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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2015-000292

South Carolina Department of Revenue Respondent.

v.

Meenaxi, Inc., d/b/a Corner Mart..... Appellant,

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

January 8, 2015

SC ADMIN. LAW COURT

South Carolina Department of Revenue,

Docket No. 13-ALJ-17-0216-CC

Petitioner,

vs.

ORDER

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

APPEARANCES: For Petitioner: Lauren Acquaviva, Esquire
For Respondent: S. Jahue Moore, Esquire

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 12-60-2540(A) for a contested case hearing requested by Meenaxi, Inc., d/b/a Corner Mart (Respondent) against the South Carolina Department of Revenue (Department) contesting the revocation of the Respondent's beer and wine permit due to the presence of illegal gambling machines on the licensed premises. The Respondent exhausted all prehearing remedies with the Department and filed a timely request for a contested case hearing before the ALC.

ISSUES

1. Did the Respondent violate S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constituted a crime?
2. If so, is the revocation of the Respondent's off-premises beer and wine permit an appropriate penalty?

FINDINGS OF FACT

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses.

This Court has personal and subject matter jurisdiction. Notice of the date, time and place of the hearing was timely given to all parties. A hearing of this matter was held on December 4, 2014.

During the hearing, Malkesh Patel testified that he is the sole owner of Meenaxi, Inc. He had notice of this proceeding and was invited by the Court to intervene.

The Department issued an off-premises beer and wine permit to Meenaxi, Inc., which does business as Corner Mart. Corner Mart is located at 1010 East Shockley Ferry Road, Anderson, South Carolina. The alcohol permit at issue in this proceeding is number 32057436-6. The Respondent held this permit on February 26, 2013.

On February 26, 2013, at approximately 1:10 p.m., South Carolina Law Enforcement Division (SLED) agents and deputies from the Anderson County Sheriff's Office entered the licensed premises to conduct an Alcohol Beverage License inspection. During the inspection, the officers found two video gaming machines--one Products Direct Sweepstakes machine and one Gift Surplus machine--on the licensed premises.

The officers spoke with Ursula Dean, who was the clerk on duty at the time of the inspection. Dean told the officers that Patel was aware that the officers were in the area. She went on to state that Patel had emptied money from the machines, turned off the power switches, and unplugged them from the wall. Dean was an employee and an agent of Patel and Meenaxi Inc., d/b/a Corner Mart. The answers she gave during the inspection were within the scope of her employment.

During his inspection of the premises, SLED Agent Thomas Bielawski found a number of discarded sweepstakes coupons and redemption instructions. The coupons were found in the trash, on the floor, and behind both machines.

Agent Bielawski plugged the machines in and turned on the power switches. Agent Bielawski was then able to see the type of games that were on the machines. I find, based on the testimony of Agent Bielawski and the related magistrate order, the two machines contained games of chance: poker, blackjack and keno on the Products Direct Sweepstakes machine; and poker and spinning reel style games on the Gift Surplus machine.

Both machines were seized pursuant to the officers' statutory authority. The officers opened the machines with keys provided by Dean. No money was found in either machine. After issuing a citation to Patel, the officers brought the two machines before Anderson County Magistrate Samuel Matthew Lollis. The Respondent requested a post-seizure hearing to contest the illegality of the machines. Magistrate Lollis examined the machines and determined that each machine was an illegal gambling device that violated South Carolina law. On March 1, 2013, Magistrate Loftis ordered the machines' destruction.

Corner Mart was originally named as a party in the related in rem action in magistrate's court to determine the legality of the machines at issue. Upon the motion of the counsel for Meenaxi, Inc., doing business as Corner Mart, Corner Mart was dismissed as the defendant. Meenaxi, Inc., d/b/a Corner Mart, had notice of the in rem action as well as an opportunity to be heard and was represented by counsel. Ultimately, the magistrate in the in rem action found the two machines were illegal and ordered their destruction.

Patel had knowledge that the machines were illegal. I find his testimony to the contrary to not be credible.

On March 28, 2013, the Department mailed the Respondent written notice of its intent to revoke the Respondent's off-premises beer and wine permit for violating the law by having the illegal gambling machines on his premises. On April 3, 2013, the Respondent timely protested the revocation of its off-premises beer and wine permit.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude, as a matter of law, the following:

The ALC has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2014), 1-23-301 et seq. (2005 & Supp. 2014), and 12-60-2540(A) (2000).

The Respondent Knowingly Permitted an Act on Its Premises that Constitutes a Crime

The Respondent contends he did not know that he had committed a crime by allowing the machines on his premises. In South Carolina, a holder of a permit for off-premises beer and wine is prohibited from knowingly allowing any criminal act to occur on the licensed premises. S.C. Code Ann. § 61-4-580(5) (Supp. 2014). It is unlawful for any person to keep on his premises any video game machine in which "is deposited a coin or thing of value...for the play of poker, blackjack, keno, lotto, bingo, or craps...." S.C. Code Ann. § 12-21-2710. The presence of such a machine is a misdemeanor and, therefore, the Department can revoke the licensee's permit for off-premises beer and wine. *Id.* and S.C. Code Ann. § 61-4-580(5). The record contains sufficient evidence to meet the Department's burden of showing the two machines in question: contained games of chance in violation of § 12-21-2710; were located on the Respondent's premises; and that the Respondent knowingly permitted the machines to be placed on its premises. Agent Bielawski testified that the two machines contained illegal games of chance and that he found the two machines on the

Respondent's premises. Dean told Agent Bielawski that Patel had turned off, unplugged, and emptied the machines of money because he knew the officers were in the area. From this behavior, one can reasonably infer that Patel knew the machines were illegal.

Change in Law

The Respondent argued that the two machines were legal on the dates they were seized. S.C. Code Ann. § 61-4-580 was amended in 1999 to allow "certain legitimate promotions and sweepstakes where specific requirements were met which did not otherwise violate South Carolina law." Op. S.C. Atty. Gen., 2013 WL 3243060 (June 14, 2013). The amendment was meant to make an "exemption from the previous absolute prohibition on all 'gambling or games of chance'...[and] not [create] a broad exception to all of the laws pertaining to gambling or games of chance in South Carolina and certainly not an exemption to specific prohibitions of § 12-21-2710." Id. The statute was amended again in 2013, but only to clarify the legislature's intent that it was not meant to create an exemption to the State's ban on gaming machines found in § 12-21-2710. Id.

The Respondent argues that the two machines fit the exception outlined in § 61-4-580(3), which was created in the 1999 amendment. Among other requirements, the machine in question must have "no purchase payment, entry fee, or proof of purchase...as a condition of entering the game promotion or receiving a prize." S.C. Code Ann. § 61-4-580(3)(b). The Respondent argued the machines required payment for coupons, which could be redeemed online for a variety of merchandise. The Respondent went on to explain that, after the coupons were purchased, the games on the machines were free to play. However, the two machines in this case clearly required payment in order to play the games. Agent Bielawski testified that both machines had bill acceptors on the front of the machine. After the machines were turned on, Agent Bielawski saw the logos for the various games, but was unable to play the games without putting money into the machine. Furthermore, Agent Bielawski found discarded coupons on the floor by the machines. Based on his investigation, he discovered the coupons could only be redeemed on a website that featured incredibly overpriced merchandise. I find that these coupons have no value. Many coupons were discarded on the floor by patrons. Payments put into the machines were to play the games and were not related to a patron's bona fide intention to acquire the coupons. The coupon scheme was a thinly veiled artifice designed to conceal the fact that payment was made solely to play the games.

Due Process

The Respondent argues that due process was violated when Patel was not personally named as a party by the Petitioner in this action. Due process is "flexible and calls for such procedural protections as the particular situation demands." Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 561, 505 S.E.2d 598, 603 (Ct. App. 1998) (quoting Stono River Envtl. Protection Assn v. South Carolina Dept of Health and Envtl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 341 (1991)). Due process requires "notice, an opportunity to be heard in a meaningful way, and judicial review." Id at 562, 505 S.E.2d at 603. As the sole owner of Meenaxi, Inc., Patel was aware of this proceeding and, in fact, was present in the courtroom. The Court invited Patel to formally intervene in the proceeding and he declined. Because Patel had the opportunity to meaningfully participate in this case, but declined to do so, the Petitioner did not violate his due process rights.

Res Judicata

The Respondent claims that the in rem magistrate order has no res judicata or collateral estoppel effect in this case. While this argument is an accurate statement of the principles of res judicata and collateral estoppel, it is beside the point. The Department did not argue that the magistrate's order has preclusive effect nor does this Court consider it a binding conclusion. The underlying magistrate order is evidence that the two machines seized during the search were illegal.

Admissibility of Statements by Dean

The Respondent argues that any statements Dean made to the officer during their inspection of the machines constitute hearsay and, therefore, should not be admissible. The statements that Dean made to Agent Bielawski at the time the two machines were seized were recorded in his investigative report. Agent Bielawski's report is admissible as an exception to the hearsay rule because the report is a record of a regularly conducted activity. SCRE 803(6). In addition, Dean's statements were an admission of a party in this case. SCRE 1007. As mentioned above, her statements were made as an employee and an agent of Patel and Meenaxi, Inc. and were within the scope of her employment. Therefore, by virtue of the rules of agency, her statements can be attributed to Meenaxi, Inc.

Unlawful Search

The Respondent argued that the officers did not have a warrant when they inspected the

Respondent's premises and, therefore, the search was unlawful. Under S.C. Code Ann. §§ 61-4-230 and 61-6-4190, SLED has the right to inspect the licensed premises. In addition, any gaming machine that contains games of chance as prohibited under S.C. Code Ann. § 12-21-2710 must "be seized by any law enforcement officer and at once taken before any magistrate of the county...who shall immediately examine it, and if satisfied that it is in violation [of the law]...direct that it be immediately destroyed." S.C. Code Ann. § 12-21-2712. The officers' inspection of the two machines was made pursuant to that authority.

Estoppel

The Respondent argued that the Department had issued licenses for both machines to be used in South Carolina and, therefore, should be prevented from now finding they were illegal. The argument in essence is an argument that the Department should be estopped from revoking the Respondent's off-premises beer and wine permit. Under South Carolina law, "[t]he party asserting estoppel bears the burden of establishing all its elements." Estes v. Roper Temp. Servs., 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct. App. 1991). A party asserting estoppel against the government must prove "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." Grant v. City of Folly Beach, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001), see also Abbeville Arms v. City of Abbeville, 273 S.C. 491, 257 S.E.2d 716 (1979). Citizens are presumed to know the law and are charged with exercising "reasonable care to protect [their] interest[s]." Smothers v. U.S. Fidelity and Guar. Co., 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct. App. 1996). Absent even one element, estoppel will not lie against a government entity. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229. The Respondent has not shown that any of the three essential elements were present. In particular, the Respondent was not able to show that it was reasonable for him to rely on the license from the Department that was affixed to the outside of the machine to conclude the machines were legal. During his testimony, the Respondent admitted that he knew the machines were illegal on the date they were seized. The Respondent also admitted that he never investigated whether these two machines in particular were legal at the time he placed them in his store. As the Respondent has not met his burden, the Department is not estopped from taking the position that the gaming machines on the licensed premises were illegal.

