

STATE OF SOUTH CAROLINA

IN THE MAGISTRATE'S COURT

COUNTY OF ANDERSON

South Carolina Law Enforcement Division,

Plaintiff,

vs.

Cas Smith dba Fun City Cyber Cafe, 22

Computer Type Gambling Devices, Dell

Tower, 1 DVR, and 2 Monitors, 19 Gaming

Consoles, 2 Ethernet Switches, 1 Linksy

Home Router, 1 HP Modem, and 19 SD cards

w/ adapter

Defendant(s)

RULING ORDER

RECEIVED

DEC 12 2013

SC Court of Appeals

This matter comes before the Court by way of two seizures pursuant to South Carolina Code Ann. 12-21-2712. The South Carolina Law Enforcement Division, Plaintiff, did seize the items listed in Attachment A on May 23, 2012, and did seize the items listed in Attachment B on July 13, 2012, as being in violation of South Carolina Code Ann. 12-21-2710. Once seized by law enforcement pursuant to South Carolina Code Ann. 12-21-2710, the items were taken before the magistrate as required under South Carolina Code Ann. 12-21-2712. After review of Attachment A, pursuant to South Carolina Code Ann. 12-21-2712, this Court issued an Order of Destruction, 2012CV0410101547, on May 25, 2012, finding the machines in violation of South Carolina Code Ann. 12-21-2710. After review of Attachment B, pursuant to South Carolina Code Ann. 12-21-2712, this Court issued an Order of Destruction,



2012CV0410102249, on July 25, 2012, finding the machines in violation of South Carolina Code Ann. 12-21-2710.

On May 25, 2012, W. Norman Epps III, Esquire, notified this Court that he was representing the defendant on Case Number 2012CV0410101547, and requested a post seizure hearing as allowed under South Carolina Code Ann. 12-21-2712. On July 20, 2012, Attorney Epps notified this Court that he was representing the defendant on Case Number 2012CV0410102249, and requested a post seizure hearing as allowed under South Carolina Code Ann. 12-21-2712. At this time, Attorney Epps requested that both Case Numbers 2012CV0410101547 and 2012CV0410102249 be consolidated and heard together. This Court did grant the request and a post seizure hearing was held, Thursday, September 20, 2012, at 9:30 a.m., to determine if the items listed in Attachments A and B are illegal contraband *per se* pursuant to South Carolina Code Ann. 12-21-2710. Those present for the plaintiff were Assistant Attorney Generals Jared Q. Libet and Adam L. Whitsett. Those present for the defendant were Mr. Cas Smith, Attorney Norman Epps, and Attorney James Griffin.

As previously stated, the single issue pending before this Court is the legality of the seized items under South Carolina Code Ann. 12-21-2710. The statute reads as follows:

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.

South Carolina Code Ann. 12-21-2710 prohibits several different categories of gaming machines. A machine need only meet one prohibited category in order to violate this statute, and a machine can be classified as illegal under multiple categories at the same time. The machines presented to this Court are devices pertaining to games of chance of whatever name or kind. The poker and keno games operate identically to those found on illegal video poker machines. The games on the machines are all games of chance and chance determines the outcome of each game. The machines provide a full and complete gaming experience, identical to that available on slot or video poker machines of the past. Additionally, the thing of value is the pin number that is entered by the customer. The pin number, once entered, correlates to an exact value of the purchase from the clerk. The point of sale at the register is the method used to access the machines and therefore is an extension of the machine and a use of technology intended to remove the direct deposit of money from the machine itself. Therefore, the machines at issue in this action clearly violate the plain language of South Carolina Code Ann. 12-21-2710 and are illegal to possess, regardless of their use or operation.

Therefore, after careful and impartial consideration of all the evidence presented to this Court the machines listed in Attachments A and B

are illegal contraband per se pursuant to South Carolina Code Ann. 12-21-2710. Therefore, this Court upholds both earlier Orders of Destruction and orders that all items in Attachment A and B, with the exceptions noted below to be returned to the defendant, remain in the custody of the plaintiff and be destroyed after thirty (30) days, and that any and all monies seized in association with these illegal items, \$1,329.00, shall be forfeited to the plaintiff. This Court advises that the defendant must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review.

EXCEPTIONS: (seized items from Attachments A and B to be returned to defendant)

Attachment A: Item #X

Attachment B: None

AND IT IS SO ORDERED this 2nd day of October, 2012.



