licensed pursuant to Section §12-21-2720 and used for gambling ...” Thus the argument is that because there was a cash payout by the proprietor of the business, the machine does not fall within the later exemption in §12-21-2710 for pinball machines – because the machine in this case cannot be a “nonpayout” machine by definition when there are cash payouts. Second, Plaintiff argues at least two of the optional games on the machine are keno and bingo, both specifically defined in §12-21-2710 as prohibited games: “[F]or the play of ...keno...bingo...”

The court declines to adopt Plaintiff’s rationale. First, the statute specifically exempts nonpayout pinball machines. 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 S.C. at 322, 821 S.E.2d at 912.

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.<sup>12</sup> 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

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<sup>12</sup> The available pinball games on this machine are: Super One Ball; Golden Game; Random Game; Triple Barrell; Euro One Ball; Lucky Ball; Break The Safe; Crazy Wheel; Lucky Ball II.

optional games that a player may select. In reviewing the audio transcript of the court hearing there is no stipulation, description, explanation, or fact submitted to support this assertion of “keno” or “bingo” games on the machine. Plaintiff asserted that if a player simply launches the ball and then does nothing then it is in essence a bingo or keno game, and thus illegal. An assertion, though, is not evidence. Quite frankly, this court has never heard nor seen of a player in a pinball game doing what Plaintiff suggests – launching the ball and then doing ... nothing. While that is certainly possible, a hypothetical possibility does not a gambling machine make. Still, the court is left with no evidence to support the Plaintiff’s statement in this regard that this machine is capable of illegal bingo or keno. The claim is neither presented nor preserved.

Next, while Plaintiff may elect to not proceed under §12-21-2721, defendant seeks its protective provisions. In a criminal case, the State certainly has the right to elect which statutes it seeks for an indictment and prosecution. In a civil case as this, a party does not necessarily get to elect one statute over another – Defendant has claimed §12-21-2721 as a defense, and as such this court must consider it. There is an obvious violation of gambling with this machine in this case – by the proprietor. It was stipulated to by the parties. Even if it had not been stipulated to and testimony had been presented, it is obvious from the SLED Agents investigation as witnessed in the photograph exhibits, *See* PL.Ex.#4 and 5, that the proprietor was engaged in unlawful gambling with this pinball machine. Our Supreme Court has certainly not issued a decision extending the law that far as to pinball machines and in fact has done the opposite in *Alexander Amusement Co.* and *Powell*. The scourge eradicated by Act 125 in 1999, and affirmed by the Court in *Westside, supra.*, was video poker, slot machines, and other video games programmed for gambling which led to severe and deleterious effects on our society in this State. This court will not extend the application of the statute where the Court has not done so.

In reviewing the statute, it is important to review its parts section by section. In its first part §12-21-2710 lists the prohibited types of machines as determined by the Legislature:

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... (emphasis supplied).

Plaintiff submits that “any machine or device licensed pursuant to Section 12-21-2720 and used for gambling” renders this pinball machine illegal *per se* – because it was used by the proprietor, Honeycutt, for gambling. Plaintiff submits this phrase, “any machine...” is a forfeiture clause and was not in the predecessor statute when *Alexander Amusement Co.* was decided. Plaintiff submits then that the exemption statute, below, is inapplicable here.

The exemption clause is the next part of §12-21-2710:

**... but the provisions of this section do not extend to coin-operated nonpayout in 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 supplied).

Defendant submits this exemption clause is a specific “carve-out” (i.e.–exemption), by the Legislature. The phrase “any machine...used for gambling” does not override the carve-out because the “but the provisions of this section do not extend...” comes after the “any machine...” phraseology. So the exemption must be given meaning and efficacy in context of the entire statute. *Senate by & through Leatherman, supra.* This carve-out clause was in the predecessor statute when *Alexander Amusement Co.* was decided and the Court affirmatively recognized this

exemption in that decision and again in *Powell*. Although the statute in *Alexander Amusement Co.* did not have the “any machine...” language, this court does not find that persuasive: to rule otherwise would make the “but the provisions of this section...” clause a nullity. *Senate by & through Leatherman, supra*.

Furthermore, it does not appear to this court that the video gambling statutes and State Supreme Court case law have superseded *Alexander Amusement Co.* or *Powell*. The statute outlawing video poker and other gambling machines, §12-21-2710, still contains the language allowing pinball machines in the “but the provisions of this section...” Nor can Plaintiff point to a single Supreme Court case addressing video poker that has overruled *Alexander Amusement Co.* or *Powell*. Pointedly, the Supreme Court case law does overrule prior cases which inadequately addressed video poker machines prior to the legislative enactments. By way of example, the Court took the opportunity to overrule a 1932 case. *192 Coin-Op.*, 338 S.C. at 196, 525 S.E.2d at 883, *overruling State v. Kizer*, 164 S.C. 383, 162 S.E. 444 (1932)(*Kizer* overruled to the extent it did not allow for a judicial hearing for owner of seized personal property deemed illegal and subject to destruction); *Accord, Westside*, 341 S.C. at 304, 534 S.E.2d at 273. None of the video poker, slot machine, or video game gambling machine cases address or question the primary holding in *Alexander Amusement Co.* or *Powell*, both of which recognize and affirm the exemption carve-out clause. To this court then, it appears that *Alexander Amusement Co.* and *Powell* are still good law. As such, they are binding on this court.

This court is bound by the South Carolina Supreme Court cases until otherwise overruled by the Court. This court will not on its own declare a State Supreme Court case like *Alexander Amusement Co.* or *Powell* no longer valid while the Court has not done so itself though it had opportunity to do so during the heyday of discussion and legislative enactments surrounding

video poker. If the Court decides to revisit *Alexander Amusement Co.* or *Powell*, that of course is within their prerogative. It is not within the prerogative of this court to do so. This court can only adhere strictly to the law as it is currently given. The Court has made it clear that pinball machines are not *per se* illegal as are video poker machines or other video gambling machines.

The final relevant part of §12-21-2710 lists the criminal penalty:

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.

The State can clearly charge the proprietor Honeycutt and potentially his employees along with the customers who participated in the unlawful scheme and conduct.

This court agrees and acknowledges that cash payouts on video gaming machines are strictly illegal and can be criminally prosecuted. *Westside Quik Shop, supra.; et. al.* This court agrees and acknowledges that the mere possession of such prohibited machines is illegal and they can be confiscated and destroyed. *Id.; 192 Coin-Op., supra.; Appley, supra.* This court agrees and acknowledges that the Legislature has legitimate police power to outlaw, control and/or take by forfeiture illegal gaming machines. *Mims Amusement Co. v. S. Carolina Law Enforcement Div., supra.* This court agrees and acknowledges that the Legislature acted with a specific intent, and the Court affirmed, to outlaw video poker, slot machines, and video game gambling devices. Act 125, Preamble (1999); *Joytime, supra.; Westside Quik Shop, supra.*

If the item seized were a video poker machine, slot machine, or any other video game device used for gambling, this court would not hesitate in examining it, and pursuant to statute and the applicable law, issue an Order destroying it. Again, this is not that case.

Therefore, this court pursuant to the statutes S.C. Code §12-21-2710, §2712, and §2721, has examined the machine and the law, and this pinball machine in and of itself is not unlawful

though the business owner as a lessee of the machine used it for unlawful purposes. It is a mechanical device covered by the exemptions in both §12-21-2710 and §2721. The backboard, or upright portion of the pinball machine which shows the different game options and scoring is in video format. But the game itself is a mechanical pinball machine. It is not a video game. The backboard lights up and has video game features. But the backboard does not control any part of the game. This court finds and concludes that this machine is a mechanical pinball device as a nonpayout in-line pin &/or nonpayout pin table game. As such, it is exempted by S.C. Supreme Court case law and statutes as set forth herein.

### CONCLUSION

This court has taken seriously its task of reading and reviewing all of the applicable statutes and case law and applying same in a scrupulous manner. This court favors neither side, but the law. This court could be wrong. Plaintiff's arguments are meritorious. But it is this court's humble view that the statutes speak plainly and the case law is also clear. The appellate court(s) may certainly take another view. But it is not this court's purview to overrule or even slightly limit *Alexander Amusement Co., supra; Powell, supra;* or the two cases which cited them with favor, *Four Video, supra.*, and *One Coin, supra.* It may well be that all four of these cases have passed their expiration dates since they were decided before Act 125 and the post-Act 125 cases from *Westside Quick Shop, supra.*, and *192 Coin-Op., supra.*, through to *Sun Light, supra.*, *Mims Amusement Co., supra.*, and *Ward West Oil, supra., et. al.* But that is not for this court to say. This court is bound by the precedent established by our Court until otherwise instructed. Nor can this court merely "distinguish" cases such as *Alexander Amusement Co.*, since it is on-point with the same facts in this case.

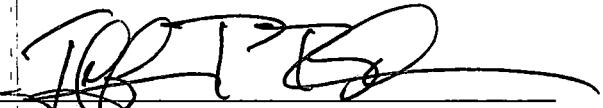
This court is asked to infer an extension of the statute §12-21-2710 based on the case law cited herein regarding video poker machines, slot machines, and video game gambling devices. *Westside Quik Shop, supra.; Joytime, supra.; 192 Coin-Op. supra.; et.al.* This court cannot, and will not, make such an inference where the Court itself has not done so, and the statute itself does not do so. Plaintiff is of course free to continue its good faith and well-developed position to the appellate courts since the case turns on interpretation of the law. But it is not the province of this humble court to announce changes in precedent to the higher Court. *Alexander Amusement Co.* and *Powell* are still valid law and have not been specifically overruled or limited or even questioned by the Court.

Finally, this court has endeavored to apply the Legislature's statutes strictly without reading more or less into them. It has reviewed every case submitted to it including those on statutory construction. This court cannot 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) (internal citation omitted).

IT IS THEREFORE ORDERED that the Order of Destruction previously issued in this case is hereby reversed and vacated. Plaintiff is hereby Ordered to return the machine confiscated in this case to Defendant. In the event that Plaintiff timely appeals (as is likely given the circumstances of this case and the stakes at issue), then this court's Order shall be held in abeyance, and Plaintiff shall take all reasonable efforts to adequately preserve said machine until final Orders of any Appellate Court(s) as may be issued in this case.

AND IT IS SO ORDERED.

August 17, 2023  
St. Matthews, S.C.

  
\_\_\_\_\_  
Jeffrey P. Bloom, Calhoun County Magistrate  
Appointed by Designation S.C. Supreme Court

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

S.C. State Law Enforcement Division )  
Appellant-Plaintiff )

VS. )

A Montana Deluze 2 Machine, and )  
Video Solutions I, Inc. )  
Respondents -Defendants )

IN THE MAGISTRATE COURT  
FOR RICHLAND COUNTY  
Mag.Ct.Case No. 2022-cv-40107-00687

**Civil Appeal No.: 2023-CP-40-04886**

MAGISTRATE COURT RETURN

ATTACHMENT B:

Appellant's Notice of Appeal and Certificate of Service [3 pp.]