Proper Penalty

According to the Department's penalty guidelines, revocation of the Respondent's permit is appropriate in these circumstances. Based on my finding of fact that the Respondent knew or should have known that the machines were illegal and the lack of mitigating evidence, I find no reason to deviate from the penalty provided for in the guidelines and imposed by the Department.

ORDER

IT IS THEREFORE ORDERED that, for the reasons set forth above the Respondent's off-premises beer and wine permit is hereby revoked.

IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

January 8, 2015
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,

Petitioner,

vs.

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

Docket No. 13-ALJ-17-0216-CC

**ORDER DENYING RESPONDENT'S
MOTION FOR RECONSIDERATION**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of counsel for Respondent, Meenaxi, Inc., d/b/a Corner Mart, seeking reconsideration of the Court's Order filed on January 8, 2015. The arguments in the motion merely reiterate the arguments made by Petitioner at the hearing. Those issues were carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

IT IS HEREBY ORDERED that Respondent's Motion for Reconsideration, alteration or amendment of its January 8, 2015 Order is **DENIED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

January 26, 2015
Columbia, South Carolina

FILED

January 26, 2015

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,

Petitioner,

vs.

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

Docket No. 13-ALJ-17-0216-CC

**ORDER DENYING RESPONDENT'S
MOTION FOR SUPERSEDEAS**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the Motion for Supersedeas filed on February 4, 2015 by counsel for Respondent, Meenaxi, Inc., d/b/a Corner Mart (Respondent). On February 6, 2015, Petitioner, South Carolina Department of Revenue (Department), filed its Response in opposition to the Motion.

In the Final Order and Decision, this Court found that (1) the Respondent violated S.C. Code Ann. § 61-4-580(5) by knowingly permitting an act on its premises that constitutes a crime – possessing unlawful gaming machines; and (2) revocation of the Respondent's beer and wine permit is the appropriate penalty for that violation. In its Motion, Respondent asserts that it will suffer severe financial hardship if its permit is revoked during the pendency of any appeal of this matter. The Department argues that the risk of public harm and the potential for ineffective enforcement of the alcohol laws outweighs any potential financial hardship the Respondent may suffer.

"The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure." S.C. Code Ann. § 1-23-380. The effect of the granting of a supersedeas motion is to suspend or stay the matters decided in the order during the pendency of an appeal. In determining whether to grant an order for supersedeas, the Court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot. Rule 241 S.C. Rules of Appellate Procedure. In this case, I find that it is not necessary to stay the order to preserve jurisdiction of the appeal or

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February 10, 2015

SC ADMIN. LAW COURT

prevent any issue from becoming moot. I find that granting a stay of the order would interfere with the Department's enforcement of this state's alcohol laws.

A beer and wine permit is a privilege and not a right. See Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943). The Respondent's conduct demonstrates that it should not be trusted to maintain this privilege any longer. The Court found that Malkesh Patel, the sole owner of Meenaxi, Inc., emptied the money out of the illegal gaming machines and unplugged them once he knew law enforcement was in the area. Patel chose to put these illegal gaming machines in his store and to try and hide his actions in an attempt to avoid being caught. These actions by Patel demonstrate disregard for the alcohol laws of this State, and an intentional attempt to hide violations of the alcohol laws from law enforcement. Permitting a person who disregards the alcohol laws of this State to keep his alcohol license creates an unnecessary risk of public harm.

Additionally, permitting the Respondent to maintain the privilege of keeping its beer and wine permit creates a risk of ineffective enforcement of the alcohol laws. Specifically, while the appeal is pending, the Respondent can circumvent the effect of having a revoked permit by applying for a new permit at a different location and, thus, completely avoid the consequences of its actions. Pursuant to S.C. Code Ann. § 61-4-520(3), the Department must not issue a beer and wine permit unless "[t]he applicant, within two years before the date of application, has not had revoked a beer or a wine permit issued to him." Thus, if the revocation remains in effect during the appeal, the Respondent cannot obtain a new beer and wine permit for two years from the date of the Order. If, however, the revocation is stayed, the Respondent can apply for a new permit and avoid the consequences of the revocation of the permit at issue in this case. By the time the Court of Appeals, and potentially the Supreme Court, issues a decision in this matter, the Respondent could already have started a new business. If that is allowed to happen, the revocation of the permit at issue would not affect the Respondent as it already would have obtained a new permit.

Allowing the Respondent to continue to hold a permit allows the Respondent to avoid the consequences of its actions. An appeal will take several months if not years to resolve. Respondent delayed the hearing in this matter at the ALC for 16 months by obtaining six continuances. By appealing the ALC decision, the Respondent would be able to operate for several years after being caught with illegal gaming machines before the license revocation would become effective. Allowing the Respondent to avoid the consequences of its actions for years hinders the Department's efforts to enforce the alcohol laws. Therefore,

IT IS HEREBY ORDERED that Respondent's Motion for Supersedeas seeking a stay of this Court's January 8, 2015 Order is **DENIED**.

AND IT IS SO ORDERED.

A handwritten signature in black ink, reading "Deborah Brooks Durden", written in a cursive style. The signature is positioned above a horizontal line.

Deborah Brooks Durden
Administrative Law Judge

February 10, 2015
Columbia, South Carolina

The South Carolina Court of Appeals

Meenaxi, Inc., d/b/a Corner Mart, Appellant,

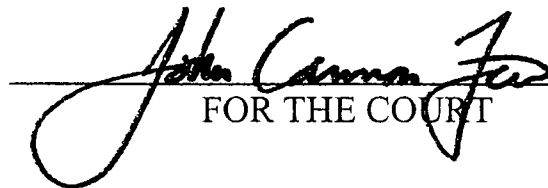
v.

South Carolina Department of Revenue, Respondent.

Appellate Case No. 2015-000292

ORDER

Appellant's petition for stay and supersedeas is denied.

 C.J.
FOR THE COURT

Columbia, South Carolina

cc:
S. Jahue Moore, Esquire
Lauren Acquaviva, Esquire

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DEPARTMENT DETERMINATION

Permittee:

Meenaxi, Inc.
d/b/a Corner Mart
1010 East Shockley Ferry Road
Anderson, SC 29624

Permit No.:

32057436-PBG

SLED Case No.:

54-13-4049

Date of Violation:

February 26, 2013

Matters in Dispute:

1. Did Meenaxi, Inc., d/b/a Corner Mart (Permittee), violate S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constituted a crime?
2. Is the revocation of the Permittee's off-premises beer and wine permit an appropriate penalty for its violation of § 61-4-580(5)?

Determinations:

1. The Permittee violated § 61-4-580(5) by knowingly permitting an act on its premises that constituted a crime.
2. The revocation of the Permittee's off-premises beer and wine permit is an appropriate penalty for violation of § 61-4-580(5).

Relevant Facts:

1. The Department of Revenue (Department) issued the Permittee an off-premises beer and wine permit for its location at 1010 East Shockley Ferry Road, Anderson, South Carolina (licensed premises). The Permittee held this permit on February 26, 2013.

2. On February 26, 2013, at approximately 1:10 p.m., South Carolina State Law Enforcement Division (SLED) Agents Bielawski, Asbill, and Casey, along with Deputies of the Anderson County Sheriff's Office (ACSO) (collectively officers), entered the licensed premises to conduct an Alcohol Beverage License inspection.
3. During the inspection, the officers found two video gaming machines (one Product's Direct Sweepstakes machine and one Gifts Surplus machine) located at the licensed premises.
4. The officers spoke with the clerk on duty at the time, Ursula Dean, who informed the officers that the owner of the business, Malakesh Patel, "had been aware that SLED and ACSO were in the area . . . [and] emptied the money from the machines, turned off the power switches, and unplugged them from the wall before . . ." ¹ SLED and ACSO arrived.
5. Agent Bielawski plugged in the machines and turned them on to see what types of games were on them. He found "card games and video 'slot machine' spinning reel style games on these machines." ² Sergeant Hamby from ACSO then seized the machines pursuant to S.C. Code Ann. § 12-21-2712 (2000) and issued completed seizure documentation. The officers then opened the machines with keys provided by Ms. Dean. No money was found inside of either machine.
6. During a subsequent inspection of the licensed premises, Agent Bielawski found "a number of Product's Direct and Gifts Surplus sweepstakes coupons with redemption instructions. These coupons . . . had all been discarded in the trash, on the floor, or were lying behind the gambling machines." ³
7. Ms. Dean telephoned Mr. Patel and handed Agent Bielawski the phone. Mr. Patel then explained his arrangement with Encore Entertainment to Agent Bielawski. Mr. Patel stated that a man named Mitesh Patel took money from the machines every Monday or Tuesday and the two split the revenues fifty – fifty.
8. Agent Bielawski then issued an Administrative Citation to the Permittee for violating § 61-4-580(5).
9. Later that day, the officers brought the two gaming machines before Anderson County Magistrate Samuel Matthew Lollis. Magistrate Lollis examined the machines and determined that each machine was an illegal gambling device in violation of S.C. Code Ann. § 12-21-2710 (2000). Accordingly, Magistrate Lollis signed an Order of Destruction/Notice of Post Seizure Hearing on March 1,

¹ SLED Report of Investigation dated February 26, 2013.

² Id.

³ Id.

2013.⁴ Pursuant to the applicable statutory procedure, Magistrate Lyles ordered the machines to be destroyed unless the Defendant requested a post-seizure hearing to contest the illegality of the machines within fifteen days of receiving the order. The Permittee made this request, but a post-seizure hearing has not been scheduled yet.

10. On March 28, 2013, the Department mailed the Permittee written notice of its intent to revoke the Permittee's off-premises beer and wine permit for violating § 61-4-580(5).
11. On April 3, 2013, the Permittee timely protested the revocation of its off-premises beer and wine permit.

Analysis:

I. The Permittee Violated § 61-4-580(5) By Knowingly Permitting An Act On Its Premises That Constituted A Crime.

In South Carolina, those holding a beer and wine permit are prohibited by § 61-4-580(5) from knowingly allowing any criminal act to occur on their licensed premises:

No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

(5) permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State;

A violation of any provision of this section is a ground for the revocation or suspension of the holder's permit.

Section 61-4-580(5). In this case, the Permittee holds an off-premises beer and wine permit and, therefore, is prohibited from permitting an act "which constitutes a crime" to occur upon its premises. On February 26, 2013, however, the Permittee violated the above-referenced statute by permitting an illegal act to occur on its premises, to wit: the possession and operation of two gaming machines, both of which contained illegal games of chance under § 12-21-2710. Section 12-21-2710 "makes it a misdemeanor to keep or operate on one's premises [certain] games of chance" S.C. Dep't of Revenue v.

⁴S.C. State Law Enforcement Div. vs. Corner Mart, 1010 Shockley Ferry Rd., Anderson, SC 29624, Case No. 2013CV0410100842.

Shree Sai, LLC, Case No. 12-ALJ-17-0198-CC, 2012 WL 7803752, at *4 (S.C. Admin. Law Ct. Oct. 10, 2012); cf. § 12-21-2710.