J. Wesley White
Presiding Magistrate
Anderson County, South Carolina

ATTACHMENT A

ANDERSON COUNTY SHERRIF'S OFFICE

Other _____

SLED # 54-12-4031

PROPERTY REPORT

1. Status - Check One Only:
 Evidence Recovered Found Other

2. Case No. 7012-27890

Date & Time
5/23/2012

IT IS MANDATORY TO SUBMIT A LABORATORY ANALYSIS REQUEST FORM FOR ALL ARTICLES REQUIRING LABORATORY OR FORENSIC PROCESSING

4. P&E use only

5. Case Type (SLED) ASSISTANT'S FINDER

Found or Recovered From: Location Suspect Complainant Employer Victim Person Reporting AKA Other

7. Location Property Was Found/Impounded (Give Exact Address/Location)

1716A PEARMAN DAIRY RD
ANDERSON, SC 29625

Name: FUN CITY CYBER CAFE

Owner's Name: JAS SMITH

9. Owner's Address: 1716 PEARMAN DAIRY RD

10. Owner's Phone #: (804) 844-1461

Item #	12. Quantity	13. Description	14. NCIC Hit	
			Yes	No
A	1	GAMING CONSOLE S/N: 006022 (#1)		
B	1	GAMING CONSOLE S/N: 004960 (#2)		
C	1	GAMING CONSOLE S/N: 00303 (#3)		
D	1	GAMING CONSOLE S/N: 00513 (#4)		
E	1	GAMING CONSOLE S/N: 00381 (#5)		
F	1	GAMING CONSOLE S/N: 00581 (#6)		
G	1	GAMING CONSOLE S/N: 00367 (#7)		
H	1	GAMING CONSOLE S/N: 00401 (#8)		
I	1	GAMING CONSOLE S/N: 00316 (#9)		
J	1	GAMING CONSOLE S/N: 00474 (#10)		
K	1	GAMING CONSOLE S/N: 00309 (#11) INOPERABLE (poor)		

I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.

Signature X: *[Signature]*

16. Impounding Officer (Print Full Name)

W. B. MCGOWAN

17. Com No. 190

18. Unit No. V 2

19. Signature

[Signature]

20. Investigating Officer

[Signature]

Received By	22. Reason	23. Date and Time Received
	Reason	Date and Time Received
	Reason	Date and Time Received
	Reason	Date and Time Received
	Reason	Date and Time Received
	Reason	Date and Time Received
	Reason	Date and Time Received
	Reason	Date and Time Received
	Reason	Date and Time Received

AUTHORIZATION FOR DISPOSITION

Type of Disposition:

Cleared for Disposal: Items _____

Person Authorizing:

Release To: Name _____

Name (print) _____

I.D. # _____ Phone # _____

Signature _____

Address _____

Date _____

IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO NOTIFY OWNERS TO CLAIM PROPERTY.

OFFICER

X Anderson Co.

ANDERSON COUNTY SHERIFF'S OFFICE

Other _____

SEP # 51-12-4031

PROPERTY REPORT

1. Status - Check One Only:
 Evidence Recovered Found Other _____

2. Case No. 2012-27890

3. Date & Time
5/23/2012 @ 5:30 PM

IT IS MANDATORY TO SUBMIT A LABORATORY ANALYSIS REQUEST FORM FOR ALL ARTICLES REQUIRING LABORATORY OR FORENSIC PROCESSING

4. P&E use only

5. Case Type (SLD)
ASSISTING ATTORNEY

3. Found or Recovered From:
 Location Suspect Complainant Employer
 Victim Person Reporting AKA Other

7. Location Property Was Found/Impounded (Give Exact Address/Location)

1716A PERREMAN DAIRY RD
ANDERSON, SC 29625

Name FUN CITY CYBER CAFE

1. Owner's Name
CHS SMITH

9. Owner's Address
1716A PERREMAN DAIRY RD

10. Owner's Phone #
(704) 844-1461

11. Item#	12. Quantity	13. Description	14. NCIC Hit	
			Yes	No
L	1	GAMING CONSOLE S/N: 00562 (#12)		
M	1	GAMING CONSOLE S/N: 00629 (#13)		
N	1	GAMING CONSOLE S/N: 00599 (#14)		
O	1	GAMING CONSOLE S/N: 00377 (#15)		
P	1	GAMING CONSOLE S/N: 00378 (#16)		
Q	1	GAMING CONSOLE S/N: 00533 (#17)		
R	1	GAMING CONSOLE S/N: 00538 (#18)		
S	1	GAMING CONSOLE S/N: 00534 (#19)		
T	1	ETHERNET SWITCH S/N: R111916H00451		
U	1	ETHERNET SWITCH S/N: R111916H00458		
V	2	KEYS		

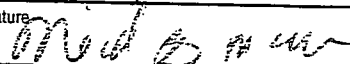
5. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.

Signature X 

16. Impounding Officer (Print Full Name)
Ned B McGowan

17. Com No. 190

18. Unit No. 282

19. Signature


20. Investigating Officer
McGowan / 5/1/12

1. Received By	22. Reason	23. Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received

Type of Disposition: _____

Cleared for Disposal: Items _____

Release To: Name _____

I.D. # _____ Phone # _____

Address _____

AUTHORIZATION FOR DISPOSITION

Person Authorizing: Name (print) _____

Signature _____

Date _____

ATTACHMENT B

Anderson Co.