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF COMMON PLEAS  
 ) Magistrate Case No.: 2022CV4010700687  
COUNTY OF RICHLAND ) Civil Action No.:

S.C State Law Enforcement Division, )  
 )  
 ) Appellant, )

v. )

**NOTICE OF CIVIL APPEAL**

A Montana Deluxe 2 machine; and )  
 )  
 ) Video Solutions I, Inc. )  
 )  
 ) Respondents. )

The South Carolina Law Enforcement Division (SLED) hereby gives notice of appeal of the judgment of Magistrate’s Court in the above action to the Circuit Court of Common Pleas in Richland County. This appeal is made subsequent to notice of the judgment, which was received by the undersigned on the 18<sup>th</sup> day of August 2023.<sup>1</sup>

SLED’s exceptions to the judgement of the Magistrate are set forth as follows:

1. As a matter of legal error, the Magistrate did not effectuate the stated intent of the South Carolina Legislature – the prohibition of cash payouts for credits earned on video game machines – when interpreting S.C. Code Ann. § 12-21-2710 in this action.
2. As a matter of legal error, the Magistrate incorrectly applied South Carolina law and ordered the return of a gaming machine despite undisputed evidence of cash payouts paid for the play of the machine.
3. As a matter of legal error, the Magistrate determined that a machine that prints tickets that were redeemed for cash payouts was a “non-payout” in-line pinball game.
4. As a matter or legal error, the Magistrate applied an incorrect legal analysis to determine whether a machine violated South Carolina law.
5. As a matter of legal error, the Magistrate misinterpreted and misapplied the applicable South Carolina statutes and jurisprudence in this matter.

<sup>1</sup> SLED acknowledges that it received an unfiled notice of the decision via email on August 18, 2023; however, SLED has never received a filed copy nor has it received notice of the filing of this order.

6. As a matter of legal error, the Magistrate did not correctly apply South Carolina jurisprudence finding that gaming machines, like the machine at issue in this action, are contraband *per se*.
7. As a matter of legal error, the Magistrate 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”.
8. As a matter of legal error, the Magistare found that the device on which “the proprietor engaged in unlawful gambling” was not subject to seizure and destruction in South Carolina.
9. As a matter of legal error, the Magistrate mischaracterized the machine’s operating features.
10. As a matter of legal error, the Magistrate found that despite the machine having “video game features” and showing “the different game options and scoring...in video format”, it was not a video game.

In conclusion, based on the foregoing, the applicable laws, statutes, and jurisprudence of the State of South Carolina; the specific intent of the South Carolina Legislature to prohibit cash payouts on gaming machines; and the entire record in this matter; the Appellant respectfully requests that the Circuit Court reverse the decision of the Magistrate and find that the machine on which unlawful gambling was engaged is in violation of S.C. Code Ann. § 12-21-2710 and should be forfeited and destroyed.

Respectfully Submitted,

s/ Adam L. Whitsett

ADAM L. WHITSETT

SLED General Counsel

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S.C. Bar Number: 74888

**ATTORNEY FOR APPELLANT**

September 18, 2023

6. ~~As a matter of legal error, the Magistrate did not correctly apply South Carolina jurisprudence finding that gaming machines, like the machine at issue in this action, are contraband *per se*.~~
7. As a matter of legal error, the Magistrate 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”.
8. As a matter of legal error, the Magistare found that the device on which “the proprietor engaged in unlawful gambling” was not subject to seizure and destruction in South Carolina.
9. As a matter of legal error, the Magistrate mischaracterized the machine’s operating features.
10. As a matter of legal error, the Magistrate found that despite the machine having “video game features” and showing “the different game options and scoring...in video format”, it was not a video game.

In conclusion, based on the foregoing, the applicable laws, statutes, and jurisprudence of the State of South Carolina; the specific intent of the South Carolina Legislature to prohibit cash payouts on gaming machines; and the entire record in this matter, the Appellant respectfully requests that the Circuit Court reverse the decision of the Magistrate and find that the machine on which unlawful gambling was engaged is in violation of S.C. Code Ann. § 12-21-2710 and should be forfeited and destroyed.

Respectfully Submitted,

s/ Adam L. Whitsett

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**ATTORNEY FOR APPELLANT**

September 18, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Magistrate Case No.: 2022CV4010700687
COUNTY OF RICHLAND	)	Civil Action No.:
S.C State Law Enforcement Division,	)	
	)	
Appellant,	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
A Montana Deluxe 2 machine; and	)	
Video Solutions I, Inc.	)	
	)	
Respondents.	)	
	)	

I hereby certify that I served the **SLED's Notice of Appeal** in the above matter on September 18, 2023 by emailing a copy of the same to the following email addresses:

Attorney Jim Griffin to - [jgriffin@griffindavislaw.com](mailto:jgriffin@griffindavislaw.com) and [MFox@griffindavislaw.com](mailto:MFox@griffindavislaw.com)

Attorney Dick Harpootlian to - [rah@harpootlianlaw.com](mailto:rah@harpootlianlaw.com) and [holli@harpootlianlaw.com](mailto:holli@harpootlianlaw.com)

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*s/Adam L. Whitsett*

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South Carolina Bar Number 74888

ATTORNEY FOR SLED

Columbia, South Carolina  
September 18, 2023

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

S.C. State Law Enforcement Division )  
Appellant-Plaintiff )

VS. )

A Montana Deluze 2 Machine, and )  
Video Solutions I, Inc. )  
Respondents -Defendants )

IN THE MAGISTRATE COURT  
FOR RICHLAND COUNTY  
Mag.Ct.Case No. 2022-cv-40107-00687

**Civil Appeal No.: 2023-CP-40-04886**

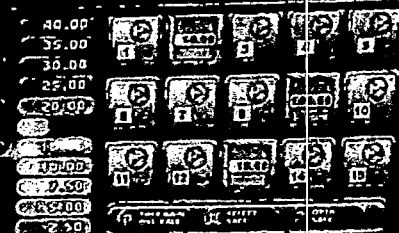
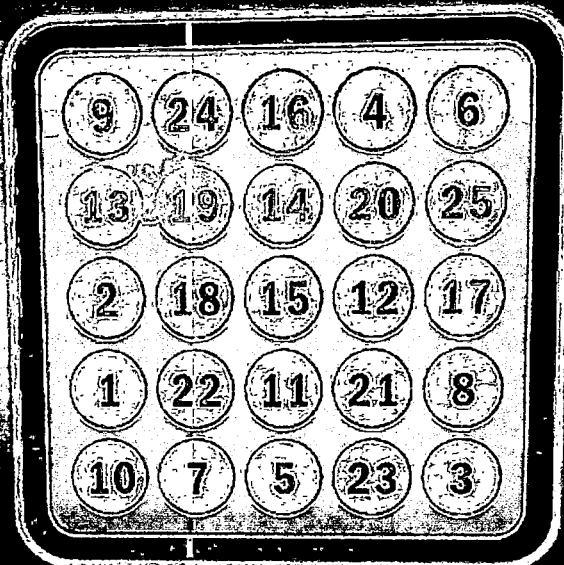
MAGISTRATE COURT RETURN

ATTACHMENT C:

Appellant's Exhibits # 1 – 5

# MONTANA DE LUXE

## SUPER ONE BALL



77	500.00	222	50.00	344	15.00
666	500.00	111	50.00	333	12.50
555	200.00		25.00	222	10.00
444	150.00	666	25.00	111	7.50
333	100.00	555	25.00		5.00



000 000 000

PLAINTIFF'S EXHIBIT  
#  
12-19-23

**CREDITS**  
010  
CASH 2  
000  
PLAY KBALL  
WIN  
BONUS  
000

1 2 3 4 5 6 7  
8 9 10 11 12 13  
14 15 16 17 18  
19 20 21 22  
23 24 25

**GOLDEN GAME**

**RANDOM GAME**

**SUPER ONE BALL**

**MAGIC TOWER**  
154.47  
279.90

**TRIPLE BARREL**

**EURD ONE BALL**

**LUCKY BALL**

**BREAK THE SAFE**

**CRAZY WHEEL**

**LUCKY BALL II**

**SUPER ONE BALL**  
PRESS R BUTTON  
TO COLLECT PLAYS



# A DE LUX

BREAK THE SAFE

9	24	16	4	6
13	19	14	20	25
2	18	15	12	17
1	22	11	21	8
10	7	5	23	3

TOP SCORE W  
RECEIVE A  
\$25.00 B.N.R.T.

MAGIC TOWER 3\$  
249.43  
452.27



CREDITS 523  
CASH 000  
PLAY 500  
BONUS 000

000000  
1 2 3 4 5 6 7  
000000  
8 9 10 11 12 13  
000000  
14 15 16 17 18  
0000  
19 20 21 22  
0000  
23 24 25

40.00  
35.00  
30.00  
25.00  
20.00  
15.00  
12.50  
10.00  
7.50  
5.00  
3.50

BONUS  
PSYX100  
GAIN  
DRE-BALL  
125.00

1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	19	20

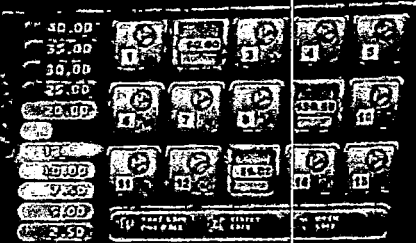
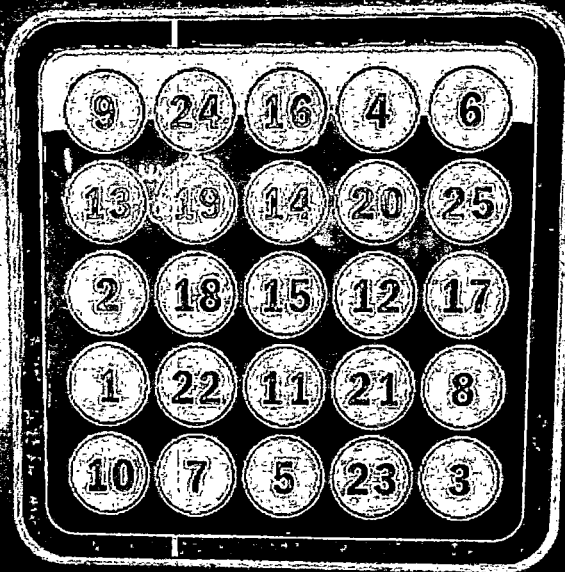
TAKE GAIN ONE BALL  
SELECT GAIN H  
OFFER GAIN

BREAK THE SAFE  
SHOOT THE BALL  
GOOD LUCK

FOR MUS

# MONTANA DE LUXE

## TRIPLE BARREL



777	500.00	222	50.00	444	15.00
666	200.00	111	50.00	333	12.50
555	200.00	777	35.00	222	10.00
444	150.00	666	25.00	111	7.50
333	100.00	555	15.00	333	5.00

MONUS	AVY	PLAYFIELD	DOUBLE	DOUBLE
...	...	...	...	...