Though the Magistrate Court found the Permittee's possession and operation of the subject machines to be in violation of § 12-21-2710, the Department shoulders the burden of proving the Permittee was in violation of § 61-4-580(5). To make this showing, the Department must prove the following three elements: (A) the machines in question contained unlawful games of chance under § 12-21-2710; (B) the machines in question were located on the Permittee's premises; and, (C) the Permittee knowingly permitted the machines in question to be placed on its premises. As will be shown below, there is sufficient evidence and authority to satisfy each of these elements.

A. The Machines In Question Contained Unlawful Games Of Chance.

Section 12-21-2710 makes it unlawful to keep or operate certain games of chance. See § 12-21-2710. The particular games prohibited are:

. . . [A]ny 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

Id. In the present case, Magistrate Lollis thoroughly examined the subject machines and, pursuant to the mandates of § 12-21-2712, determined that each machine contained illegal games of chance under § 12-21-2710. Magistrate Lollis' finding of illegality is significant, because it is the Magistrate's Court that determines the legality of machines seized by law enforcement. In S.C. Dep't of Revenue v. C&M Market, the court held "the law [referring to Section 12-21-2712] clearly provides that the Magistrate's Court possesses the authority to determine whether the machines seized by any law enforcement officer are unlawful" Case No. 12-ALJ-17-0298-CC, 2013 WL 1395681, at *2 (S.C. Admin. Law Ct. Jan. 4, 2013). Similarly, in Shree Sai, LLC, the court held:

If a magistrate determines a game kept on a . . . Permittee's premises to be an unlawful game of chance under § 12-21-

2710, the magistrate's order plainly constitutes evidence of unlawfulness for purposes of § 61-4-580(5). As a matter of law, this evidence is sufficient to meet the burden of proof that the machine is unlawful for the administrative violation.

2012 WL 7803752, at *5. Therefore, for purposes of § 61-4-580(5), Magistrate Lollis' finding of illegality establishes the Department has met its burden in proving the first of the three elements.

Still more, the South Carolina Supreme Court has held that "illegal gambling devices" are "contraband per se," not "derivative contraband," at the moment of seizure. Mims Amusement Co. v. S.C. Law Enforcement Div., 366 S.C. 141, 154, 621 S.E.2d 344, 350 (2005); see id. ("Contraband per se consists of items which are inherently illegal to possess." (citing People ex rel. O'Malley v. 6323 N. LaCrosse Ave., 634 N.E.3d 743, 746 (1994)); see also Allendale County Sheriff's Office v. Two Chess Challenge II, 361 S.C. 581, 606 S.E.2d 471 (2004) ("[T]he effect of the magistrate's order is that it deems the machines unlawful at the time they were seized and examined.")). Because Magistrate Lollis determined the machines in question contained unlawful games of chance, and because the South Carolina Supreme Court has held they are contraband per se, the illegality of these machines has been determinatively established.

B. The Machines In Question Were Located On The Permittee's Premises.

The facts in this matter clearly establish that the subject machines were located on the Permittee's premises. The administrative citation issued to the Permittee indicates the Permittee's violation of § 61-4-580(5) occurred at 1010 Shockley Ferry Road, Anderson, South Carolina. This is the same location for which the Permittee's off-premises beer and wine permit was issued. Additionally, both the SLED Report and the ACSO Incident Report indicate that the machines were seized from the licensed premises. Moreover, the Permittee has presented no evidence that indicates the machines were not located on the premises.

C. The Permittee Knowingly Permitted The Machines In Question To Be Placed On Its Premises.

The circumstances of this case also make clear that the Permittee knowingly permitted the machines to be placed on its premises.⁵ To make this showing, it is not necessary to establish the Permittee had actual knowledge. Constructive knowledge based on the

⁵The acts prohibited by § 61-4-580 are also applicable to servants, agents, or employees. Thus, knowledge on the part of a servant, agent, or employee is imputed to the Permittee.

reasonable person standard is sufficient. See Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22, 25 (1943) (holding that a sale of alcoholic liquors to a minor was made knowingly where the clerk had knowledge that the purchaser was a minor or had such information that would lead a reasonably prudent person to believe that the purchaser was a minor, and if followed by inquiry, must bring knowledge of that fact to the clerk); see also Daley v. Ward, 303 S.C. 81, 86, 399 S.E.2d 13, 15 (Ct. App. 1990) (concluding that Feldman injects a "reasonable person" standard into the definition of "knowingly" as used in the statutes found in Title 61 of the South Carolina Code of Laws applicable to such licensing violations).

Here, the facts and circumstances strongly indicate the Permittee had actual or constructive knowledge that the subject machines were located on its premises. Notably, the machines were readily viewable by law enforcement when they entered the licensed premises on February 26, 2013. It follows that, if the machines were located in such an open and notorious manner when law enforcement conducted its undercover investigation, the machines were readily viewable by the Permittee, its employees, and its customers on a day-to-day basis prior to the investigation.

Additionally, the store clerk informed the officers that the store owner turned off, unplugged, and emptied money from the machines prior to the officers entering the licensed premises. The officers also spoke with the store owner who informed them that he received fifty percent of the revenues from the machines. Given such facts and the inferences drawn therefrom, the Department finds the Permittee knowingly permitted the machines to be placed on its premises.

II. The Revocation Of The Permittee's Off-Premises Beer And Wine Permit Is An Appropriate Penalty For Its Violation Of § 61-4-580(5).

A violation of any provision of § 61-4-580 "is a ground for the revocation or suspension of the holder's permit." The Department is mindful that the large sums of money to be made from unlawful gaming devices are exceedingly tempting for permit holders. Moreover, as compulsive behavior is exploited by the combination of alcohol and gambling in the same location, the offering of both is perceived as a means of victimizing patrons with compulsive tendencies. Accordingly, the revocation of the Permittee's off-premises beer and wine permit is an appropriate penalty.

Conclusion:

If you agree with this Department Determination, you must surrender your off-premises beer and wine permit to the South Carolina Department of Revenue, PO Box 12265, Columbia, SC 29211, within thirty days of the date of this Determination.

If you disagree, please appeal the Department Determination within the thirty day period noted in the attached cover letter.

If you do not request a contested case hearing or surrender your permit, the Department, with assistance from SLED, will take possession of your permit in order to enforce the revocation. By returning your permit, you are consenting to the revocation.

May 8, 2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 13-ALJ-17-0216-CC

South Carolina Department of)
Revenue,)
)
Petitioner,)
)
v.)
)
Meenaxi, Inc., d/b/a Corner Mart,)
)
Respondent.)
-----)

COPY

ADMINISTRATIVE HEARING

Thursday, December 4, 2014
10:59 a.m. - 1:54 p.m.

The hearing before the Honorable Deborah D. Durden, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 4th day of December, 2014 before Carla S. Dominick, Court Reporter and Notary Public in and for the State of South Carolina.



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Also Present:

Sarah Khouri, Esquire, SCDOR
Justine Tate, SCDOR
George David Crocker, SCDOR

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EXHIBITS

(The original exhibits were retained by Judge Anderson.)

PETITIONER'S EXHIBIT NUMBER ONE	13
(Report issued to Corner Mart at 1010 E. Shockley Ferry Road, Anderson, SC; dtd 2/26/13 by Thomas Bielawski)	
PETITIONER'S EXHIBIT NUMBER TWO	45
(Violation report to Malkesh Patel Meenaxi, Inc., license # 320574366, signed by Ursula Dean; 2013-cv-0410100842)	
PETITIONER'S EXHIBIT NUMBER THREE	48
(Order of Destruction)	
PETITIONER'S EXHIBIT NUMBER FOUR	50
(Final Order of Destruction 2013-cv-041010-0842)	
PETITIONER'S EXHIBIT NUMBER FIVE	34
(Photos of two machines taken by Thomas Bielawski on 2/26/13 @ Corner Mart)	
PETITIONER'S EXHIBIT NUMBER SIX	40
(Photos of two machines taken by Thomas Bielawski on 2/26/13 @ Corner Mart)	
PETITIONER'S EXHIBIT NUMBER SEVEN	40
(Receipts from machine taken by Thomas Bielawski on 2/26/13 @ Corner Mart)	
PETITIONER'S EXHIBIT NUMBER EIGHT	13
(scdor Alcoholic Beverage License; #320574366)	

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Judge Division and the South Carolina Rules of Civil Procedure.



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1 (Petitioners's Exhibit Number One through Eight were
2 marked for identification purposes prior to the
3 hearing.)

4 **THE COURT:** We're here this morning for a hearing in
5 the matter of South Carolina Department of Revenue,
6 Petitioner, versus Meenaxi Incorporated doing
7 business as Corner Mart, Respondent. It's
8 docket number 13-ALJ-17-0216. We've got Ms.
9 Acquaviva. How are you?

10 **MS. ACQUAVIVA:** Good morning, Your Honor.

11 **THE COURT:** And Mr. Moore.

12 **MR. MOORE:** Good morning, Your Honor.

13 **THE COURT:** Do we have any preliminary matters to
14 take up?

15 **MS. ACQUAVIVA:** Not from the Department.

16 **MR. MOORE:** No, ma'am.

17 **THE COURT:** Okay. Y'all want to do openings?

18 **MS. ACQUAVIVA:** Yes, please.

19 **THE COURT:** All right.

20 **OPENING STATEMENTS**

21 **OPENING STATEMENT BY MS. ACQUAVIVA:** Thank you, Your
22 Honor. Good morning. We are here today
23 because the Department has asserted that on
24 February 26, 2013, the Respondent, Meenaxi
25 Incorporated violated 61-5-4-580, subsection



1 five, by permitting illegal games of chance to
2 be located on the licensed premises. We will
3 be calling a SLED agent as our sole witness and
4 we expect that the evidence will show that on
5 February 26, 2013, SLED went into the licensed
6 location, which was licensed at the time as
7 evidenced by his license being on the wall,
8 found two video gambling machines. At the
9 time, originally, the machines were unplugged,
10 but the agents plugged them in and viewed the
11 machines, found various gambling machine --
12 gambling games on those machines. We also
13 expect the evidence to show that the license
14 holder, the Respondent, knew those machines
15 were there and therefore, we would ask that the
16 Court uphold the Department's determination and
17 revoke the license.

18 **THE COURT:** Okay.

19 **MS. ACQUAVIVA:** Thank you.

20 **THE COURT:** Mr. Moore?