ANDERSON COUNTY SHERIFF'S OFFICE

Other _____

PROPERTY REPORT		1. Status - Check One Only: <input type="checkbox"/> Evidence <input type="checkbox"/> Recovered <input type="checkbox"/> Found <input type="checkbox"/> Other _____		2. Case No. 2012-38079	
3. Date & Time 7/13/12 1639		IT IS MANDATORY TO SUBMIT A LABORATORY ANALYSIS REQUEST FORM FOR ALL ARTICLES REQUIRING LABORATORY OR FORENSIC PROCESSING		4. P&E use only	
6. Found or Recovered From: <input checked="" type="checkbox"/> Location <input type="checkbox"/> Suspect <input type="checkbox"/> Complainant <input type="checkbox"/> Employer <input type="checkbox"/> Victim <input type="checkbox"/> Person Reporting <input type="checkbox"/> AKA <input type="checkbox"/> Other		7. Location Property Was Found/Impounded (Give Exact Address/Location) 4415 HWY 24 ANDERSON, SC 29625			
Name _____		8. Owner's Name		9. Owner's Address	
				10. Owner's Phone #	

11. Item#	12. Quantity	13. Description	14. NCIC Hit	
			Yes	No
AAA	1	BOX OF RECEIPTS		X
BBB	1	2012 MONTHLY MONITOR BOOKLET		X
CCC	1	COMPOSITION BOOK		X
DDD	1	MISC. PAPERWORK		X
EEE	1	SAM'S CLUB NOTE PAD		X
FFF	5	BOARD SIGNS		X
GGG	1	GREEN FOLDER CONTAINING PAPERWORK		X
HHH	1	BLACK FOLDER CONTAINING PAPERWORK		X
III	1	White Foam cooler with tickets		X
JJJ	1	White trash bag with electrical components		X

15. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.		16. Impounding Officer (Print Full Name) J. BROWN		17. Com No. 471	18. Unit No. V-83
Signature X _____		19. Signature <i>J. Brown</i>		20. Investigating Officer J. Brown	
21. Received By	22. Reason	23. Date and Time Received			
Received By	Reason	Date and Time Received			
Received By	Reason	Date and Time Received			
Received By	Reason	Date and Time Received			
Received By	Reason	Date and Time Received			
Received By	Reason	Date and Time Received			
Received By	Reason	Date and Time Received			
Received By	Reason	Date and Time Received			

AUTHORIZATION FOR DISPOSITION

Type of Disposition:

Cleared for Disposal: Items _____

Release To: Name _____

I.D. # _____ Phone # _____

Address _____

Person Authorizing:

Name (print) _____

Signature _____

Date _____

IT IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO NOTIFY OWNERS TO CLAIM PROPERTY.

OFFICER

Anderson Co.

ANDERSON COUNTY SHERIFF'S OFFICE

Other _____

PROPERTY REPORT		1. Status - Check One Only: <input type="checkbox"/> Evidence <input type="checkbox"/> Recovered <input type="checkbox"/> Found <input type="checkbox"/> Other _____		2. Case No. 2012 - 38079	
3. Date & Time 13 July 2012 11:39		IT IS MANDATORY TO SUBMIT A LABORATORY ANALYSIS REQUEST FORM FOR ALL ARTICLES REQUIRING LABORATORY OR FORENSIC PROCESSING		4. P&E use only	
6. Found or Recovered From: <input checked="" type="checkbox"/> Location <input type="checkbox"/> Suspect <input type="checkbox"/> Complainant <input type="checkbox"/> Employer <input type="checkbox"/> Victim <input type="checkbox"/> Person Reporting <input type="checkbox"/> AKA <input type="checkbox"/> Other		7. Location Property Was Found/Impounded (Give Exact Address/Location) 4415 Hwy 24 Anderson S.C.			
8. Owner's Name		9. Owner's Address		10. Owner's Phone #	

11. Item#	12. Quantity	13. Description	14. NCIC Hit	
			Yes	No
AA	1	Hitachi Monitor Model # LE195314		X
BB	1	Cisco Linksys SE2800 # 10610J0311741		X
CC	1	Arris cable Modem SN R4XRNS6CB415655		X
DD	1	SMC Network cable Modem SN# HZ1129176B1D		X
EE	1	Dell Inspiron Hard Drive		X
FF	6	SD + USB cards		X

15. I hereby acknowledge that the above lists represent all property taken from my possession and that I have received a copy of this report.		16. Impounding Officer (Print Full Name) Jonathan Brown		17. Com No. 471	18. Unit No. 1-83
Signature X _____		19. Signature <i>Jonathan Brown</i>		20. Investigating Officer J Brown	

21. Received By	22. Reason	23. Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received
Received By	Reason	Date and Time Received

AUTHORIZATION FOR DISPOSITION

Type of Disposition: <input type="checkbox"/> Cleared for Disposal: Items _____	Person Authorizing: Name (print) _____
<input type="checkbox"/> Release To: Name _____	Signature _____
I.D. # _____ Phone # _____	Date _____
Address _____	

IT IS THE AUTHORIZING OFFICER'S RESPONSIBILITY TO NOTIFY OWNERS TO CLAIM PROPERTY.

OFFICER