**CREDITS**  
0.10

**CASH** X

000

PLAY XBALL

---

**WIN**

---

**BONUS**

000

1 2 3 4 5 6 7  
8 9 10 11 12 13  
14 15 16 17 18  
19 20 21 22  
23 24 25

**GOLDEN GAME**

**RANDOM GAME**

**SUPER ONE BALL**

**MAGIC TOWER**

154.41

**TRIPLE BARREL**

**EURO ONE BALL**

**LUCKY BALL**

**BREAK THE SAFE**

**CRAZY WHEEL**

**LUCKY BALL II**

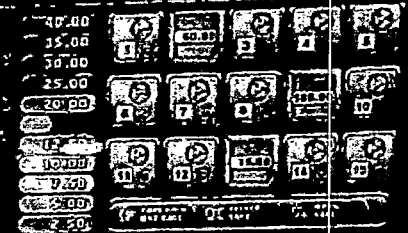
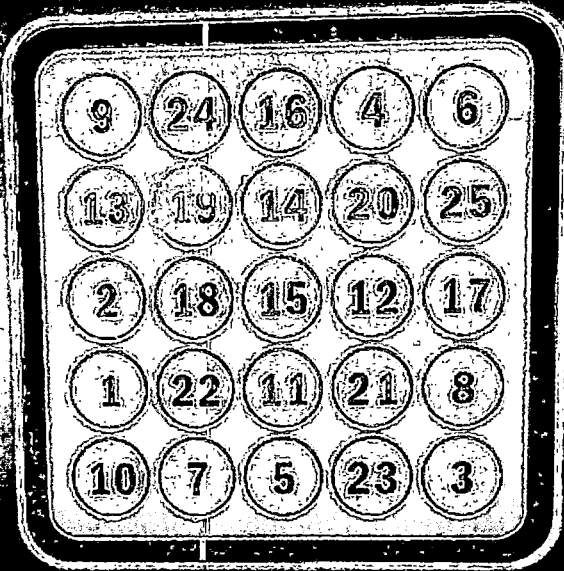
**TRIPLE BARREL**

PRESS YEL BUTTON TO CHANGE GAME



# MONTANA DE LUXE

## EURO ONE BALL



200.00	222	50.00	10	15.00
555	500.00	111	50.00	33
555	200.00	35.00	22	10.00
444	150.00	55	25.00	7.50
333	100.00	55	17.50	5.00

200.00	222	50.00	10	15.00
555	500.00	111	50.00	33
555	200.00	35.00	22	10.00
444	150.00	55	25.00	7.50
333	100.00	55	17.50	5.00

555 555 555



**CREDITS**  
0 10

**CASH** \*

000

PLAY  KILL

**WIN**

-----

**BONUS**

000

000000

1 2 3 4 5 6 7

000000

8 9 10 11 12 15

000000

14 15 16 17 18

000000

19 20 21 22

000000

23 24 25

**GOLDEN GAME**

**RANDOM GAME**

**SUPER ONE BALL**

**MAGIC TOWER**

154.41

279.98

**TRIPLE BARREL**

**EURO ONE BALL**

**LUCKY BALL**

**BREAK THE SAFE**

**CRAZY WHEEL**

**LUCKY BALL II**

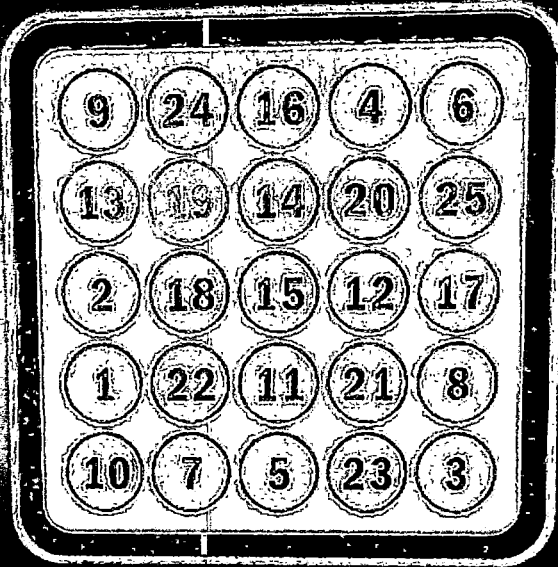
**EURO ONE BALL**

PRESS YEL BUTTON TO CHANGE GAME

www.plm.be

# IA DE LUX

## CRAZY WHEEL



40.00	[Symbol]	[Symbol]	[Symbol]	[Symbol]
35.00	[Symbol]	[Symbol]	[Symbol]	[Symbol]
30.00	[Symbol]	[Symbol]	[Symbol]	[Symbol]
25.00	[Symbol]	[Symbol]	[Symbol]	[Symbol]
20.00	[Symbol]	[Symbol]	[Symbol]	[Symbol]
15.00	[Symbol]	[Symbol]	[Symbol]	[Symbol]
10.00	[Symbol]	[Symbol]	[Symbol]	[Symbol]
5.00	[Symbol]	[Symbol]	[Symbol]	[Symbol]
0.00	[Symbol]	[Symbol]	[Symbol]	[Symbol]

77	200.00	222	50.00	11	15.00
666	500.00	111	50.00	33	12.50
555	200.00	777	35.00	22	10.00
444	150.00	666	25.00	11	7.50
333	100.00	555	15.00	00	5.00

### CREDITS

0.10

CASH

000

PLAY XBALL

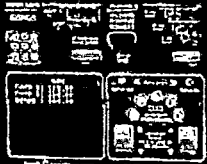
WIN

BONUS

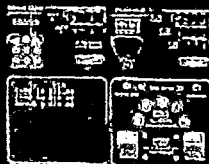
000

- ○ ○ ○ ○ ○ ○ ○
- 1 2 3 4 5 6 7
- ○ ○ ○ ○ ○ ○ ○
- 8 9 10 11 12 13
- ○ ○ ○ ○ ○ ○ ○
- 14 15 16 17 18
- ○ ○ ○ ○ ○ ○ ○
- 19 20 21 22
- ○ ○ ○ ○ ○ ○ ○
- 23 24 25

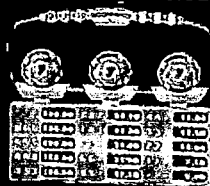
### GOLDEN GAME



### RANDOM GAME

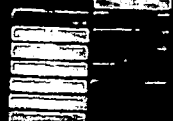


### SUPER ONE BALL



### MAGIC TOWER

154.41

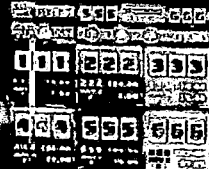


279.98

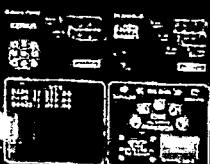
### TRIPLE BARREL



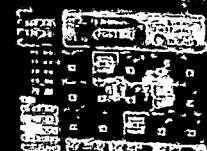
### EURO ONE BALL



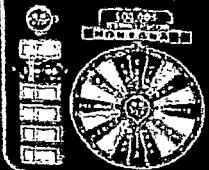
### LUCKY BALL



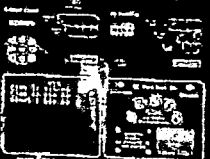
### BREAK THE SAFE



### CRAZY WHEEL



### LUCKY BALL II

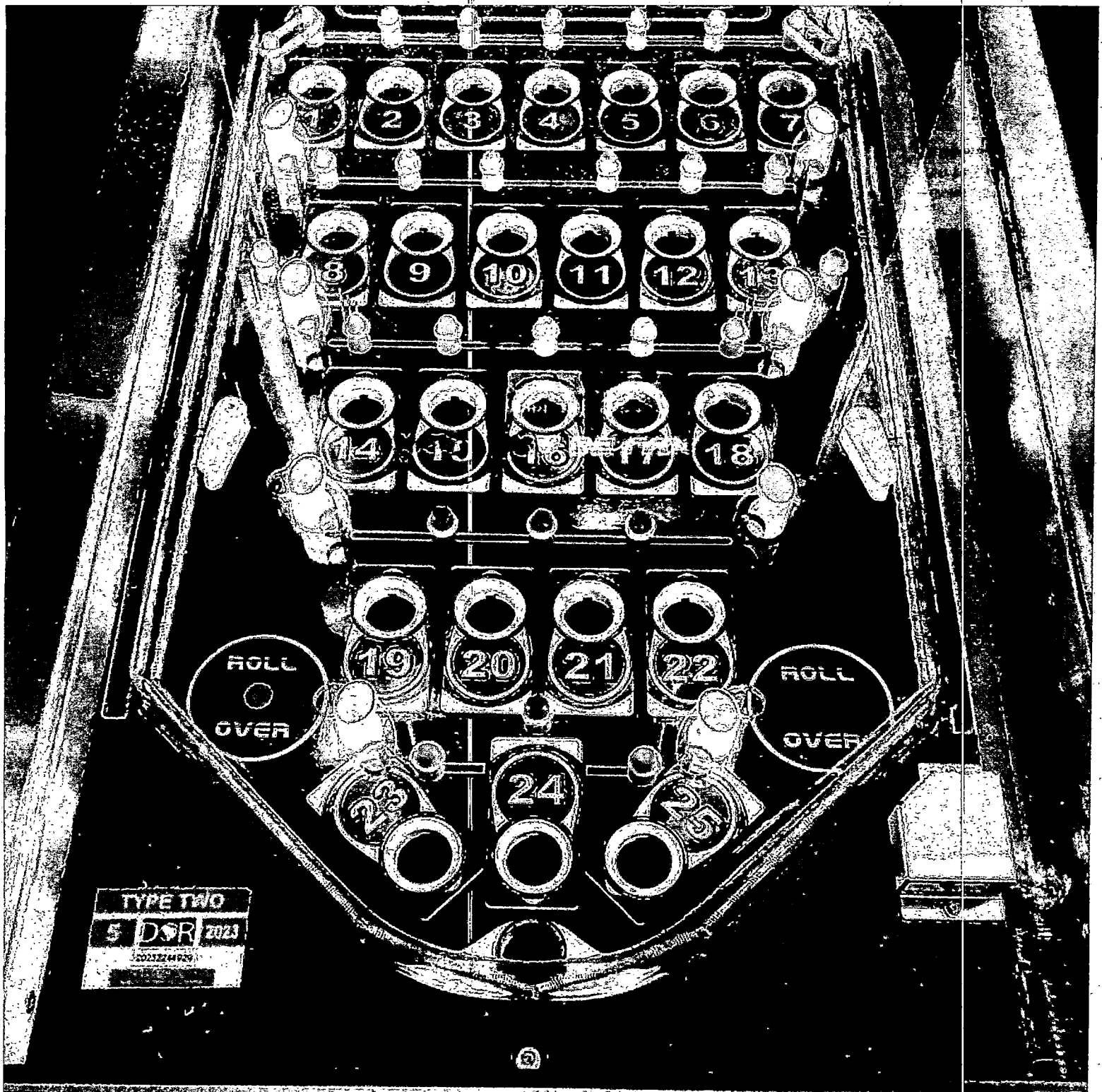


### CRAZY WHEEL

PRESS R BUTTON TO COLLECT PLAYS

www.igra.be





TYPE TWO  
5 DSR 2023  
2023244920







**MONTANA**

PLAINTIFF'S  
EXHIBIT  
# 2  
6/19/23

TYPE TWO

5



2023

20232244929

Self-Operated Vehicle  
Expires May 31, 2023  
South Carolina Department of Revenue