21 **OPENINGS STATEMENT BY MR. MOORE:** May it please Your
22 Honor, it is our position that the machines in
23 question were lawful at the time they may have
24 been found on the premises. We believe the
25 machines that they are talking about -- we're



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1 not sure exactly which machines they're talking
2 about, but the machines that they're talking
3 about, we believe were lawful at the time. I
4 see that we don't have machines in the
5 courtroom that can be viewed by the court and
6 we perceive that as a major problem. What we
7 have here is I have them -- we will have an
8 issue in regard to the applicability in any of
9 prior court orders by a magistrate. There
10 appears to have been an action brought in
11 Anderson County where the machines
12 preliminarily may have been picked up. There's
13 a proposed order in a Defendant known as Corner
14 Mart. My client is not Corner Mart. My client
15 is Meenaxi Inc. and as the Department has --
16 says d/b/a Corner Mart, but what basically has
17 happened is, apparently, the preliminary order
18 of instruction, the Defendant is listed as
19 Corner Mart. There is no legal entity known as
20 Corner Mart, so there is a nonentity, which
21 shows as the Defendant in the preliminary
22 order. I have been handed what purports to be
23 a final order in a case against one product
24 direct machine and one gift surplus machine.
25 There -- we don't know if this final order is



1 actually the order that's supposed to be
2 applicable to these machines or not, but one
3 thing is positive, my client is not bound by
4 this order and this order basically has zero
5 impact in regard to the ultimate determination
6 as to whether those machines were legal at a
7 time. There are two problems with the final
8 order. First of all, there's no way we can
9 determine if this final order is applicable to
10 these machines or not, apparently. The second
11 of all, res adjudicata would not apply in
12 regard to a collateral proceeding. The law
13 basically says that in an action against a
14 thing, an action in rem, the determinations in
15 regard to forfeiture and ownership and those
16 things are binding against the world, however,
17 in a collateral action, the finding in an
18 action in rem would not be binding upon
19 anybody, such as my clients. As a matter of
20 fact, in this case, the Court has specifically
21 stipulated that my client was not a proper
22 party to the action and that this was a
23 forfeiture action in rem only and therefore,
24 even if the final order has something to do
25 with the machines that we apparently think



1 we're talking about this morning, my client
2 would not be bound by any finding of legality
3 or illegality. The -- so we -- we have several
4 major problems with proof in this case. First
5 of all, we don't believe that any finding of a
6 magistrate in a court which is not a court of
7 record would be binding on anybody in this
8 case. As the Court well knows, a magistrate
9 court is not a court of record and since we
10 were not a party to the action, any form of
11 prior judicial determination in regard to an
12 action against the machine only, would not be
13 conclusively binding upon this court in any
14 form or fashion, especially since the action,
15 if it was held, is simply an in rem action
16 only. We also have this problem, at the time
17 the machines were seized from my client's
18 premises, there were court orders all over the
19 state and I believe even a circuit court order
20 was in effect at that time declaring that this
21 type of machine was a lawful sweepstakes device
22 and not a gambling device, which would have
23 been permitted under the statutory scheme which
24 existed at the time. As a matter of fact, after
25 these machines were picked up, the legislature



1 changed the law specifically to make this type
2 of machine illegal. The license holder at the
3 time these machines were picked up, had done
4 everything in his power to establish the fact
5 that the machines were lawful. There were
6 court orders, which were actually located
7 inside the machines indicating that the
8 machines had been approved by the courts. He
9 was advised that they were sweepstakes
10 machines, which were lawful according to the
11 statute. As I recall, even the copy of the
12 statute under which they were operating was
13 actually included in the machine. So we have
14 a situation where even if the machines were
15 ultimately determined to have been an illegal
16 machine, it had all of the appearances and
17 indicium authority. The machine was actually
18 licensed by the Department of Revenue, taxes
19 had been paid on the machine and received by
20 the Department of Revenue, and the courts of
21 the state had already ruled on the machine --
22 machines of this type and declared them to be
23 legal. So if the machines are ultimately
24 determined after inspection of the machines,
25 which I don't think we're going to have today,



1 to have been unlawful, we still have the issue
2 of there's no intentional, willful violation of
3 any law, when the man should be able to rely
4 upon court orders in order to basically
5 function, so we think that any type -- any type
6 of fine or suspension would be improper because
7 there certainly has been no intentional
8 violation of the law by anybody. And I know
9 the Court probably has heard these cases before
10 -- has the Court had cases like this before?

11 **THE COURT:** We have.

12 **MR. MOORE:** The court is intimately familiar with
13 the legal arguments and so forth, so I will not
14 belabor those points. I thank you for
15 listening to me, but I do think we have some
16 serious problems with -- with proof this
17 morning considering the fact that the machines
18 are not here to examine. Thank you.

19 **THE COURT:** All right. Ms. Acquaviva.

20 **MS. ACQUAVIVA:** Thank you, Your Honor. The
21 Department would like to call Agent Tom
22 Bielawski to the stand.

23 **MADAME COURT REPORTER:** Raise your right hand. Do
24 you solemnly swear that the testimony you're
25 about to give in this matter is the truth, the



1 whole truth, and nothing but the truth, so help
2 you God?

3 **MR. BIELAWSKI:** Yes, I do.

4 **MADAME COURT REPORTER:** State and spell your name
5 for the record.

6 **MR. BIELAWSKI:** Special Agent Thomas Bielawski B-I-E-
7 L-A-W-S-K-I.

8 **THOMAS BIELAWSKI,** having been duly sworn, testifies
9 as follows:

10 **MR. BIELAWSKI - DIRECT EXAMINATION BY MS. ACQUAVIVA:**

11 Q: Good morning, Agent Bielawski.

12 A: Good morning.

13 Q: Where are you currently employed?

14 A: For the State Law Enforcement Division.

15 Q: What is your job title there?

16 A: I am a Special Agent in the Video Gambling
17 Unit.

18 Q: How long have you worked for SLED?

19 A: For two years.

20 Q: How long have you worked in law enforcement in
21 general?

22 A: Seventeen years.

23 Q: Have you received any kind of specialized
24 training related to gambling machines?

25 A: Yes, I have.



1 Q: And what kind of training have you received?

2 A: When I got hired by SLED, I attended a week-
3 long course held by industry professionals that
4 was hosted by SLED dealing with video gambling
5 enforcement.

6 Q: And what did you learn during those trainings?

7 A: How to identify video gambling machines, the
8 different varieties of machines, how they
9 function, and the laws that we use to enforce.

10 Q: And how do you identify an illegal gambling
11 machine?

12 A: Mostly by looking at it and determining the
13 games that are on them are illegal games of
14 chance.

15 Q: What examples of games would -- would you look
16 for?

17 A: Specifically, as mentioned in statute, poker,
18 keno, and blackjack, and craps, things like
19 that, and slot machine style games, which are
20 clearly and have been illegal games of chance.

21 Q: And what were you doing on February 26, 2013?

22 A: I was conducting an inspection -- several
23 inspections in the area of Anderson -- Anderson
24 County along with the sheriff's office.

25 Q: And was one of those locations owned by Meenaxi



1 Incorporated?

2 A: Yes.

3 Q: And after your investigation, any investigation
4 that you do, how do you normally document an
5 investigation?

6 A: with an investigative report.

7 Q: And do you normally keep those reports in the
8 ordinary course of business?

9 A: Yes.

10 Q: It's a regular practice for you to ---

11 A: Yes.

12 Q: --- keep those reports?

13 A: Yes.

14 Q: May I approach, Your Honor?

15 **THE COURT:** Yes.

16 Q: At this time, I'd like to hand you what's been
17 marked as Petitioner's Exhibit One. Can you
18 identify that document?

19 A: Yes, this is my investigative report.

20 Q: And how do you know that, that's your
21 investigative report?

22 A: Well, it has my name on it and it also has the
23 location that we're talking about with Meenaxi
24 Incorporated and the address, and I can tell by
25 reading the narrative that this is mine.



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1 Q: At this time, Your Honor, I'd like to offer
2 Petitioner's Exhibit One into evidence?

3 MR. MOORE: May I review that, Your Honor?

4 THE COURT: Certainly.

5 MR. ACQUAVIVA: And for the record, Mr. Moore does
6 have copies of all my proposed exhibits.

7 MR. MOORE: I believe I got this one this morning,
8 Your Honor, for the first time. I'm not sure
9 I actually got this one, but today's the first
10 time I believe I've seen it.

11 THE COURT: Well, take your time to look at it.

12 MR. MOORE: Thank you. Your Honor, there are a --
13 I'll object to the document coming into
14 evidence on a number of different grounds.

15 THE COURT: Okay. Explain.

16 MR. MOORE: Your Honor, first of all, the document
17 is replete with hearsay. It basically contains
18 statements of third parties. It contains this
19 -- this gentleman has no been offered as any
20 type of expert witness in any field. I don't
21 think he'd ever qualify as such. It contains
22 conclusions on his part, legal conclusions on
23 his part. This is simply a report which
24 apparently he generated in the field saying
25 what he did, what other people did, what folks



1 there said, conclusions that he basically
2 reached. The document would not qualify under
3 any circumstance as an exception to the hearsay
4 rule that I know of and even if it did, the
5 conclusions and so forth would reach are
6 conclusions that are legal conclusions for the
7 court and would not be allowable into evidence
8 as a legal conclusion. Additionally, Your
9 Honor, I believe the document is basically
10 irrelevant because in no way does it relate
11 anything to Meenaxi Inc., which is the
12 Respondent in this case. So and I guess the
13 Court is going to have to -- to read the
14 document in order to look at the objections I
15 have put little dots by the various portions
16 which are either objectionable in some form or
17 fashion, but there is -- there's content in
18 here that the things that the magistrate did,
19 magistrate said, the magistrate did, which is
20 not in evidence and it shouldn't be in evidence
21 as far -- as far as I'm concerned. There are
22 things that -- there -- there's no indication
23 that this relates to the machines, which are
24 the subject of this action. There are comments
25 by Ursula Dean. We have no idea who Ursula



1 Dean is and she certainly is not in the
2 courtroom to testify. There are comments from
3 a gentleman by the name of Malkesh Patel who
4 would certainly be hearsay. There are
5 conclusions. There are -- it also would
6 appear, Your Honor, that the conduct of the law
7 enforcement officer would violate the Fourth
8 Amendment prohibitions against an unreasonable
9 search and seizure. This gentleman was acting
10 on behalf of the State. He came in as an
11 official SLED agent. He apparently had no
12 warrant. He had no lawful authority to do what
13 this report says that he did. According to
14 this report, he saw two machines that were
15 turned off and nonfunctional and then in order
16 to inspect the machines, he basically had to
17 plug them in, take use of the power -- the
18 electricity that did not belong to the State
19 and did not belong to him and he basically had
20 to plug them in and turn them on in order to do
21 his inspection. There's no indication that
22 anybody with any authority gave him the consent
23 to search. There's no indication that he had
24 a search warrant. There's no indication that
25 he had any probable cause to do anything.



1 There's no indication that there was any arrest
2 or any search through an arrest and there would
3 certainly be no justification for the search,
4 which apparently was done on my client's
5 premises. He was acting in the name of the
6 State and the -- unless I can -- I have not
7 seen the search warrant, but if he had one --
8 if he went in and saw a machine sitting there
9 and they had names on them, he would've had
10 probable cause to go to the magistrate to get
11 a warrant or he would've had to get permission
12 of somebody to search. So you have the Fourth
13 Amendment issue, you have hearsay issues, you
14 have relevance issues, and you have the fact
15 that there's conclusions being drawn, which the
16 man is not capable or authorized to draw, and
17 I guess what I have to do is ask the Court
18 probably is going to have to look at it make a
19 ruling on it.

