

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )

IN THE MAGISTRATE'S COURT  
Case No. 2012CV0410101547  
Case No. 2012CV0410102249

South Carolina Law Enforcement Division, )  
 )  
Plaintiff, )

v. )

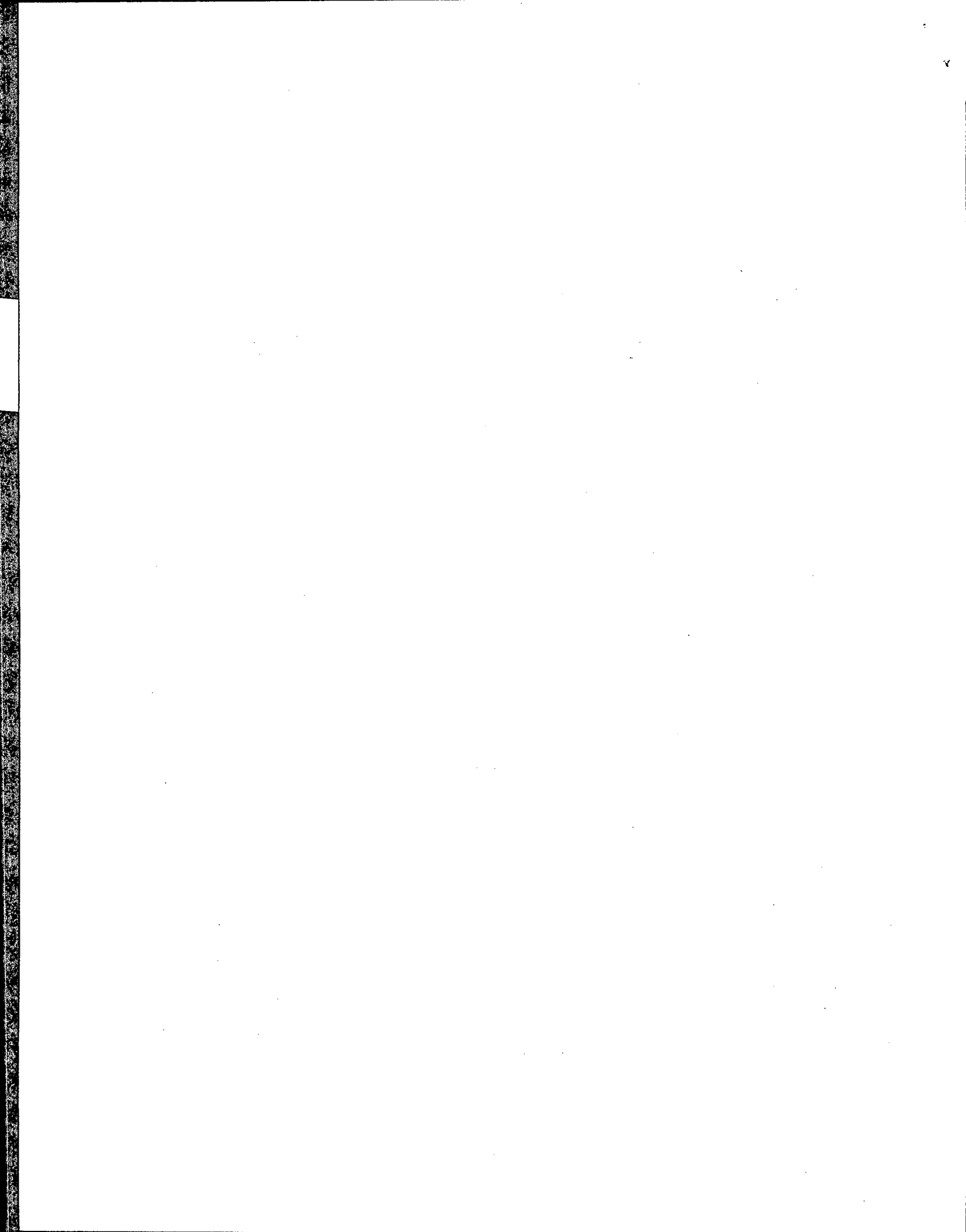
Cas Smith dba Fun City Cyber Café, 22 )  
Computer Type Gambling Devices, )  
Dell Tower, 1 DVR, and 2 Monitors, )  
19 Gambling Consoles, 2 Ethernet Switches )  
1 Linksys Home Router, 1 HP Modem, and )  
19 SD Cards w/ adapter, )  
 )  
Defendants. )

**ORDER DENYING DEFENDANTS'  
MOTION TO ALTER OR AMEND OR,  
IN THE ALTERNATIVE, A NEW  
TRIAL**

This matter came before the Court on November 27, 2012, on a hearing regarding the Defendants' motion to alter or amend or, in the alternative, a new trial. The Plaintiff was represented at the hearing by Adam L. Whitsett of the South Carolina Attorney General's Office. The Defendants were represented by William N. Epps, III, Esquire of Epps, Nelson & Epps. After considering the evidence in this matter and the arguments set forth by both parties, I hereby DENY all of the Defendants' motions in this matter.