PLAINTIFF'S  
EXHIBIT  
#3  
12-19-55

0057579

0070558

0149773

0175881

1

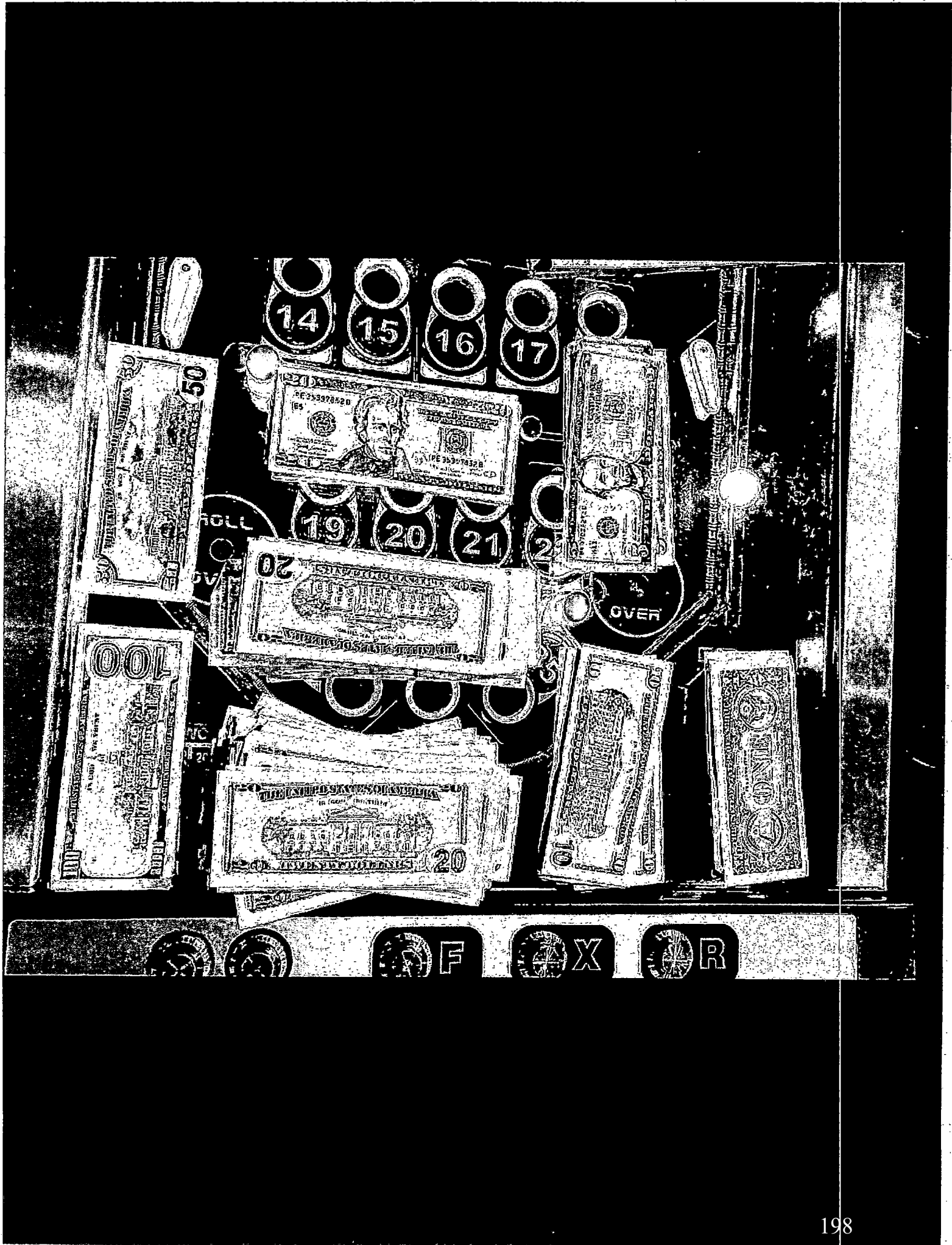
U

**SPLIN**

VIDEO SOLUTIONS INC.  
SALES  
AND  
SERVICE  
1-800-968-5259

PLAINTIFF'S  
EXHIBIT  
#4  
12-19-99

**TOP SCORE WILL  
RECEIVE A  
\$25.00 BAR TAB**







HIGH SCORE  
\*\*5000\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
03:08:24 10/04/2022  
TICKET NO: 289  
GAME NO: 0  
CODE: 29

*Smith*  
*Ph*  
*Smith*

JB pd



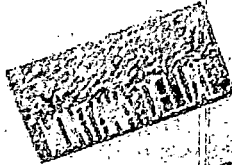
HIGH SCORE  
\*\*6017\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
23:21:50 09/04/2022  
TICKET NO: 287  
GAME NO: 0  
CODE: 32

Smitty

4/10/00  
#409



HIGH SCORE  
\*\*13024\*\*

POINTS  
NO CASH VALUE  
NO PURCHASE NECESSARY  
GOOD ONLY  
GOOD ONLY  
GOOD ONLY  
GOOD ONLY  
GOOD ONLY  
GOOD ONLY



RE  
\*

DELUXE

SCORE  
\*\*

GOOD ONLY

with a  
R. Smith  
130



HIGH SCORE  
\*\*8019\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
06:33:55 10/04/2022  
TICKET NO: 290  
GAME NO: 0  
CODE: 32

Pat Wiggs  
Jo Smith

088  
4-11-22  
5-10



10/100

HIGH SCORE  
\*\*10062\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
18:29:09 11/04/2022  
TICKET NO: 301  
GAME NO: 0  
CODE: 7

4-11-22  
ab  
Keith D. 1415,



HIGH SCORE  
\*\*20324\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
10:18:22 11/04/2022  
TICKET NO: 299  
GAME NO: 0  
CODE: 69

MONTANA DELUXE

HIGH SCORE  
\*\*1141\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
11:01:41 10/04/2022  
TICKET NO: 291  
GAME NO: 0  
CODE: 1

*B 11 Carol  
Smitty*

14.00

90 pk

MONTANA DELUXE

HIGH SCORE

\*\*1399\*\*

410.00  
#469<sup>00</sup> L



HIGH SCORE

\*\*13024\*\*

POINTS

NO CASH VALUE

FOR AMUSMENT ONLY

C000000

11:49:47 10/04/2022

TICKET NO: 292

GAME NO: 0

CODE: 14

Smitty  
Pd Smitty  
130



HIGH SCORE

\*\*10018\*\*

POINTS

NO CASH VALUE  
FOR AMUSMENT ONLY

C000000

01:51:27 11/04/2022

TICKET NO: 296

GAME NO: 0

CODE: 50

*Pl 100*

*J-Lo*

*Smith*



HIGH SCORE

\*\*9011\*\*

POINTS

NO CASH VALUE  
FOR AMUSMENT ONLY

C000000

08:35:57 11/04/2022

TICKET NO: 298

GAME NO: 0

CODE: 80

*Smith*  
*Red Smith*  
*70*



HIGH SCORE

\*\*7889\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
02:48:47 10/04/2022  
TICKET NO: 288  
GAME NO: 0  
CODE: 85

*Steve W.*  
*7889*

(fw)



HIGH SCORE  
\*\*7000\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
22:53:49 12/04/2022  
TICKET NO: 309  
GAME NO: 0  
CASH: 27

4/12/22  
\$1025<sup>00</sup>  
L

CUB  
4-10-22  
Wayne

MONTANA DELUXE

151.00

HIGH SCORE  
\*\*15050\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
17:08:48 10/04/2022  
TICKET NO: 294  
GAME NO: 0  
CODE: 6

1231.00  
4-8-22  
FRH



HIGH SCORE  
\*\*25023\*\*

POINTS  
VALUE  
ONLY



HIGH SCORE

\*\*5012\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000

01:18:05 11/04/2022

TICKET NO: 295

GAME NO: 0

CODE: 56

*Smully*  
*pd Smully*  
*50*

16 pd



HIGH SCORE  
\*\*4750\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000

20:07:35 09/04/2022

TICKET NO: 285

GAME NO: 0

CODE: 51

*Wagner*



HIGH SCORE  
\*\*3000\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
20:32:58 09/04/2022  
TICKET NO: 286  
GAME NO: 0  
CODE: 67

*Mike*

DB  
4-11-22



HIGH SCORE  
\*\*8023\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
02:05:39 12/04/2022  
TICKET NO: 302  
GAME NO: 0  
CODE: 18



**MONTANA DELUXE**

**HIGH SCORE**  
**\*\*13000\*\***

**POINTS**  
**NO CASH VALUE**  
**FOR AMUSMENT ONLY**

C000000

22:30:46 12/04/2022

TICKET NO: 308

GAME NO: 0

CODE: 0

*LB PD*



HIGH SCORE  
\*\*3567\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
18:32:03 12/04/2022  
TICKET NO: 306  
GAME NO: 0  
CODE: 46

*JLO*

DB-22  
4-11



HIGH SCORE

\*\*6012\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
07:19:02 12/04/2022  
TICKET NO: 304  
GAME NO: 0  
CODE: 29

MONTANA DELUXE

HIGH SCORE  
\*\*11000\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

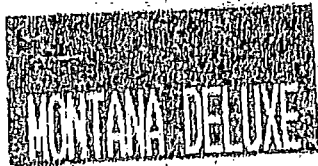
C000000

01:22:14 13/04/2022

TICKET NO: 312

GAME NO: 0

CODE: 64



HIGH SCORE  
\*\*11017\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
00:32:30 13/04/2022  
TICKET NO: 310  
GAME NO: 0  
CODE: 1



**HIGH SCORE**  
**\*\*10012\*\***

**POINTS**  
**NO CASH VALUE**  
**FOR AMUSMENT ONLY**

C000000  
03:36:35 13/04/2022  
TICKET NO: 314  
GAME NO: 0  
CODE: 51

*Smiley*

(A)



HIGH SCORE

\*\*5012\*\*

POINTS

NO CASH VALUE  
FOR AMUSMENT ONLY

C000000

01:07:30 13/04/2022

TICKET NO: 311

GAME NO: 0

CODE: 63

DB  
4-22

MONTANA DELUXE

HIGH SCORE  
\*\*11010\*\*

POINTS

DB  
4-11-22



HIGH SCORE  
\*\*16522\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
05:44:16 12/04/2022  
TICKET NO: 303  
GAME NO: 0  
CODE: 34

CB  
4-7-22  
J-LO

MONTANA DELUXE

HIGH SCORE  
\*\*9487\*\*

*Handwritten initials*

**MONTANA DELUXE**

**HIGH SCORE**  
**\*\*11137\*\***

*Handwritten signature*  
*pd*

**MONTANA DELUXE**

**HIGH SCORE**  
**\*\*14925\*\***

~~As~~  
Nthe

MONTANA DELUXE

HIGH SCORE  
\*\*6504\*\*

POINTS  
CASH VALUE  
ONLY

*Handwritten initials/signature*

**MONTANA DELUXE**

**HIGH SCORE**

**\*\*\*9987\*\*\***

ENTS

ME

OB  
4-9-22  
Wayne



HIGH SCORE

\*\*20000\*\*

POINTS

NO CASH VALUE  
FOR AMUSMENT ONLY

C000000

17:58:22 09/04/2022

TICKET NO: 283

GAME NO: 0

CODE: 35

*M. J. P.*



**HIGH SCORE**  
**\*\*16634\*\***

**POINTS**  
**NO CASH VALUE**  
**FOR AMUSMENT ONLY**

C000000  
09:20:44 09/04/2022  
TICKET NO: 282  
GAME NO: 0  
CODE: 15

*Boan*

(A)  
SMNT

MONTANA DELUXE

HIGH SCORE  
\*\*6004\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
02:41:22 13/04/2022  
TICKET NO: 313  
GAME NO: 0  
CODE: 48

AB  
4-10-22  
Wayne



HIGH SCORE  
\*\*20000\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
16:31:39 10/04/2022  
TICKET NO: 293  
GAME NO: 0  
CODE: 18

Wayne AB  
4-11-22



HIGH SCORE  
\*\*\*10100\*\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
18:05:56 11/04/2022  
TICKET NO: 300  
GAME NO: 0  
CODE: 18

MONTANA DELUXE

HIGH SCORE  
\*\*42016\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

0000000  
06:04:26 11/04/2022  
TICKET NO: 297  
GAME NO: 0  
CODE: 78

*Smitty* *RL Smitty*

420

ff pd

MONTANA

HIGH SCORE

\*\*20250\*\*

POINTS

Club  
4-12-22  
Wayne +  
JLO



HIGH SCORE  
\*\*11224\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
17:10:17 12/04/2022  
TICKET NO: 305  
GAME NO: 0  
CODE: 23