20 **THE COURT:** I think I will. I can with respect to a
21 couple of the things that you've said, with
22 respect to relevance, I don't find that to be
23 a problem. If -- if after his testimony it
24 turns out to be irrelevant, I'm certainly going
25 to take your -- your concerns into



1 consideration and I think that will go to the
2 weight of the evidence. I don't think the
3 issue about the search warrant is one that --
4 that I need to be concerned with within this
5 context.

6 **MR. MOORE:** May I be heard on that, Your Honor? I
7 don't mean to argue with the Court, but may I
8 be heard on that?

9 **THE COURT:** Yes.

10 **MR. MOORE:** The Fourth Amendment to the United
11 States Constitution applies in the
12 administrative law court as well as in a
13 criminal. The right of the people to be secure
14 in their properties against unlawful searches
15 applies not only to criminal matters, but civil
16 matters as well. Cases are replete upon that.
17 The constitution applies at all times and all
18 places. Now what you have here and this -- it
19 may sound technical, but it's really not.
20 Again, the State South Carolina had no lawful
21 authority to walk into a place of business,
22 which was open to the public. He had every
23 right to walk into a place of business, but
24 what they didn't have a right to do without
25 permission was to plug a machine in and to in



1 effect engage in a conversion of somebody
2 else's power. By plugging the machines in,
3 they basically took advantage of resources and
4 assets that were not theirs and they did it
5 without permission. They had every right to
6 look at the outside of the machine, but they
7 did not have a right to plug that machine in.
8 What was open to the public were two machines
9 that were off. When they basically exceeded
10 their authority and plugged in and turned on
11 something that was not open to the public and
12 was obviously intended to be disengaged, the
13 Fourth Amendment would say, they didn't have a
14 right to do that. I, as a member of the
15 public, would not have had a right to do that
16 and certainly law enforcement engaged in
17 investigation of what apparently they claim was
18 some sort of criminal activity even though no
19 criminal arrest charges were brought, they
20 certainly would've had no right at all to plug
21 those machines in without a warrant. I don't
22 know of any authority they would've had. I'd
23 love to hear from the State what they claim to
24 be the authority they had to plug the machines
25 in and to basically to turn them on, open them



1 up, apparently the opened them up and did an
2 inspection using the indicium authority with no
3 warrant of any type. I would love to know what
4 authority they had to do that. I don't mean to
5 be condescending to the -- to the State, but I
6 don't think they had a right to do that.
7 Matter of fact, I'm sure they don't have a
8 right to do that.

9 **MR. ACQUAVIVA:** Your Honor, I do not know off the
10 top of my head, but I do believe there is a
11 statute in Title 61 that permits enforcement
12 agents to inspect licensed premises if it's
13 part of the privilege of having an alcohol
14 license. I could have one of my colleagues see
15 if they could find that statute for you while
16 we address the remaining objections.

17 **THE COURT:** That would be good if someone could do
18 that.

19 **MR. MOORE:** But Your Honor, and my point is this,
20 there's no question at all and I -- I don't
21 have any qualms with them coming in to inspect
22 licensed premises. They have every right in
23 the world to inspect, but as soon as they
24 basically determined that there may be a
25 problem, they did not have a right as part of



1 their inspection to take somebody else's assets
2 without permission and by plugging that machine
3 into the wall and engaging that power, that's
4 more than an inspection, that's basically
5 exceeding the scope of an inspection. That now
6 becomes a search and it also becomes a search
7 using and taking private property without
8 permission. They didn't have a right to plug
9 the machines in. They had a right to inspect
10 and see, but they had no right to plug that
11 machine in. Once they inspected, if they had
12 probable cause to believe that something was
13 wrong, that's when the law would've said, they
14 had to go back, talk to a magistrate, get a
15 search warrant. The magistrate would've said,
16 you may plug it in and basically look at it at
17 that point in time. That's more than an
18 inspection, that's a search. There's a
19 difference and the law is very clear on this.
20 There is a difference between an inspection and
21 a search. When they basically plugged those
22 machines in, they went from a mere inspection
23 to a search.

24 **THE COURT:** Do you have a citation to case law that
25 supports your position that plugging the



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1 machine in exceeded the scope of what they're
2 allowed to do in these inspections?

3 **MR. MOORE:** Your Honor, there are -- I -- I've done
4 -- I've practiced criminal law for 40 years in
5 this state and I have looked at this issue
6 before and ---

7 **THE COURT:** Well, let me ...

8 **MR. MOORE:** --- I can tell the Court there's --
9 there is authority out there somewhere ---

10 **THE COURT:** Well, I need a citation.

11 **MR. MOORE:** I just don't have it off the top of my
12 head. I -- I really didn't expect -- I didn't
13 expect this issue to come up this morning or I
14 would've brought it. It's there.

15 **MS. ACQUAVIVA:** Where would you like me to begin,
16 Your Honor?

17 **THE COURT:** What -- what I would -- have we found
18 the -- the statute ---

19 **MR. CROCKER:** No, ma'am, not yet.

20 **THE COURT:** --- that Ms. Acquaviva was referring to?
21 Could you -- could you go and get my copy of
22 Title ...

23 **MS. ACQUAVIVA:** Can I have a moment to speak with --
24 -

25 **THE COURT:** Yes.



1 MS. ACQUAVIVA: --- Mr. Crocker Thank you.

2 THE COURT: Okay.

3 MS. ACQUAVIVA: There's a few. There's 61-2-20 ---

4 THE COURT: Hang on. Let me find it. 61-2.

5 MS. ACQUAVIVA: Dash 20. And that ones just the
6 basic right of the Department to administer the
7 law and enforce.

8 THE COURT: Okay. Just a minute. Okay.

9 MS. ACQUAVIVA: And then there's 61-4-230, entitled
10 Refusal to Permit Inspection and it's actually
11 that statute makes it unlawful to prevent an
12 enforcing agent from inspecting a licensed
13 premises. One could argue that therefore the
14 Department and its enforcing agents have the
15 right to inspect the licensed premises if it's
16 a violation to prevent them from doing so.

17 THE COURT: Uh-huh. Okay.

18 MS. ACQUAVIVA: And those are the ones.

19 THE COURT: Okay.

20 MS. ACQUAVIVA: Basically, the second one more so
21 than the first one. The first one is more
22 general.

23 MR. MOORE: Again, Your Honor, we don't -- we don't
24 refute that the Department's ability to inspect
25 the premises. That -- that's perfectly fine,



1 but when they go beyond the basic inspection
2 and begin turning on devices, opening devices,
3 that goes beyond the scope of an inspection
4 that becomes a search and when they're
5 basically talking about searching in regard to
6 criminal activity potentially or even not, it
7 still is a search. There's a difference in the
8 law between inspecting something and searching
9 something. They had a right to search the
10 premises or to inspect the premises, they
11 didn't have a right to basically start
12 conducting scientific tests. Again, that's
13 what this apparently is supposed to be. This
14 gentleman purports apparently is claiming to be
15 although he has not been accepted as one is
16 claiming to have some special expertise in some
17 scientific field called determining video
18 gambling devices and what he's apparently done
19 is to go in and do what he claims to be some
20 sort of a professional or scientific test on a
21 machine, but a lot of difference between
22 inspecting premises and started to test
23 devices, especially those which are turned off
24 and are inoperable. That is a search that is
25 not an inspection. If you go in and inspect and



1 you believe there's probable cause of
2 wrongdoing, then you go get a warrant from a
3 judge under the Fourth Amendment. What he's
4 done is to basically come in and start
5 conducting tests of devices. That's a lot
6 different than inspecting.

7 **THE COURT:** Okay. I understand your position. All
8 right. In the absence of any citation to
9 authority that would show that this exceeds the
10 scope of what's -- what's considered an
11 inspection in this -- in this type of a matter,
12 it seems to me like what was done is part of a
13 -- of a routine inspection, so I'm going to
14 overrule your objection on the Fourth Amendment
15 grounds and I think your other ground for
16 objection was hearsay. This document falls
17 under the hearsay -- under the exception to
18 hearsay for records of a regularly conducted
19 activity, so I'm going to overrule your
20 objection on that ground as well.

21 **MR. MOORE:** Thank you, Your Honor.

22 **THE COURT:** Did I miss any ground for your
23 objection?

24 **MR. MOORE:** Yes.

25 **MS. ACQUAVIVA:** I believe he actually did say within



1 hearsay objection and I have a response to
2 that.

3 **MR. MOORE:** And there's also a legal conclusion
4 objection, Your Honor. This gentleman
5 apparently is drawing legal conclusions of
6 what's not conclusions.

7 **THE COURT:** Well, I can assure that anything in
8 there that constitutes a legal conclusion, I
9 will disregard and -- and make my own -- I'll
10 make my own conclusions based on the factual
11 evidence, so I'll ...

12 **MR. MOORE:** Thank you, ma'am.

13 **THE COURT:** If I could hearsay within hearsay.

14 **MS. ACQUAVIVA:** Hearsay within hearsay, the one
15 statement by Ms. Ursula Dean is -- falls under
16 it's not hearsay as a statement by a party of
17 comment under 801D2D. Ms. Ursula Dean was an
18 employee of Meenaxi Incorporated at the time
19 and therefore as an agent of that employer, she
20 made the statement in the course of her duties.
21 It falls under it's not hearsay.

22 **MR. MOORE:** Your Honor, that -- that's not on the
23 record. The only testimony is she apparently
24 was employed at something called Corner Mart.
25 There's no evidence in the record that she was



1 an employee of Meenaxi Incorporated. There's
2 actually ---

3 **THE COURT:** So let me get something straight. Are
4 you going to present evidence that Corner Mart
5 and Meenaxi are not the same entity?

6 **MR. MOORE:** I don't know who Corner Mart is. The
7 problem I have is -- my position is yes, ma'am.
8 My position is we -- there is no lawful
9 corporation known as Corner Mart.

10 **THE COURT:** Well, yeah, I understand your position
11 on that, but what I'm saying is -- is there ---

12 **MR. MOORE:** The State has the burden of proof and
13 when we have a situation here where they're
14 trying to contribute statements to employee of
15 Meenaxi Inc., and all they come in and say is
16 there was a Corner Mart.

17 **THE COURT:** So are -- is -- are you going to present
18 evidence that this business where these --
19 where these machines were found is not called
20 Corner Mart?

21 **MR. MOORE:** Your Honor, I may not present any
22 evidence at all. The -- what this gentleman
23 has testified to is that this lady was an
24 employee of Corner Mart. He has yet to
25 establish the relationship between Meenaxi Inc.



1 and a business known as Corner Mart.

2 **THE COURT:** Okay. Well, he hasn't had a chance to
3 say much, yet, so we'll give him that
4 opportunity.