**1. The Evidentiary Motion**

Specifically, I hereby deny the Defendants' challenge to my trial rulings that the Defendants could not present evidence or testimony regarding issues that I deemed unrelated and irrelevant to the determination of the legality of the machines and devices at issue in this action. In the exercise of my discretion in this decision, I note that the South Carolina Supreme Court has acknowledged that a post-seizure hearing is the opportunity for the owner of seized machines and devices to come forward to prove the legality of the seized machines or devices. State v. 192



Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000) (“the most due process requires is a post-seizure opportunity for an innocent owner ‘to come forward and show, if he can, why the *res* should not be forfeited and disposed of as provided for by law); *see also* Union County Sheriff’s Office v. Henderson, 395 S.C. 516, 719 S.E.2d 665, 666 (2011) (“At a post-seizure hearing, the burden is on the owner of the *res* [the machines and equipment] to show why the seized property should not be forfeited and destroyed.”). Accordingly, I find and conclude that the only issue for resolution at the post-seizure hearing is whether the machines and/or devices before the court violate South Carolina Code Ann. § 12-21-2710 (“§ 12-21-2710”). Therefore, I find and conclude that any and all evidence and testimony related to issues that, in my discretion, I deemed unrelated to the legality of the machines and devices at issue in this action, to include evidence solely related to law enforcement action prior to the signing of an Order of Destructions in this matter, was simply not relevant at the post-seizure hearing and inadmissible.

I also find and conclude that the South Carolina Supreme Court has already addressed this issue. In State v. 192, the South Carolina Supreme Court noted that even if a search or seizure of gaming machines or devices was illegal, there is no remedy for such at a post-seizure hearing. The Court noted that the usual remedy for an unlawful search is suppression of evidence in a criminal trial; however, a post-seizure hearing is not a criminal trial and there is no jury from which to suppress the evidence. Further, “because the machines are contraband *per se*, the State certainly cannot return them to appellant, which is presumably the remedy sought.” *Id.* at 882-83 *citing* Trupiano v. United States, 334 U.S. 699, 68 S.Ct. 1229, 92 L.Ed. 1663 (1948), *overruled on other grounds*, 339 U.S. 56, 70 S.Ct. 430, 94 L.Ed. 653 (1950) (“[S]ince this property was contraband, they have no right to have it returned to them.”). Accordingly, as I

under § 12-21-2710. The phone cards did not have a slot. While the machine which dispensed the phone cards did contain a slot, this was not of any importance in finding the phone cards themselves separately illegal. "Although the phone cards are an integral component of the dispensers, the phone cards would be illegal if they were issued over the counter as opposed to being placed in the dispensers." Sun Light, 360 S.C. at 54, 600 S.E.2d at 64. Thus, it was the game of chance on the phone cards that made them illegal, regardless if they came from a machine or over the counter. If § 12-21-2710 required a slot, the Supreme Court could not have found the phone cards illegal since they had no slot.

Furthermore, the South Carolina Supreme Court has ruled that even though a machine may be capable of being operated in a lawful manner or, in fact might be completely inoperable, that the legislature clearly intended to outlaw even the mere possession 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, 525 S.E.2d 872 (2000). Accordingly, I hereby uphold my ruling that all of the machines and devices at issue in this action violate § 12-21-2710 and should be destroyed.

### **3. The Vagueness Motion**

At the motion hearing, the Defendants' raised, for the first time in this matter, a challenge to the constitutionality of § 12-21-2710 as it was applied to the Defendants in this matter. This motion is hereby denied, as "All statutes are presumed constitutional and will, if possible, be construed so as to render them valid." Last v. MSI Constr. Co., 305 S.C. 349, 352, 409 S.E.2d 334, 336 (1991) (citations omitted). "This Court is directed by the constitution, and our precedent, to make every effort to find acts of the General Assembly constitutional." Joytime Distributors and Amusement Co., Inc. v. State, 338 S.C. 634, 653, 528 S.E.2d 647, 657 (1999).

#### 4. The First Amendment Motion

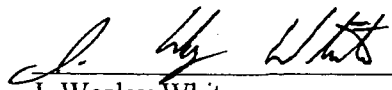
I also deny the Defendants' First Amendment motion. The South Carolina Supreme Court has long acknowledged that "[g]aming devices in general have long been recognized as legitimately within the police power of the State to control or take by forfeiture." Westside Quik Shop, Inc. v. Stewart, 341 S.C. 297, 303, 534 S.E.2d 270, 273 (2000) citing Lawton v. Steele, 152 U.S. 133, 136, 14 S.Ct. 499, 38 L.Ed. 385 (1894). The United States Court of Appeals for the Fourth Circuit has also noted this history of the enforcement of § 12-21-2710 acknowledging the "measured approach to enforcement for the eighty-one years § 2710 and its predecessor statutes have been in effect." Martin v. Lloyd, 11-1405, 2012 WL 5871623 (4th Cir. Nov. 21, 2012). I find that § 12-21-2710 was codified as an exercise of South Carolina's police power and that § 12-21-2710 regulates conduct, *i.e.* possession of illegal machines and/or devices, not speech. The statute prohibits the possession of certain gaming machines and devices, and prohibits such possession regardless of the intended use or capable operation of the machines or devices. See State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000). There is simply no protected speech at issue in this action and, as such, the Defendants' First Amendment motion is denied.

THEREFORE, based on the foregoing and all applicable South Carolina statutory and common law, IT IS HEREBY ORDERED, DECREED and ADJUDGED that each ground of the Defendants' motion to alter or amend or, in the alternative, a new trial is DENIED, and all previous orders in this case are upheld in the entirety.

IT IS FURTHER ORDERED that the Defendant must file a notice of appeal within thirty (30) days to secure the appropriate appellate review, and that all remaining items at issue in this

action must remain in the care or custody of the Plaintiff and/or law enforcement and not be destroyed during this time.

IT IS SO ORDERED this 10th day of January, 2013.

  
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J. Wesley White  
Presiding Magistrate  
Anderson County, South Carolina