HIGH SCORE

\*\*10023\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000

04:55:58 13/04/2022

TICKET NO: 315

GAME NO: 0

CODE: 83

*Handwritten initials*



**HIGH SCORE**  
**\*\*14005\*\***

**POINTS**  
**NO CASH VALUE**  
**FOR AMUSMENT ONLY**

C000000  
07:34:38 13/04/2022  
TICKET NO: 316  
GAME NO: 0  
CODE: 46

*Handwritten signature*

AW  
JLO 9/12



HIGH SCORE  
\*\*12017\*\*

POINTS  
NO CASH VALUE  
FOR AMUSMENT ONLY

C000000  
22:19:53 12/04/2022  
TICKET NO: 307  
GAME NO: 0  
CODE: 49

Wayne  
cash out  
205.<sup>00</sup>

Darren was  
130 —

12/24/2000

Tim  
Pol. 80 -

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

S.C. State Law Enforcement Division )  
Appellant-Plaintiff )

VS. )

A Montana Deluze 2 Machine, and )  
Video Solutions I, Inc. )  
Respondents -Defendants )

IN THE MAGISTRATE COURT  
FOR RICHLAND COUNTY  
Mag.Ct.Case No. 2022-cv-40107-00687

**Civil Appeal No.: 2023-CP-40-04886**

MAGISTRATE COURT RETURN

ATTACHMENT D:

Respondent's Exhibits # 1 - 2

VIDEO GAME TERMINAL COIN MACHINE AND LEASE AGREEMENT

THIS AGREEMENT, made in the County of Richland State of South Carolina this 22 day of March, 2022 between VIDEO SOLUTIONS I, INC. and Fred Honeycutt individually and d/b/a Tavern on Broad hereinafter jointly referred to as PROPRIETOR, who agree jointly and severally to the following:

NOW THEREFORE, in consideration of the sum of ONE DOLLAR (\$1.00) in hand paid, the receipt of which is hereby acknowledged and in consideration of the mutual covenants and agreements herein contained, it is agreed: PROPRIETOR hereby grants unto VIDEO SOLUTIONS I, INC. the exclusive rights for eight (8) years to install and maintain video game terminals and coin operated music and amusement machine upon the entire premises presently known by the address 7949 Broad River Rd for the initial term commencing 3-22-22 Irmo SC 29043

VIDEO SOLUTIONS I, INC. shall install upon said premises the following equipment: ALL VIDEO GAME TERMINALS AND ALL COIN OPERATED MUSIC, SWEEPSTAKES, REDEMPTION KIOSKS, COMPUTER AND HANDHELD DEVICE GAMES, PROMOTIONAL GAMES, INTERNET GAMING, AMUSEMENT MACHINES AND ALL IN-LINE PIN GAMES OF THE NON-PAYOUT WITH FLIPPERS REFERRED TO AS BINGO GAMES. Such machines are to be placed in prominent places within said premises for optimum use by persons during all usual business hours. PROPRIETOR shall furnish to VIDEO SOLUTIONS I, INC. all necessary electrical outlets for the operation of such machines. All equipment installed by VIDEO SOLUTIONS I, INC. shall remain the sole and exclusive property of VIDEO SOLUTIONS I, INC. and neither PROPRIETOR nor any third party shall have the right or claim thereto except the right of PROPRIETOR to share in the contents of the coin and currency boxes as provided herein. All equipment so placed shall bear the name of VIDEO SOLUTIONS I, INC. and shall state thereon said equipment is the sole property of VIDEO SOLUTIONS I, INC. PROPRIETOR shall permit VIDEO SOLUTIONS I, INC. reasonable access to all VIDEO SOLUTIONS I, INC. equipment.

VIDEO SOLUTIONS I, INC. shall service such equipment upon said premises between 9:00 A.M. and 6:00 P.M. except there shall be NO Sunday service. VIDEO SOLUTIONS I, INC. shall collect the contents of coin and currency boxes or such equipment weekly. To the extent the coin and currency boxes of the Terminals exceeds \$1.00, the contents thereof shall be divided 50% PROPRIETOR/50% VIDEO SOLUTIONS I, INC. To the extent the coin and currency boxes of multi-player unit exceed \$1.00, the net proceeds thereof shall be divided 50% PROPRIETOR/50% VIDEO SOLUTIONS I, INC. To the extent the coin and currency boxes of all other equipment exceed \$100.00 per video card game, \$40.00 minimum per machine video and \$25.00 minimum per machine music and electromechanical games. In the event a machine does not generate the weekly minimum, VIDEO SOLUTIONS I, INC. shall have the right to remove or replace said machine. VIDEO SOLUTIONS I, INC. shall provide for all machines licenses and/or taxes the costs of which shall be divided (50%/50%) between PROPRIETOR and VIDEO SOLUTIONS I, INC. VIDEO SOLUTIONS I, INC. may, at its option, collect any amounts due under this contract at any time during the term of this contract, provided, however, that upon notice and demand by VIDEO SOLUTIONS I, INC., PROPRIETOR shall promptly pay all amounts due, and in the event PROPRIETOR does not pay such amounts within thirty (30) days of such demand, PROPRIETOR shall pay VIDEO SOLUTIONS I, INC. interest on all amounts unpaid, including all cost of collections as provided herein, and such interest shall be computed at an annual rate fourteen (14%) compounded monthly.

During the term and any continuation thereof, no other person, firm, corporation, or entity of any kind whatsoever shall have the right to operate any coin operated music and/or game machines upon said premises. Following the term hereof, this Agreement shall automatically continue for an additional term of six years and like terms thereafter until written notice is received on or before sixty (60) days prior to the termination of this Agreement or any extension thereof. PROPRIETOR shall refrain from contacting and/or negotiating with any person, firm, corporation, entity of any kind whatsoever regarding the placement of coin-operated music and amusement machines with in the above referenced premises until the expiration of this Agreement. Any contract or agreement entered into between PROPRIETOR and any third party which violates this Agreement shall be null and void to the extent of such violation, except as otherwise provided under the laws of the State of South Carolina.

PROPRIETOR agrees to indemnify VIDEO SOLUTIONS I, INC. for damage to or destruction of VIDEO SOLUTIONS I, INC. machines on said premises excluding normal wear and tear. PROPRIETOR WARRANTS THAT IT WILL USE ALL EQUIPMENT IN A LAWFUL MANNER. PROPRIETOR FURTHER AGREES TO ABIDE BY ALL FEDERAL, STATE, LOCAL AND MUNICIPAL LAWS, RULES, STATUTES, ORDINANCES AND REGULATIONS. PROPRIETOR agrees to hold VIDEO SOLUTIONS I, INC. harmless for any damage or loss, including consequential damages, which may result from any unauthorized or unlawful use of VIDEO SOLUTIONS I, INC. equipment by anyone on PROPRIETOR's premises.

In the event of any breach of this Agreement, it is recognized by both parties the remedies at law are inadequate given the highly competitive nature of the amusement machine industry, and the difficulty of finding alternate locations not committed to existing agreements. PROPRIETOR further acknowledges the unique nature of its location. PROPRIETOR further acknowledges that the loss of this location will result in irreparable harm to VIDEO SOLUTIONS I, INC. As a result, the parties agree that either party may, without notice to the other party, petition a court of competent jurisdiction and obtain a restraining order and/or injunction requiring compliance with the terms of this Agreement. Notwithstanding the foregoing, in the event of a breach, in addition to any other remedy available, VIDEO SOLUTIONS I, INC. may elect to terminate this Agreement and remove all equipment without interference from PROPRIETOR and shall be entitled to liquidated damages in an amount equal to VIDEO SOLUTIONS I, INC. average weekly share of the contents of the coin and currency boxes, prior to said breach, multiplied by the number of weeks remaining in the unexpired term of this Agreement.

This agreement shall be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns. In the event PROPRIETOR sells or assigns his interest in said premises, such successor shall be fully bound by the terms of the Agreement. If PROPRIETOR sells or assigns his interest in said premises, he agrees to notify his successor of the Agreement, and to provide for the assumption hereof by the successor. If PROPRIETOR relocates his business within VIDEO SOLUTIONS I, INC. service area, PROPRIETOR shall allow VIDEO SOLUTIONS I, INC. at its option and expense, to transport VIDEO SOLUTIONS I, INC. equipment (or to deliver similar equipment) to the new location, under the terms and conditions set forth in this Agreement.

PROPRIETOR hereby agrees to pay VIDEO SOLUTIONS I, INC. any and all costs and expenses incurred or paid by VIDEO SOLUTIONS I, INC. in protecting or enforcing its rights under this Agreement, including reasonable attorney's fees based upon the greater of fifteen percent (15%) of the total sums due hereunder or VIDEO SOLUTIONS I, INC.'S attorney's actual time expended upon enforcement of this Agreement multiplied by his regular hourly rate for commercial litigation. The term "attorney" as used in this Agreement, is intended to include those employees of VIDEO SOLUTIONS I, INC. licensed to practice law and whose primary responsibility is the conduct of the legal affairs of VIDEO SOLUTIONS I, INC. as well as, and in addition to, any private attorney retained by VIDEO SOLUTIONS I, INC.

In the event a court competent jurisdiction declares any of the conditions or terms herein invalid or unenforceable for any reason, the remaining provisions shall remain in full force and effect. This Agreement shall be irrevocable by the parties hereto.

By signature below, PROPRIETOR agrees to permit the release of certain information relating to this Agreement including, but not limited to, criminal records, credit reports, and financial statements. This release shall continue for a term of years, which shall extend eight (8) years beyond the expiration of this Agreement, inclusive of renewal periods.

The signatories to this Agreement hereby certify authority to enter into this Agreement. The parties further certify that there are no reservations or understandings except as provided in this Agreement. Any prior statements, offers, representations or understandings are deemed matters of negotiation only and are merged into this Agreement which is a complete integration of the Agreement and contains the only Agreement between the parties regarding the subject matter described herein. PROPRIETOR further certifies that there are no contracts or agreements with any other party regarding the subject matter herein.

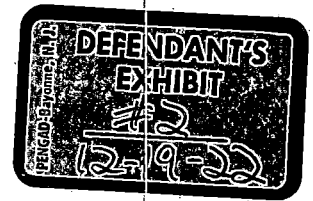
WITNESS [Signature]  
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3-22-22  
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DATE

By: Brett Bluba  
VIDEO SOLUTIONS I, INC.  
By: Fred Honeycutt  
INDIVIDUAL/DBA Tavern on Broad  
By: Fred Honeycutt  
INDIVIDUAL Fred Honeycutt 248



**MEMORANDUM OF UNDERSTANDING FOR IN LINE PIN GAMES**



Video Solutions I, Inc. (Company) and Tavern on Broad (Proprietor) enter into this addendum to the Location Agreement between them dated 3-22-22.

Company and Proprietor agree that each shall independently comply with any and all requirements imposed by SC Code 12-21-2710 or any regulation issued pursuant to either, specifically including but not limited to, the following:

- (1) Proprietor will comply at all times with all licensing, contracting, reporting, operating, and auditing requirements of the Act;
- (2) Proprietor will cooperate with all aspects of an inspection, audit, or other request for information by SC Code;
- (3) Proprietor will comply with all State and Federal Tax Laws.
- (4) All COAMs must have a permit sticker affixed to the machine by the Company. The permit sticker may not be removed from any COAM except by Company for replacement of a new sticker;
- (5) Proprietor shall timely meet any obligations imposed by the tax laws or other laws or regulations of this State;
- (6) CASH/REDEMPTION
  - (a) No form of cash or cash equivalent can be awarded for the successful play of In Line Pin Games.
  - (b) No form of redemption can be awarded to successful player.
  - (c) Tickets are used to clear High Score points by player and have no cash value.
  - (d) In Line Pin Game is for amusement only.