5 **MR. MOORE:** The problem, though, is this, she is
6 taking -- making the argument that it's not
7 hearsay because she claims that this lady is an
8 employee of Meenaxi Inc. He does know that and
9 she doesn't know that and that's not in the
10 record. The only record is that she's an
11 employee of something called Corner Mart. He
12 has no firsthand knowledge at all of the
13 relationship between Meenaxi Inc. and Corner
14 Mart, at least that's my belief, and he
15 certainly has no firsthand knowledge as to
16 whether or not this lady was actually employed
17 by a company known as Meenaxi Inc. As far as
18 he knows, she could've been working for a
19 personnel service. As far as he knows, she
20 could've been working for a third-party
21 operator that was there. He doesn't know that.
22 All he knows is that she was in the location
23 and it was known as Corner Mart. Anything
24 different is going to be speculation on his
25 part because he can't prove that and because he



1 can't prove it, the rule of evidence that's
2 been cited to the Court is simply doesn't apply
3 because this gentleman cannot testify that this
4 lady was an employee of Meenaxi Inc. and all
5 I'm doing is placing them and putting them
6 stringently to their burden of proof, which I
7 think I can do.

8 **THE COURT:** You can.

9 **MS. ACQUAVIVA:** I think I can clear this up ---

10 **THE COURT:** Okay.

11 **MS. ACQUAVIVA:** --- with some evidence.

12 **THE COURT:** I think for now, I'm going to admit the
13 document. I'm going -- with the understanding
14 that those factual matters are going to be
15 cleared up. If they're not cleared up, then
16 we'll revisit the issue.

17 **MS. ACQUAVIVA:** Okay. Thank you, Your Honor.

18 **THE COURT:** Okay.

19 **(Petitioner's Exhibit Number One was admitted into**
20 **evidence.)**

21 **Q:** Before we get into more detail, I would like to
22 show you what's been marked as Petitioner's
23 Exhibit Eight. It's the last photograph. Can
24 you generally identify that document for the
25 record?



1 A: Yes, that is a South Carolina Department of
2 Revenue Alcoholic Beverage License.

3 Q: More generally, there are two pictures on this
4 document, correct?

5 A: I'm sorry. Correct, there are two -- two
6 pictures.

7 Q: And who took those pictures?

8 A: I took those pictures.

9 Q: And did these pictures accurately reflect what
10 both of these items looked like on February
11 26th?

12 A: Yes, they do.

13 Q: At this time, Your Honor, I'd like to move
14 Petitioner's Exhibit Eight into evidence.

15 **MR. MOORE:** If I might, is it this one?

16 **MS. ACQUAVIVA:** Yes.

17 **MR. MOORE:** I have no objection to that at all.

18 **THE COURT:** Okay. It's admitted.

19 **(Petitioner's Exhibit Number Eight was admitted into**
20 **evidence.)**

21 **MS. ACQUAVIVA:** Thank you.

22 Q: Now can you please describe to the Court what's
23 in the -- the top picture?

24 A: The top is a photograph of the alcoholic
25 beverage license of Corner Mart, which is the



1 d/b/a of Meenaxi and I took that picture during
2 my alcoholic beverage license inspection, which
3 I did on -- in February of 2013.

4 Q: And what's the license number listed?

5 A: 320574366.

6 Q: Now if I could bring your attention back to
7 what's been admitted as Petitioner's Exhibit
8 One, did you write the license number in your
9 report?

10 A: Yes.

11 Q: And what license number did you write?

12 A: It's the same one. I don't have the report in
13 front of me, but it is the same one. I always
14 the -- I always write the license number from
15 the license.

16 **MS. ACQUAVIVA:** Do you have Petitioner's Exhibit One
17 still, Your Honor?

18 **THE COURT:** I do.

19 **MR. BIELAWSKI:** Thank you, Your Honor.

20 Q: And this again, just for the -- for the record,
21 can you take a look at the report and verify
22 that it is the same license number?

23 A: It is the same.

24 Q: And what is the doing business as mean
25 according to the license in the photograph?



1 A: Corner Mart.

2 **MR. MOORE:** Objection, Your Honor, that's calling
3 for a legal conclusion on the part of the
4 witness.

5 **THE COURT:** No, that's asking for a fact.
6 Overruled.

7 Q: And the physical address of the business
8 according to the license?

9 A: 1010 East Shockley Ferry Road, Anderson, South
10 Carolina.

11 Q: And what is the address you used on your
12 report?

13 A: 1010 East Shockley Ferry Road, Anderson, South
14 Carolina.

15 **MR. MOORE:** May it please, Your Honor, again I hate
16 to keep interrupting, but there's no doing
17 business as listed. The gentleman has just now
18 given a description as what doing business as
19 means and doing business as shows nowhere on
20 the license, so he's answering a question that
21 doesn't even show on the license. It doesn't
22 say doing business as. So he's giving an
23 explanation for something that's not even
24 there.

25 **THE COURT:** If you want to cover those things in



1 cross-examination, you'll be welcome to do
2 that, but you -- we're going to let this
3 witness testify.

4 **MR. MOORE:** Thank you, ma'am.

5 Q: Now your report that was admitted as
6 Petitioner's Exhibit One reflects the events
7 that you witnessed at the license location,
8 license number 320574366 on February 26, 2013,
9 correct?

10 A: Yes.

11 Q: Okay. What happened when you entered the
12 licensed premises on February 26th, Meenaxi
13 Inc., doing business as Corner Mart?

14 A: When I entered the store, I identified myself
15 as a state law enforcement division agent with
16 my state law enforcement credentials. It
17 happens to be the same one that I'm wearing
18 right now.

19 Q: Who did you identify yourself to?

20 A: To the clerk who was on duty behind the
21 counter.

22 Q: How did you know that she was a store clerk?

23 A: Because she was behind the counter in a role
24 that a store clerk would have in any other
25 store just like it.



1 Q: And what was her name?

2 A: Ursula Dean.

3 Q: What did you do after you identified yourself
4 to Ms. Dean?

5 A: I informed her that I was going to conduct a
6 regulatory inspection of a licensed premises.

7 Q: And then what did you do?

8 A: Then as I conducted my inspection, I noticed
9 that there were two video gambling machines in
10 the left side ---

11 **MR. MOORE:** Objection, Your Honor, ---

12 A: --- of the store as you come in.

13 **MR. MOORE:** --- that's -- that clearly calls for a
14 legal conclusion on the part of the witness.
15 If he calls it a video gambling machine. It is
16 a sweepstakes machine according to our
17 stipulation and we don't even have the machine
18 here, but that clearly is a legal conclusion.

19 **THE COURT:** Your objection is overruled.

20 **MR. MOORE:** Thank you, ma'am.

21 Q: I'm going to show you what's been marked as
22 Petitioner's Exhibit Five. Can you identify
23 that for the record, generally again?

24 A: These are pictures that I took in the licensed
25 premises when I did my inspection.



1 Q: Okay. At this time, Your Honor, I'd like to
2 offer Petitioner's Exhibit Five into evidence.

3 MR. MOORE: Might I see that one? I don't have any
4 objection to these at all.

5 THE COURT: Okay.

6 (Petitioner's Exhibit Number Five was admitted into
7 evidence.)

8 Q: Just to go back on your testimony, you said you
9 found two machines?

10 A: Correct.

11 Q: And the two machines in this photograph are the
12 two machines you were referring to?

13 A: Yes.

14 Q: And what is the -- as the machine owner would
15 call the machines, what are -- what types of
16 machines are these?

17 A: Products Direct and gift surplus are what
18 they're called.

19 Q: And at this point, what was the status of the
20 machines?

21 A: They'd been turned off and unplugged.

22 Q: And what did you learn regarding why they were
23 off?

24 A: The ---

25 MR. MOORE: Object to the hearsay, please, Your



1 Honor. It would -- had to be based on what he
2 was told.

3 **MR. ACQUAVIVA:** By the store clerk, Your Honor.

4 **THE COURT:** I'm going to allow the testimony. I
5 mean, if we have some showing later on that
6 this clerk was -- is somehow not -- this
7 apparent clerk is not what she appeared to be,
8 then I -- I may reconsider, but at this point,
9 the testimony is that she was the store clerk.

10 **MR. MOORE:** And if I might just also but, Your
11 Honor, even if she were a clerk, she would
12 certainly not have the authority to speak to
13 law enforcement on behalf of her employer. If
14 the State -- if she were a clerk, basically
15 running a store, her -- her duties would not --
16 certainly not include dealing with officials of
17 the State of South Carolina, so any comment
18 that she would've made would clearly be above
19 and beyond her scope of authority and be ultra
20 varies, so she would not have the authority to
21 make such a comment, so you'd wind up with a
22 situation where just because she's a clerk and
23 certainly if -- if a -- if an operator of an
24 Exxon Station -- a clerk of an Exxon Station
25 basically says something, it would not be



1 binding upon Exxon Corporation. There's a
2 limit to what the authority a person could
3 have. If she had -- if she was clearly had the
4 authority to speak on behalf of the company,
5 then I would believe that -- that the testimony
6 would be admissible, but this -- this is not
7 part of her overall job functions is to deal
8 with the State. This statement is over and
9 above anything she would have the authority to
10 talk about.

11 **THE COURT:** Anything -- legal argument on that
12 point?

13 **MS. ACQUAVIVA:** Your Honor, I would argue that any
14 employee has -- it's in their duties to relate
15 facts to law enforcement when law enforcement
16 comes into their state of employment and all
17 she -- she did not give any kind of explanation
18 how the business is run, she just stated a fact
19 as to what she had observed happened and what
20 she was told to do. I believe it's what she
21 observed the store owner do.

22 **THE COURT:** All right. I'm going to allow the
23 testimony. It sounds to me like the statements
24 were made within the role that she had as a
25 clerk of the store concerning -- concerning



1 strictly matters that were -- were related to
2 her role.

3 **MR. ACQUAVIVA:** Thank you, Your Honor.

4 Q: What did you learn from the store clerk, Ms.
5 Dean, after you noticed the machines off?

6 A: I learned that the owner of the store had
7 unplugged them and removed the cash from them
8 prior to our arrival. Excuse me.

9 Q: Did you learn why he did that?

10 A: It does -- I don't -- well, let me just refer
11 to my -- my report real quick on that
12 particular point. She didn't say in that -- I
13 didn't write -- I didn't note in my report what
14 she said, however, in my experience, this is a
15 very common tactic that people will turn them
16 -- unplug them ---

17 **MR. MOORE:** Your Honor, based upon his experience a
18 common tactic, this is not what -- which would
19 be something he's speculating now which is
20 somebody's intent of doing something. That's
21 clearly speculation.

22 **THE COURT:** That will go to the -- that goes to the
23 weight. He's a law enforcement officer. He --
24 he can testify as to his experiences to -- in
25 law enforcement.



1 Q: If I could refer you to the second paragraph
2 under your narrative, the second sentence I
3 believe you state that she informed you?

4 A: Yes.

5 **MR. MOORE:** Your Honor, I would object. The client
6 -- the attorney leading the client and cross-
7 examining the client.

8 **THE COURT:** That's overruled.

9 A: She did remark that -- that the owner of the
10 business had been aware that SLED and the
11 Anderson County Sheriff's Office were in the
12 area.

13 Q: After that conversation, what did you do?

14 A: Excuse me. I continued my inspection and I
15 noticed that there were several receipts from
16 these machines that were crumpled up on the
17 floor and then from my own training and
18 experience, I know that this is a very common
19 pattern with these types of machines that these
20 -- these receipts -- these tickets have no
21 value and they're crumpled up and discarded on
22 the floor.