Agreed to this 22<sup>nd</sup> day of March year 2022

[Signature]  
Location Owner's Signature

Brett Blaker  
Video Solutions I, Inc

Tavern on Broad  
Location Name

7949 Broad River Rd, Firmo  
Location Address  
SC 29063

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

S.C. State Law Enforcement Division )  
Appellant-Plaintiff )

VS. )

A Montana Deluze 2 Machine, and )  
Video Solutions I, Inc. )  
Respondents -Defendants )

IN THE MAGISTRATE COURT  
FOR RICHLAND COUNTY  
Mag.Ct.Case No. 2022-cv-40107-00687

**Civil Appeal No.: 2023-CP-40-04886**

MAGISTRATE COURT RETURN

ATTACHMENT E:

Respondent's Post-Seizure Request for a Hearing and Pre-Trial  
Brief dated May 5, 2022 [5 pp.]

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

2022CV4010700687  
**CASE NUMBER**

South Carolina Law Enforcement  
Division  
Plaintiff,

**PRE-TRIAL BRIEF**

v.

(1) Montana Deluxe 2; Gambling  
Machines,  
Defendant.

UPPER TOWNSHIP  
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MAGISTRATE'S OFFICE

INTRODUCTION

Video Solutions I, Inc., (VS) the owner of a Montana De Luxe 2 amusement device seized on April 20, 2022 from the Tavern on Broad, hereby submits this Pre-Trial Brief for the Court's consideration at the post-seizure hearing being requested. This Court issued a preliminary order of destruction on April 21, 2022 finding that the machine violates S.C. Code Section 12-21-2710. For the reasons set forth herein, VS requests that the Court vacate its Order of Destruction and order that the machine and proceeds seized from the machine be returned.

MONTANA DE LUXE 2

The Montana De Luxe 2 is a mechanical pin game played on a sloping table, the object being to shoot a ball, driven by a spring-operated plunger, up a side passage, causing the ball to roll back down against pins and through channels that flash or ring, with the goal being that the pin ball comes to rest in particular holes on the playing field. In addition, the player can alter the course of direction of the ball by actuating one or more levers or flippers causing the lever or flipper to strike the ball. The outcome depends upon the player shooting a pinball into a particular divot on the playing table.

The Montana De Luxe 2 is an in-line pin game like many older in-line pin games that have been legally operated in South Carolina. The original in line pin games play exactly like the new Montana De Luxe 2. The only difference is that the header on the Montana De Luxe 2 has two LED monitors instead of light bulbs.

The original in-line pin games had only two or three games available for play. In fact, DOR Revenue agents have historically referred to in-line pin games as "bingo" games. See *SCDOR v. Scott Sheets, d/b/a S&S Amusements* 96-ALJ-17-390 CC (attached). The Montana De Luxe 2 has nine games available for play. The games either simulate a multi ball skill shot game or a single ball skill shot games of various types. The games are listed as follows: golden game, random game, super one ball, triple barrel, euro one ball, lucky ball, break the safe, crazy wheel, and lucky ball 2. Players can control the speed the to achieve a winning outcome.

#### LEGAL ANALYSIS

The Montana De Luxe 2 is a mechanical in-line pin game which is excluded from the list of devices identified in S.C. Code Section 12-21-2710 that are unlawful to possess in South Carolina.

Section 2710 states:

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 non-payout 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.

S.C. Code Ann. § 12-21-2710 (emphasis added).

In addition, South Carolina Code Section 12-21-2720 expressly provides for the licensing of in-line pin games with either a Type 2 or Type 3 license. Section 2720 provides:

(A) Every person who maintains for use or permits the use of, on a place or premises occupied by him, one or more of the following machines or devices shall apply for and procure from the South Carolina Department of Revenue a license effective for two years for the privilege of making use of the machine in South Carolina and shall pay for the license a tax of fifty dollars for each machine in item (1), two hundred dollars for each machine in item (2), and four thousand dollars for each machine in item (3):

(2) a machine for the playing of amusements or video games, without free play feature, or machines of the crane type operated by a slot in which is deposited a coin or thing of value and 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. A machine required to be licensed under this item is exempt from the license fee if an admissions tax is imposed.

(3) a machine of the non-payout type, or in-line pin game, operated by a slot in which is deposited a coin or thing of value except machines 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.

S.C. Code Ann. § 12-21-2720

As is evident by the highlighted language in Section 2720, the distinction between Type 2 and Type 3 in-line pin games under the South Carolina licensing provision is the existence levers or flippers operated by a player by which the course of the balls may be altered or changed.

In *SCDOR v. Scott Sheets, d/b/a S&S Amusements 96-ALJ-17-390 CC* the Administrative Law Court ruled that the Miss Nevada in-line pin game with flippers was a Type 2 machine. The

DOR urged the Court to rule that the Miss Nevada was a Type 3 machine, which at the time was illegal to operate in South Carolina. The Court rejected the DOR's interpretation, concluding that the Miss Nevada met the definition of a Type 2 machine because of the free play feature and flippers that could alter the course of the ball.

The DOR did not appeal the Administrative Law Court's decision. Instead, SC DOR has since adopted this decision in Revenue Ruling 16-4. RR 16-4 provides guidelines for determining the proper license under Section 2720. Under RR 16-4 only in-line pin games without flippers are required to carry a Type III license. Pin table with levers are only required to carry a Type II license regardless of whether the pin table has a free play feature or not.

The South Carolina Department of Revenue Regulation 117-1300.2 defines "free play feature" and reads:

The words "which has a free play feature" shall mean and include any machine which is designed and made with such feature by the manufacturer of such machine, provided however, that where the mechanism constituting a free-play feature has been completely and wholly removed from the machine, and a certificate to that effect is filed at the time of application for license, the machine shall be licensed as one without a free play feature.

SC DOR RR 16-4 further explains that "a free play feature allows a person to play an entire game free of charge where the free game is the same game the person would play if he had paid to play the game. For example, a player may receive a free game after a high score or after a number match where the last number of the player's score matches a number randomly selected by the machine (Score:328,446, Randomly Selected Number :6)."

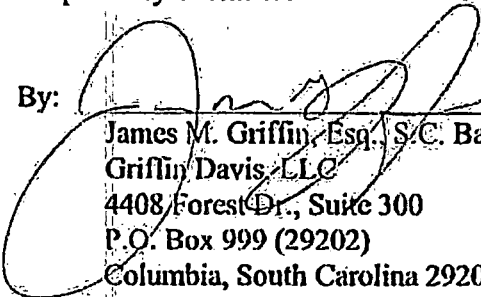
The Montana De Luxe 2 machine meets the criteria for a lawful Type II machine because it is an in-line pin game with levers or flippers. In addition, the Montana De Luxe 2 has a free play feature, whereby a player can win the opportunity to play the same game free of charge.

**CONCLUSION**

Based upon the foregoing, the undersigned respectfully requests order the return of the seized machine to its lawful owner, VS, as well as all proceeds seized inside the machine.

Respectfully Submitted.

By:



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*Attorneys for Video Solutions I, Inc.,*

Columbia, SC  
May 3, 2022

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MAGISTRATE'S OFFICE

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

S.C. State Law Enforcement Division )  
Appellant-Plaintiff )

VS. )

A Montana Deluze 2 Machine, and )  
Video Solutions I, Inc. )  
Respondents -Defendants )

IN THE MAGISTRATE COURT  
FOR RICHLAND COUNTY  
Mag.Ct.Case No. 2022-cv-40107-00687

**Civil Appeal No.: 2023-CP-40-04886**

MAGISTRATE COURT RETURN

**ATTACHMENT F:**

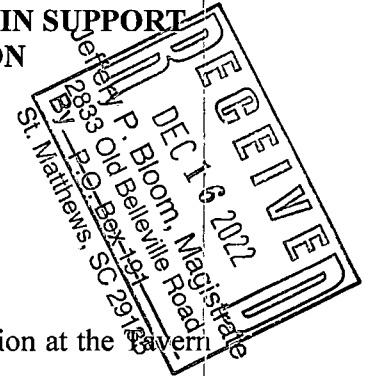
**Appellant's Memorandum In Support of Destruction dated  
December 16, 2023 [17 pp.]**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE MAGISTRATE’S COURT  
Case No.: 2022CV4010700687

S.C State Law Enforcement Division, )  
 )  
v. )  
 )  
1 Montana Deluxe 2; Gambling Machine )  
 )  
Defendant. )

**MEMORANDUM IN SUPPORT  
OF DESTRUCTION**



**BACKGROUND**

On or about April 20, 2022, SLED agents conducted an alcohol inspection at the [redacted] on Broad, which is a licensed alcohol location located at 7949 Broad River Road, Suite 90 in Irmo, South Carolina. During this inspection, SLED agents observed evidence illegal gambling and an illegal gaming device.

In accordance with S.C. Code Ann. § 12-21-2712, SLED agents seized this illegal device and took it to an appropriate Richland County Magistrate Judge who examined it and issued an Order of Destruction finding that the machine violates South Carolina Code Ann. § 12-21-2710 (“§ 12-21-2710”). This order also authorized the destruction of the machine. However, a post-seizure hearing was requested.

**BURDEN OF PROOF**

“At a post-seizure hearing, the burden is on the owner of the *res* [the machine] 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); State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000). Therefore, the actual owner of this gaming machine, and only the actual owner of this device, bears the burden of proof or has standing in this matter. However, based on the following, the owner cannot meet this burden:

## HISTORY AND APPLICABILITY SECTION 12-21-2710

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) *citing* Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 303, 534 S.E.2d 270, 273 (2000); Lawton v. Steele, 152 U.S. 133, 136 (1894).

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.* at 304, 534 S.E.2d at 273 *citing* Bennis v. Michigan, 516 U.S. 442, 452 (1996); Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 686-87 (1974).

The South Carolina Supreme Court has also indicated that when analyzing machines and devices pursuant to § 12-21-2710, courts should “**look behind the name and style of the device to ascertain its true character.**” Ward v. W. Oil Co., Inc., 387 S.C. 268, 278, 692 S.E.2d 516, 522 (2010) *citing* 38 C.J.S. Gaming § 10 (Supp. 2010) (emphasis added).

Further, in South Carolina, a “**machine is a gambling device where its operation is such that, although the player in any event will receive something, he stands a chance to win something in addition.**” Harvie v. Heise, 150 S.C. 277, 148 S.E. 66, 68 (1929) *quoting* 27 C. J. 989 (emphasis added).

Section 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. The full text of the statute is set out below:

**SECTION 12-21-2710. Types of machines and devices prohibited by law; penalties.**

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.

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). The South Carolina Supreme Court acknowledged the South Carolina Legislature's true aim and intent in passing § 12-21-2710 in Westside Quik Shop v. Stewart, 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). 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 to the contrary is inaccurate.

Further, as far back as 1939, the South Carolina Supreme Court acknowledged that, “[i]t is clear that the law [§ 12-21-2710 and its predecessors] condemns any devices pertaining to games of chance, of whatever name or kind....” Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20, 23 (1939) (emphasis added). In 1967, the South Carolina Supreme Court again recognized, “[i]t is clear that the Legislature, by the enactment of the statutes here involved [Sections 5—621 and 5—622 of the Code, which are the predecessor statutes to Sections 12-21-2710 and 12-21-2712], did condemn any devices pertaining to games of chance.” Squires v. South Carolina Law Enforcement Division, 249 S.C. 609, 612-13, 155 S.E.2d 859, 861 (1967) (emphasis added). Accordingly, it is unquestionable that the intent of the South Carolina Legislature in enacting § 12-21-2710 and its predecessor statutes was to specifically prohibit the possession of all devices pertaining to games of chance of whatever name or kind, and all machines that are, or can be used as gambling machines in this state.

The South Carolina Supreme Court has also ruled that even if a machine may be capable of being operated in a lawful manner or, in fact might be completely inoperable, the legislature clearly intended to outlaw even **the mere possession** or storage of certain types of machines themselves, “**regardless of their intended use or operation.**” State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 190, 525 S.E.2d 872, 880 (2000) (emphasis added) (noting that “§ 12-21-2710 clearly makes mere possession of described machines unlawful.”). As such, as acknowledged by the South Carolina Supreme Court, all video gaming machines, like the machine before this Court, are illegal to possess in South Carolina, “regardless of their use or operability.” Further, while the evidence and testimony in this matter will demonstrate that this machine violates § 12-21-2710 in multiple ways, any single capability or use of a machine that violates § 12-21-2710 is sufficient to uphold the Order of Destruction in this matter.

## THE DEVICE AT ISSUE IN THIS ACTION VIOLATES § 12-21-2710

When analyzing the true nature, use, and character of the device seized in this matter, the evidence and testimony presented will clearly demonstrate that this device is illegal to possess pursuant to § 12-21-2710 in multiple ways.

### 1. Device Operated by a Slot in which is Deposited a Coin or Thing of Value for the Play of Bingo or Keno

This device is an illegal device operated by a slot in which is deposited a coin or thing of value for the play of bingo and keno in violation of § 12-21-2710. 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.

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 lights up 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. This is not a legal pin table or pinball machine in South Carolina. Rather, this machine is a device operated by a slot in which is deposited a coin or thing of value for the play of bingo and/or keno in violation of § 12-21-2710.

In addition, as will be discussed more fully below, this machine does not meet the exception set forth in § 12-21-2710 for “non-payout pin tables” or “non-payout in line pin games” (i.e. traditional pin ball machines) because the evidence and testimony will demonstrate that there were in fact pay outs for winnings on this machine.

## **2. Illegal Gambling Device**

This machine is also an illegal gambling device prohibited by South Carolina law. The evidence and testimony will demonstrate that not only was this machine capable of paying out winnings to players, but also that cash payouts were paid to players from this machine. Notably, this machine shows the credits and the “cash” available to be collected and indicates “Press the R Button to Collect Plays”. Now, interestingly, this machine goes through the ruse of claiming to offer only “winning plays”, but the evidence and testimony will establish that patrons were paid the cash amount equivalent to the plays. SLED will provide evidence of numerous cash payouts from the play of this device, including payouts in excess of \$100.00. As such, this is a gambling device. *See Harvie v. Heise*, 150 S.C. 277, 148 S.E. 66, 68 (1929) *quoting* 27 C. J. 989 (a “machine is a gambling device where its operation is such that, although the player in any event will receive something, he stands a chance to win something in addition.”). There is no doubt whatsoever that players stand a chance to win cash payouts *i.e.* something of value for the play of this device.

In addition, in late 2012, 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."<sup>1</sup> It is axiomatic that players put money into this machine on the chance that the machine will provide the player with the uncertain event of randomly generated winning combinations of BINGO or Keno that will win the player money. 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 lucky enough to have a BINGO or keno resulting in the payment of money constitutes a wager and is thus considered illegal gambling in South Carolina. *See Id.*

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, this device does not appear to give change. As such, this is a machine or device licensed pursuant to Section 12-21-2720 and used for gambling in violation of the laws of the State of South Carolina.

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<sup>1</sup> <http://www.merriam-webster.com/dictionary/wager>.

### 3. Illegal Free Play Feature Machine

This machine is also a video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value in violation of S.C. Code Ann. § 12-21-2710. A historical background of the video poker laws demonstrates such. In 2005, the South Carolina Supreme Court noted,

For nearly seventy years, gaming machines have been illegal in this State and subject to forfeiture as contraband. In 1931, the General Assembly enacted a comprehensive statute outlawing the possession of all forms of gambling devices, including vending machines that could be operated as gambling devices. 1931 S.C. Act No. 368. In 1982, however, the General Assembly enacted an exemption for “video games with free play feature” which were a relatively recent technological development. 1982 S.C. Act No. 466.

Westside Quik Shop v. Stewart, 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).

However, this “free play feature” exemption was removed by the Legislature

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.**

*Id.* (emphasis added).

Therefore, as of the year 2000, South Carolina law has prohibited any and all video game machines with a free play feature operated by a slot in which is deposited a coin or thing of value. The evidence in this case will show that this device offers “free play features” that award a player “free plays”. These “free plays” allow the player to play without the player having to wager any more of the player’s money. This functionality is unquestionably a “free play feature”. As such, the existence of this functionality - standing alone - renders this device illegal in South Carolina.

#### **4. Device Pertaining to Games of Chance of Whatever Name or Kind**

In addition, the true nature and character this machine is that it is a “device pertaining to games of chance of whatever name or kind.” Chance ultimately dictates the outcome of each single play on this machine. As noted above, this device offers nine different chance game boards, which simulate bingo and keno. The fact that the selection of the numbers comes from the use of a plunger and a metal ball as opposed to a bucket or hopper filled with balls is of no consequence. Chance still predominates because a player’s knowledge, skill, dexterity, or abilities absolutely cannot improve the overall result because it all comes down to luck. Simply put, skill cannot overcome chance on this device. As such, chance predominates on these machines and it is an illegal device pertaining to games of chance of whatever name or kind.

The fact that there are also nine different games separates this machine from traditional pinball machines or even in-line pin games. The player selects between nine different “boards” seeking to get lucky enough to with the jackpots offered thereon – whether it’s “breaking the safe” or the “crazy wheel”. In every instance, the device randomly sets the available prizes on the game and the player’s “luck” ultimately determines the outcome. As such, this is a device, which offers 9 different games of chance, is an illegal device in South Carolina.

## CONTRABAND PER SE

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. 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, the machine at issue in this action, which is also the subject of § 12-21-2710’s prohibition is contraband *per se* and illegal to possess regardless of its intended, capable, or possible uses.

### COMPONENT PARTS

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 Co. 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 acknowledged the history of 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). Therefore, even though the machine at issue in this action may not be operational at this time, the parts that comprise this illegal machine are themselves illegal to possess in South Carolina. As such, any argument that the machine is not operable or that this machine may have other lawful uses is of no consequence.

## A LICENSING SCHEME CANNOT LEGALIZE ILLEGAL DEVICES.

Moreover, regardless of whether or not this machine has South Carolina Department of Revenue stickers, it is still illegal to possess. The South Carolina Supreme Court has clearly ruled that “[u]nder longstanding precedent in this state, licensing schemes do not render legal products or devices that are illegal under other provisions of state law.” State v. One Coin-Operated Video Game, 321 S.C. 176, 467 S.E.2d 443, 445 (1995); *see also* Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20, 24 (1939). As such, regardless of whether this machine was licensed by the South Carolina Department of Revenue, the machine, which directly violates § 12-21-2710, is illegal to possess in South Carolina.

In addition, South Carolina Code Ann. § 12-21-2736 states that “[t]he issuance of a license under the provisions of this article by the department does not make lawful the operation of any gambling machine or device, the operation of which is made unlawful under the laws of this State.” Because of this provision, the Department of Revenue does not inspect machines prior to the issuance of a license. Rather, upon the payment of the appropriate amount, the Department issues licenses to applicants to be placed on whatever machine the applicant desires. As such, the licensure of a machine has no bearing on the machine’s illegality.

Rather, South Carolina law clearly contemplates licensed machines being illegal. Specifically, S.C. Code Ann. § 12-21-2710 addresses this issue by clearly stating that “any machine or device licensed pursuant to Section 12-21-2720 and used for gambling” is illegal in South Carolina. This section would have no meaning whatsoever if licensure was the end of the analysis. It is not. The evidence in this matter will establish that this device was licensed pursuant to Section 12-21-2720 and used for gambling. As such, it is prohibited.

## PAYOUTS

The evidence and testimony will reveal that the owner of this machine and the owner of the location from which it was seized paid out cash winnings on this machine. However, should there be any argument that such payouts were made by providing merchandise instead of cash, this would not affect the outcome in this matter. Notably, despite evidence of cash payouts, the machines has a sign that says "Top Score will Receive a \$25.00 Bar Tab". Despite being a ruse, whether the payout is cash, a gift card, or a bar tab is of no consequence. Rather, the South Carolina Legislature specifically repealed S.C. Code Ann. § 16-19-60, which allowed nonmachine cash payouts prior to the year 2000. Notably, prior to its repeal, S.C. Code Ann. § 16-19-60 stated that the gambling prohibitions in South Carolina were limited to machines that actually disbursed money directly to players. However, the South Carolina Legislature specifically repealed this provision with 1999 S.C. Act 125. In Westside Quik Shop v. Stewart, the South Carolina Supreme Court specifically acknowledged this repeal stating that 1999 S.C. Act 125 "repeals § 16-19-60, which allows nonmachine cash payouts, and amended S.C. Code Ann. § 12-21-2710 (2000) to remove the exception for video gaming machines, thereby rendering the possession of these machines illegal..." 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)). Accordingly, South Carolina law is clear, any payout of any kind, is prohibited, and payouts of merchandise do not render a machine any less illegal. In addition, the South Carolina Supreme Court has long held that standing a chance to receive "something" in addition to the original wager constitutes gambling. *See Harvie v. Heise*, 150 S.C. 277, 148 S.E. 66, 68 (1929) *quoting* 27 C. J. 989 (a "machine is a gambling device where its operation is such that, although the player in any event will receive something, he stands a chance to win something in addition.").

## CONCLUSION

The South Carolina Supreme Court has 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) *quoting* Moberly v. Deskin, 169 Mo. App. 672, 155 S. W. 842 (1913). 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 with the use "cunning mechanical inventions". 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.

Therefore, for the foregoing reasons and all others that will be set forth at the hearing on this matter; SLED asks that this Court uphold the previous Order of Destruction signed in this matter, find that the illegal gambling machine at issue in this action violates both the plain language of § 12-21-2710 and the spirit of this law and the intent of this law, and order that this illegal gaming machine be destroyed.

[SIGNATURE PAGE ATTACHED]

Respectfully submitted,

*s/Adam L. Whitsett*

Adam L. Whitsett, Esquire

General Counsel

South Carolina Law Enforcement Division

Post Office Box 21398

Columbia, South Carolina 29221

Phone: (803) 896-0647

Fax: (803) 896-7588

Email: [AWhitsett@sled.sc.gov](mailto:AWhitsett@sled.sc.gov)

South Carolina Bar Number 74888

ATTORNEY FOR SLED

Columbia, South Carolina  
December 15, 2022

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

S.C. State Law Enforcement Division )  
Appellant-Plaintiff )

VS. )

A Montana Deluze 2 Machine, and )  
Video Solutions I, Inc. )  
Respondents -Defendants )

IN THE MAGISTRATE COURT  
FOR RICHLAND COUNTY  
Mag.Ct.Case No. 2022-cv-40107-00687

**Civil Appeal No.: 2023-CP-40-04886**

MAGISTRATE COURT RETURN

**ATTACHMENT G:**

**Richland County magistrate court Order of Destruction / Notice  
of Post-Seizure Hearing and case file correspondence/documents  
[9 pp.]**

STATE OF SOUTH CAROLINA )

2022CV4010700687

CASE NUMBER

COUNTY OF RICHLAND )

South Carolina Law Enforcement )  
Division )

IN THE MAGISTRATES COURT

Plaintiff )

Vs )

(1) Montana Deluxe 2; Gambling )  
Machines )

Defendant )

ORDER OF DESTRUCTION/  
NOTICE OF POST SEIZURE  
HEARING

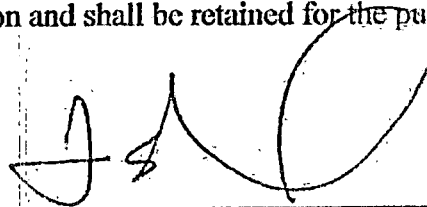
Pursuant to S.C. Code Ann. §12-21-2712, the above listed machine was seized on April 20, 2022, from Tavern on Broad at 7949 Broad River Road, Suite 90, Irmo SC 29063 by the Plaintiff and brought before me on April 21, 2022, for examination to determine if the machine is prohibited pursuant to S.C. Code Ann. §12-21-2710.