23 **MR. MOORE:** Your Honor, he has no way of knowing if
24 they have a value or not. Now that's -- he --
25 he is basically speculating horribly. These



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1 tickets do have a value. He knows it and he
2 has no way of knowing either way if they have
3 a value or not. He doesn't know that.

4 **THE COURT:** Mr. Moore ---

5 **MR. MOORE:** He's speculating.

6 **THE COURT:** --- your going to have an opportunity to
7 cross-examine this witness. Let's let him
8 testify right now.

9 **MR. MOORE:** Thank you, ma'am.

10 Q: And this is -- this photograph here would be
11 one of the -- the receipts you're talking
12 about?

13 A: Yes, ma'am.

14 Q: I'm going to hand you what's been marked as
15 Petitioner's Exhibits Six and Seven. Keep this
16 one over here. Can you identify these
17 documents for the record, again generally?

18 A: These are pictures that I -- I took.

19 Q: And are those pictures, do they accurately
20 reflect the thing that you took pictures of
21 that day?

22 A: Yes, they do.

23 Q: Let me show them to Mr. Moore before I offer
24 them.

25 **THE COURT:** Which Exhibit is this again?



1 **MS. ACQUAVIVA:** This is Petitioner's Six and Seven.
2 The remaining photographs. I figured it would
3 be easier to do it at the same time.

4 **MR. MOORE:** I have no objection to either one of
5 these.

6 **THE COURT:** Okay.

7 **MR. ACQUAVIVA:** I'd like to offer Petitioner's Six
8 and Seven.

9 **THE COURT:** They're admitted.

10 **MR. ACQUAVIVA:** Thank you.

11 **(Petitioner's Exhibit Numbers Six and Seven were**
12 **admitted into evidence.)**

13 **Q:** And again, looking at Petitioner's Seven, what
14 do these pictures show, specifically?

15 **A:** They are discarded receipts from the gambling
16 machines.

17 **Q:** What is the purpose of these receipts?

18 **A:** The receipts essentially purport to give a --
19 some sort of enticements to -- for a person to
20 gamble, but it's -- but it's -- it's a false --
21 it's a fraudulent enticement. There's no --
22 there's no -- nothing of any value on these.
23 I personally have -- have taken a product
24 direct sweepstakes coupon and examined it and
25 went on the website and tried to see what value



1 there was on one of them and the only value I
2 could find was that there -- there was none.
3 It was -- the items that were there were
4 overpriced and you could easily go to a local
5 store yourself and pick up the same sort of
6 item at a much lower cost than what was this
7 supposed discount that you receive from playing
8 the product's direct.

9 Q: Okay. So -- just so the record is clear,
10 potentially these receipts could be used to
11 purchase a product?

12 A: Potentially.

13 Q: Why would they be all over the floor in the
14 convenience store then?

15 A: Because the products that they offer for sale
16 ---

17 **MR. MOORE:** Your Honor, again, now this is clearly -
18 - this is clearly speculation. Why those
19 receipts were on the floor, he has no way of
20 knowing that. He really doesn't. Those --
21 these receipts are on the floor. He can't tell
22 -- tell us why they were there, except what he
23 believes to be the case. That's clear
24 speculation.

25 **THE COURT:** He's testifying as to his -- his



1 investigation of how these receipts operate and
2 I'm going to let him testify to that.
3 Obviously, I agree that -- that doesn't
4 directly explain why these particular receipts
5 are on the floor, but I'm going to let him
6 testify and I'll take your objection as to the
7 weight of the evidence.

8 **MR. MOORE:** Thank you.

9 A: After having done many of these inspections and
10 having interviewed people who have played these
11 machines, I understand that in my experience
12 that is my understanding of why these are on
13 the floor because they don't hold any value to
14 the players.

15 **MR. MOORE:** Again, I hate to keep interrupting, Your
16 Honor, but now -- now he says he's testifying
17 as a result of hearsay, apparently what other
18 people have now told him. He's reached his
19 conclusions based on what other folks have told
20 him apparently dealing with other machines in
21 other locations. That now clearly is not only
22 -- it's also hearsay based on what he says.
23 He's -- he's giving his testimony of why some
24 people at other places have done something
25 based on what they've told him. I can't cross-



1 examine those people.

2 **THE COURT:** Ms. Acquaviva?

3 **MS. ACQUAVIVA:** If I could lead the witness slightly
4 and ask the question in a different way, 'I
5 think I could get him to get what I'm ---

6 **THE COURT:** That would be good.

7 **MR. ACQUAVIVA:** --- without talking about what other
8 people have told him?

9 **THE COURT:** Yeah.

10 Q: If you throw a receipt out, could you use it to
11 purchase something?

12 A: No.

13 Q: So the fact that these receipts are on the
14 floor evidences that they were not being used
15 for their intended purpose?

16 A: Yes.

17 **MR. MOORE:** Objection, leading please, Your Honor.

18 **THE COURT:** It's overruled.

19 Q: After you noticed the receipts, what did you do
20 with the machines?

21 A: I plugged them in, in the continuance of my
22 inspection in the same way that I would turn on
23 the lights in a beer cooler that did not have
24 it's lights on, so I could inspect the beer
25 cooler or in the same way that I would have



1 someone turn on the -- the lights in a liquor
2 storage closet so I could inspect the closet.

3 Q: And this is what one of the machines looked
4 like?

5 A: Yes.

6 Q: What types of games specifically on the gift
7 surplus machine?

8 A: You see some -- there's poker and spinning reel
9 games as well as keno. Excuse me.

10 Q: Do you recall what types of games were on the
11 Products Direct machine?

12 A: Products Direct machines have poker, blackjack,
13 and keno on them as well.

14 Q: What did you do after you discovered these
15 types of games on the machines?

16 A: The machines were then seized and I issued a
17 violation to the business and I -- I'm sorry.

18 **MR. MOORE:** Your Honor, I don't have any objection
19 to the violation report coming in. I don't
20 think it's proof of anything, but that's fine.

21 **THE COURT:** Okay. This is Petitioner's?

22 **MS. ACQUAVIVA:** Exhibit Two.

23 **THE COURT:** Two is admitted.

24 **(Petitioner's Exhibit Number Two was admitted into**
25 **evidence.)**



1 MS. ACQUAVIVA: Okay. We will -- on foundation
2 then.

3 Q: Can you tell the court about that document?

4 A: Yes, that is a violation report for violations
5 of the alcoholic beverage license and this is
6 one that I issued to this licensee.

7 Q: Can you read to the Court who the citation was
8 issued to -- the name of the licensee?

9 A: The name of the licensee is Malkesh Patel
10 Meenaxi Inc.

11 Q: And what was the license number?

12 A: 320574366.

13 Q: Was there a signature on the bottom of the ---

14 A: There is.

15 Q: Who signed the violation report on behalf of
16 the licensee?

17 A: Ursula Dean.

18 Q: And what did you write the violation for?

19 A: 614580 subsection 5, permitting games that
20 constitute crime under state law and that law
21 would be 12212710.

22 Q: What happened after you wrote the violation?

23 A: Excuse me. We opened up the machines to
24 continue the inspection inside the machines and
25 also to verify if there were any money -- was



1 any money inside the machines and to account
2 for any money that could be in there.

3 Q: What happened after that?

4 A: Okay. There was no money in the machines and
5 we did open them with keys that were provided
6 by Ms. Ursula Dean. Ms. Dean telephoned the
7 owner, Mr. Patel, and when I spoke to him
8 directly on the phone, he told me that this was
9 his store when he explained the nature of his
10 business arrangement with the owners of the
11 machines, which means he was not the owner of
12 the machines.

13 Q: And what was his business arrangement?

14 A: His business arrangement is one that is typical
15 with most people in this industry and that's a
16 50/50 split of the profits that come from the
17 video gambling machines and he also explained
18 that -- that the owner, who is -- he told me
19 was Mitesh Patel, comes to Corner Mart every
20 Monday or Tuesday to collect the money from the
21 machines.

22 Q: Where did you take the machines after your
23 investigation was complete?

24 A: They were brought to the Anderson County
25 Sheriff's Office Armory where they were viewed



1 by a magistrate.

2 Q: Were you present when the magistrate reviewed
3 those machines?

4 A: I was.

5 Q: And what did the magistrate determine?

6 A: He determined -- he determined them to be
7 illegal and issued an order of destruction.

8 Q: I'd like to hand you what's been marked as
9 Petitioner's Exhibit Three. Generally, can you
10 identify that document?

11 A: Yes. This is an order of destruction from the
12 magistrate's court.

13 Q: And does that -- is that order about the
14 machines that you -- were there when you
15 witnessed the judge rule that they were to be
16 destroyed?

17 A: Yes, it is.

18 Q: How do you know that?

19 A: I know it because -- excuse me -- because of
20 the name that's on the front and the date and
21 the location in the -- in the first paragraph,
22 which explains the name of the location and the
23 address.

24 Q: And is that a certified copy ---

25 A: It is.



1 Q: --- of an order from the magistrate's court?

2 A: It is.

3 Q: At this time, Your Honor, I'd like to offer
4 Petitioner's Exhibit Three into evidence.

5 **MR. MOORE:** I would object on the grounds of
6 relevance, Your Honor. This is a preliminary
7 report -- this is a preliminary order issued
8 after no form of due process hearing simply,
9 it's a preliminary order only and it would
10 basically have no permanent value in the facts
11 of this case at all.

12 **MS. ACQUAVIVA:** Your Honor, that order combined with
13 a final order, which I have here marked as
14 Petitioner's Exhibit Four together establish
15 that the machines were determined to be
16 illegal. So while one is not final, I have the
17 final order, which upholds that order.

18 **THE COURT:** Okay.

19 **MR. MOORE:** The problem, though, is this, Your
20 Honor, if -- if this final order, which has
21 been issued is in fact a final order, in the
22 case the magistrate clearly -- the magistrate
23 clearly has this language contained in that
24 final order. The parties stipulated that the
25 original caption should be amended to list only



1 the machines as the Defendant's and this civil
2 forfeiture action and the store and store owner
3 are not proper parties to this action. See
4 Union County Sheriff versus Henderson. Since
5 this forfeiture action is in rem, the proper
6 Defendant's are only the seized machine and
7 equipment, which is the subject of the order of
8 destruction, so what basically happened here
9 is, before any type of final order was issued,
10 my client, who was not even the owner of the
11 machines, was basically dismissed as a party to
12 this action. Now somehow, someway, the State
13 of South Carolina is going to have to explain
14 to me, I'll either Res judicata or collateral
15 estoppel would apply to bind my client in a
16 final order to which my client not only was not
17 a party, but where the Court declared that my
18 client was not a proper party to the action.

19 **THE COURT:** Well, as I -- as I understand this, the
20 -- the Department doesn't need to prove that
21 your client owned the machines, only that he
22 knowingly allowed illegal machines on the
23 premises.

24 **MR. MOORE:** But here's the problem with that, my
25 client has got to be entitled as a matter of



1 due process to his day in court. If -- if --
2 if they determine -- if what the State of South
3 Carolina is going to say is, you were operating
4 illegal machines, then there has to be a venue,
5 an avenue where my client has the ability to
6 come in and protect himself, to cross-examine
7 and say, no they're not illegal, they were
8 lawful and in this case ---

9 **THE COURT:** Today is his opportunity to convince me
10 that he had a reasonable belief that those
11 machines were lawful.