Upon careful examination of the machine, I find the machine to be: vending or slot machine, or a 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 S.C. Code Ann. §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.

I find that the Defendant's machines is in violation of S.C. Code Ann. §12-21-2710 and do hereby order its destruction. **The Defendant has 15 days from the date of receipt of this Order to request a Post Seizure Hearing to contest the illegality of the machine. Otherwise, the machine will be destroyed.**

Pursuant to state law, the State Law Enforcement Division is authorized to retain, expend, and carry forward all monies associated with illegal gaming devices seized by the Division, once orders of destruction and awarding of these monies have been received from a court of competent jurisdiction. I find that \$5,344.00 was seized by the Division and shall be retained for the purposes provided by the law.

**AND IT IS SO ORDERED.**



Judge Timothy C Emdond  
Upper Township Magistrate  
7615A Wilson Blvd  
Columbia, SC 29203  
803-576-2570

April 21, 2022

MV166

### FAX COVER SHEET

TO	Honorable Judge Edmond
COMPANY	Richland County Magistrate Court
FAX NUMBER	18035762579
FROM	Paul Ferrara
DATE	2022-05-05 20:01:11 GMT
RE	Case No.:2022-CV4010700687

### COVER MESSAGE

Dear Judge Edmond,

Please see the attached hearing request and affidavit of service for the above referenced case. Thank you.

Best Regards,  
Ashlene McCarthy  
Paralegal to the Ferrara Law Firm

FERRARA LAW FIRM, PLLC  
8887 Old University Blvd., Ste 200  
North Charleston, South Carolina 29406  
(843) 569-5511 Office  
(843) 569-5411 Fax  
(843) 214-2753 Direct

UPPER TOWNSHIP  
2022 MAY -5 PM 4: 04  
MAGISTRATE'S OFFICE

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

FOR THE MAGISTRATE'S COURT  
CASE NO.: 2022-CV-4010700687

SLED,

Plaintiff,

v.

1 Montana Deluxe (2) Gambling Machines,

Defendant.

HEARING REQUEST

UPPER TOWNSHIP  
2022 MAY -5 PM 4:04  
MAGISTRATE'S OFFICE

PLEASE TAKE NOTICE that Fred Honeycutt, by and through his attorney, Paul B. Ferrara, III hereby requests a pre destruction hearing to be set to evaluate whether the S.C. Code of law authorizes destruction where the machine does not payout money. The machine must be used for gambling per S.C. Code Ann. 12-21-2710. See State v. Blackmon, 304 S.C. 270, 274, 403 S.E.2d 660, 662 (1991) (emphasis added). A machine was seized that did not payout proceeds and the Supreme Court did not authorize the destruction of the machine. The Court further stated that "Although this result appears anomalous, as it allows activity which seems to be unlawful gambling to go unpunished, it is nonetheless clear that this outcome reflects the intent of the legislature... Further, it is not within our province to amend the law to resolve this inconsistency, rather, we leave to the legislature the resolution of this matter." The Court in Blackmon held that coin-operated non-payout machines with free play features are exempt from the reach of Section 16-19-40 as long as the machines themselves do not disburse money to the player. Since the poker machines involved in this case fall within this specific statutory exemption, the 2 Nexus machines should not be ordered to be destroyed.

FERRARA LAW FIRM, PLLC

PAUL B. FERRARA, III  
Attorney for Fred Honeycutt  
8887 Old University Boulevard  
North Charleston, SC 29406  
T: 843-569-5511 / F: 843-569-5411  
SC Bar No.: 70511  
Email: [paul@ferreralawfirm.net](mailto:paul@ferreralawfirm.net)

May 5, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

FOR THE MAGISTRATE'S COURT  
CASE NO.: 2022-CV4010700687

SLED,

Plaintiff,

v.

1 Montana Deluxe (2) Gambling Machines,

Defendant.

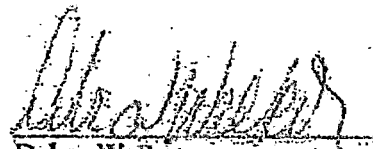
**AFFIDAVIT OF SERVICE**

PERSONALLY appeared before me the undersigned who, being duly sworn, on oath says:

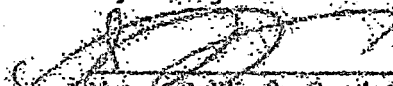
1. That she is an employee in the office of Ferrara Law Firm, attorneys for the defendant herein;
2. That on the 5th day of May, 2022 she did by US mail give a true and correct copy of the Hearing Request to:

Judge Tomothy C. Edmond  
7615A Wilson Blvd.  
Columbia, SC 29203

3. That she is not a party to this action.

  
Debra Walker

SWORN to before me this 5th  
day of May 2022.

  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: 1/2/31



GRIFFIN  DAVIS

JAMES M. GRIFFIN

4408 Forest Drive, Suite 300 / PO Box 999 (29202)  
Columbia, SC 29206

jgriffin@griffindavislaw.com  
803 744 0800 o | 803 744 0805 f

May 3, 2022

**VIA FACSIMILE and U.S. MAIL**

The Honorable Tomothy C. Edmond  
Upper Township Magistrate  
7615A Wilson Blvd  
Columbia, SC 29203

**Re: South Carolina Law Enforcement Division v. Montana Deluxe 2;  
Gambling Machines  
Tavern on Broad, 7949 Broad River Road, Suite 90, Irmo, SC 29063  
Case No. 2022CV4010700687**

UPPER TOWNSHIP  
2022 MAY -3 PM 12: 04  
MAGISTRATE'S OFFICE

Dear Judge Edmond:

Richard A. Harpootlian and I represent Video Solutions I, Inc., the owner of equipment seized from Tavern on Broad, 7949 Broad River Road, Suite 90, Irmo, SC 29063 on April 20, 2022. I am writing on behalf of Video Solutions I to request a Post Seizure Hearing to address the legality of the equipment seized.

To assist you with processing this request, I am enclosing herewith a copy of the Order of Destruction received by Video Solutions I on April 24, 2022.

Please provide us notice on behalf of Video Solutions I the scheduling of the Post Seizure Hearing in this matter.

I am also enclosing a Pre-Trial Brief for your consideration.

Thank you for your assistance and should you need any further information please do not hesitate to contact me.

With best regards, I am

Very Truly Yours,

  
James M. Griffin

JMG/jh  
Enclosures

cc: Richard A. Harpootlian (Via Electronic Mail)

UPPER TOWNSHIP  
2022 MAY - 6 PM 1:20  
MAGISTRATE'S OFFICE

May 3, 2022

MAY 06 2022

Initial: JH

VIA FACSIMILE and U.S. MAIL  
The Honorable Tomothy C. Edmond  
Upper Township Magistrate  
7615A Wilson Blvd  
Columbia, SC 29203

Re: **South Carolina Law Enforcement Division v. Montana Deluxe 2;  
Gambling Machines**  
Tavern on Broad, 7949 Broad River Road, Suite 90, Irmo, SC 29063  
Case No. 2022CV4010700687

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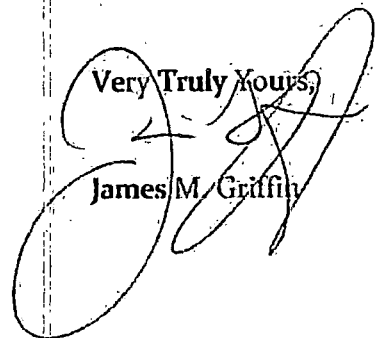
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Thank you for your assistance and should you need any further information please do not hesitate to contact me.

With best regards, I am

Very Truly Yours,

James M. Griffin



JMG/jh  
Enclosures

cc: Richard A. Harpootlian (Via Electronic Mail)

UPPER TOWNSHIP  
2022 MAY - 6 PM 1:20  
MAGISTRATE'S OFFICE

Frank B McMaster  
Attorney at Law  
1708 Richland Street  
Columbia S.C. 29201  
803-587-1303 (24/7)  
Fax: 803-252-6266  
Dimcmaster34@gmail.com  
SC BAR 9073

5-11-22  
Judge Tomothy C Edmond  
Upper Township Magistrate  
7615A Wilson Blvd  
Columbia S.C. 29203  
803-576-2579

Re: SLED v (1) Montana Deluxe 2 Gaming Machine  
2022CV4010700687

Dear Judge Edmond:

Please note my appearance on behalf of the Defendant in connection with the above matter. I believe Attorney Jim Griffin has already appeared and I will be co-council with attorney Griffin in this action.

Sincerely,

  
Frank B McMaster  
803-587-1303

Cc Griffin  
jgriffin@griffindavislaw.com

UPPER TOWNSHIP  
2022 MAY 11 PM 3:35  
MAGISTRATE'S OFFICE



**SOUTH CAROLINA  
SUMMARY COURT  
UPPER TOWNSHIP DISTRICT  
RICHLAND COUNTY**

er Township Magistrate Office  
7615 A Wilson Boulevard  
Columbia, SC 29203

[www.richlandcountysc.gov](http://www.richlandcountysc.gov)



FOREVER

Montana Deluxe II  
7949 Broad River Rd  
Suite 90  
Irmo, SC 29063



**SOUTH CAROLINA  
SUMMARY COURT  
UPPER TOWNSHIP DISTRICT  
RICHLAND COUNTY**

Township Magistrate Office  
15 A Wilson Boulevard  
Columbia, SC 29203

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FOREVER / USA

Tavern on Broad  
7949 Broad River Rd  
Suite 90  
Irmo, SC 29063

went out in  
nail 4-21-22

expires 5/21/22

Date: April 21, 2022

Machine Name:

Montana De Luxe 2  
Keno, Bingo & Pinball machine

Seized Location:

7949 BR rd suite 90  
Irmo, SC

Date of Seizure:

April 20, 2022

Currency Seized:

\$ 5,344.00

Business name (if applicable):

Tavern @ on Broad

Other incident information:

had pay out slips w/ high scores

UPPER TOWNSHIP  
2022 APR 21 AM 11:11  
MAGISTRATE'S OFFICE

Seized By: SLED Agent(s): \_\_\_\_\_

**RECEIVED**

**Nov 21 2025**

**SC Court of Appeals**

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**Certificate of Counsel**

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The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

*s/ Adam L. Whitsett*

Adam L. Whitsett, Esquire

General Counsel

South Carolina Law Enforcement Division

Post Office Box 21398

Columbia, South Carolina 29221-1398

(803) 896-0647

S.C. Bar Number: 74888

**Attorney for Appellants**

April 23, 2025