12 **MR. MOORE:** But Your Honor ---

13 **THE COURT:** Today is his day.

14 **MR. MOORE:** But Your Honor, his -- his -- his day
15 also is the State has to prove that they were
16 unlawful not there -- there are two issues
17 here, A were the machines lawful and the
18 finding by the magistrate in a case to which he
19 is a party doesn't bind anybody. You simply
20 have to have a hearing today to determine were
21 the machines lawful or were they not, then if
22 this Court determines that the machines were
23 unlawful at the time, then the question is, did
24 he have a rational believe that they were in
25 fact lawful.



1 **THE COURT:** Exactly.

2 **MR. MOORE:** So this order, though, has no binding or
3 relevant impact as to whether the machines were
4 lawful or not lawful because we weren't a party
5 to the action and as a matter of fact, were
6 dismissed from the action by the Judge.

7 **THE COURT:** I would say -- I would agree with you
8 that it's possible they're not binding on my --
9 my finding of fact today, but they are relevant
10 to the -- the finding of fact that I need to
11 make today and so I'm going to admit it.

12 **MR. MOORE:** Thank you.

13 **(Petitioner's Exhibit Number Three was admitted into**
14 **evidence.)**

15 Q: And now I'd like to hand you Petitioner's
16 Exhibit Four. Can you generally identify that
17 for the record?

18 A: Yes, this is a final order of destruction from
19 the magistrate.

20 Q: And let me just take you back ---

21 **THE COURT:** Is that Number Four? I'm sorry.

22 **MS. ACQUAVIVA:** Four, yes.

23 **THE COURT:** Okay.

24 Q: --- to Petitioner's Exhibit Three, what was the
25 case number on Petitioner's -- on the order for



1 Petitioner's Exhibit Three?

2 A: 2013CV0410100842.

3 Q: And what is the case number on the order that's
4 marked Petitioner's Exhibit Four?

5 A: 2013CV0410100842.

6 Q: I'd like to offer Petitioner's Exhibit Four
7 into evidence.

8 **MR. MOORE:** Same objection.

9 **THE COURT:** Okay. It's admitted.

10 **(Petitioner's Exhibit Number Four was admitted into**
11 **evidence.)**

12 Q: What happened after the machines were
13 determined to be illegal gambling machines?

14 A: They were then stored by the Anderson County
15 Sheriff's Office in their storage location.

16 Q: I'm sorry, could you repeat that last part?

17 A: They were -- I'm sorry. They were stored by
18 the Anderson County Sheriff's Office in their
19 storage location.

20 Q: Do you happen to know the current status of
21 those machines now?

22 A: Those machines have been destroyed.

23 Q: Pursuant to ---

24 A: Pursuant to the final order of destruction
25 issued by Judge Lollis.



1 Q: I have no further questions for you at this
2 time.

3 MR. MOORE: May it please, Your Honor?

4 THE COURT: Yes, go ahead.

5 MR. BIELAWSKI - CROSS-EXAMINATION BY MR. MOORE:

6 Q: Sir, let me -- let me ask you this, we looked
7 at the photographs of these machines. Both of
8 the machines indicated that no purchase was
9 necessary, correct?

10 A: If you can pull up one of those photographs or
11 allow me to look at one to make sure that,
12 that's correct, I'll look at it.

13 Q: I believe I can show it to you.

14 A: Okay.

15 Q: Probably on -- if we look at ...

16 A: Is that the one?

17 Q: Yeah. Exhibit Number Six. See where it says,
18 no purchase necessary?

19 A: I see that.

20 Q: So basically, according to the actual face of
21 the machine, you didn't have to buy anything in
22 order to play, correct?

23 A: You have to put money in the machine to play.

24 Q: Well, yes, sir, well, let me ask you this, did
25 you actually play these machines?



1 A: This particular machine, I did not.

2 Q: Either one of these machines, did you play?

3 A: I did not.

4 Q: So all we know -- and again we have a case by
5 case determination of whether the machines
6 lawful or unlawful, right?

7 A: Yes.

8 Q: So in regard to this machine, all we know is
9 that according to the face of the machines, it
10 was not necessary to purchase anything in order
11 to play.

12 A: That's not relevant. It's illegal under 2710,
13 which defines what types of games are illegal
14 under state law.

15 Q: I appreciate that sir, but I -- what I'd like
16 you to do is let the Judge be the Judge of the
17 law and if you'd just answer the questions that
18 I ask.

19 A: That's my answer to your question as far as I'm
20 concerned when I'm doing my investigation in my
21 law enforcement, I have to determine whether
22 something is illegal under 2710 and that's --
23 that's my answer to your question.

24 Q: I appreciate that. Now let's go back to my
25 question. According to what the machine



1 actually says, it was not necessary to purchase
2 anything in order to play the machine, correct?

3 A: You'd have to define what purchase means
4 because you have to put money in the machine in
5 order to play it, so I'm -- I'm not exactly
6 certain where you're -- what -- what
7 particularly you mean with that question.

8 Q: I mean, English language.

9 A: Okay.

10 Q: If you read what the front of the machine
11 actually says, it says, no that basically means
12 no, right?

13 A: Well, it also -- I also know that people very
14 often put different games in the cabinets in
15 which they're housed and very often the
16 stickers are recycled and it mean -- the
17 stickers on that machine may have absolutely no
18 bearing on the game that's on it.

19 Q: And -- and again the stickers may have a
20 bearing, right?

21 A: In this case, I can't answer that question if
22 they do or if they don't.

23 Q: Well, okay, so you don't know either way,
24 right?

25 A: It's not -- correct, I don't know.



1 Q: And since you didn't play the machine, you
2 don't know if that language applied or not?

3 A: But I did examine the -- this machine and I do
4 know that there are illegal games on it.

5 Q: Well, you examined it and you turned it on?

6 A: Correct.

7 Q: I just want to make sure on the face of the
8 machine, it said that no purchase was necessary
9 in order to play?

10 A: It does say that on that particular machine.

11 Q: On this machine, are you able to say if you had
12 to purchase something in order to play it?

13 A: Please restate the question?

14 Q: Surely. You didn't put any money in the
15 machine, right?

16 A: Correct, I did not.

17 Q: You didn't actually operate the machine?

18 A: I did not.

19 Q: When the magistrate inspected it, did she put
20 money in?

21 A: Well, Judge Lollis, he did not put any money
22 in, however, it is -- there were a lot of
23 machines that day and many of them did have
24 money put in, so that he could see how they
25 worked. He doesn't have ---



1 Q: But on these machines -- when -- when Judge
2 Lollis inspected them, did he turn them on?

3 A: They were on, yes, they were. He reviewed each
4 ---

5 Q: Did he play them?

6 A: --- and every machine. He played some of the
7 machines.

8 Q: Did he play these two?

9 A: He did not play these two.

10 Q: All right. Well, then does anybody -- is there
11 anybody in the world that you know of who can
12 actually say, I played the machine and a
13 purchase was necessary in order to play it?

14 A: I have played Products Direct machines before
15 myself ---

16 Q: Well like you said ---

17 A: --- undercover.

18 Q: --- machine by machine and you can have one
19 cabinet and ---

20 A: Uh-huh (affirmative response).

21 Q: --- it can be -- the games can be modified.
22 I'm talking about these machines, all right?

23 A: Okay.

24 Q: I just want to know, did anybody test the
25 machine to make sure that a purchase was in



1 fact necessary?

2 A: There was no money put into these machines.

3 Q: Okay. So the answer to my question is, no?

4 A: There is -- correct, there was no money put
5 into these machines.

6 Q: So then on the fact of the machines, the --
7 there is no purchase necessary according to the
8 language on the machine, there's no purchase
9 necessary in order to play it, right?

10 A: That's what the sticker on the machine says,
11 correct.

12 Q: Now in these machines when you seized them and
13 took them to the armory, you found court orders
14 actually inside the machines indicating that
15 machines of this type had been previously
16 approved by other courts, did you not?

17 A: I don't recall that.

18 Q: Do you not know that there were existing court
19 orders at the time?

20 A: There are existing false court orders, which
21 had been vacated by judges that I'm aware of,
22 but I'm not aware of any that were actually
23 real.

24 Q: False court orders?

25 A: Correct.



1 Q: You mean, court orders where ---

2 A: By Judge Eric. I'm sorry. I'm sorry.

3 Q: Yeah, Judge Hill, the circuit judge, had ruled
4 the machines legal, right?

5 A: I can't testify to that.

6 **MS. ACQUAVIVA:** Your Honor, I would object as Ms.
7 Moore has stated previously, the machines are
8 looked at on a case by case basis, so the
9 relevance of other court orders has no bearing
10 on this matter.

11 **MR. MOORE:** I agree with that. I agree with that.

12 Q: Machine by machine basis, so we've got to
13 basically see what these machines did. So
14 since we have to see what these specific
15 machines did, do you know the name of anybody
16 that ever gambled on these machines?

17 A: No, I -- excuse me. No, I do not.

18 Q: Do you know if -- you've been taught that the
19 gambling consists of chance, wager, and what is
20 it?

21 A: Putting money into a machine for the chance to
22 win something else.

23 Q: Yeah.

24 A: That's what -- that's what gambling is.

25 Q: Well, according to the face of the machine, no



1 purchase was necessary and you're not able to
2 tell us actually how these machines worked
3 because these specific machines because you
4 didn't play them?

5 A: I've been involved in the seizure of nearly
6 2000 machines and I have not found one that you
7 can walk up to and play without ---

8 Q: Right, but we're not ---

9 A: --- putting money in.

10 Q: --- talking about 2000, according to the State,
11 we're talking about these two.

12 A: That's right.

13 Q: And as I understand it, nobody anywhere in the
14 world in regard to these two machines is able
15 to tell us that these machines actually took
16 money in exchange for gain.

17 A: They both have bill acceptors?

18 Q: Sure they do, but they both say, no purchase
19 necessary to play, right?

20 A: That particular one does. Excuse me.

21 Q: Well, the actually both do, don't they?

22 A: Okay. They might.

23 Q: Actually, there was -- there was -- there were
24 only Products Direct there was actually a sign
25 posted on the premises, which basically said



1 too that there -- no purchase is necessary in
2 order to play it?

3 A: It's my understanding the way that Products
4 Direct works is that the no purchase means you
5 have to send off in the mail to somewhere to
6 get something, but you still, in order to play
7 -- operate that machine, you have to put money
8 into that machine.

9 Q: But it basically is a -- and of course, we
10 don't know how that machine worked because
11 nobody played that specific machine, right?

12 A: The machines have illegal games on them, which
13 is what makes them illegal.

14 Q: Well, you're telling me that if -- if I play
15 poker for no wager, that's illegal?

16 A: Poker is illegal in South Carolina, yes.

17 Q: If I play poker just for fun, me and you with
18 a deck of cards and we're wagering nothing,
19 that's illegal?

20 A: It is.

21 Q: And -- all right. Let's talk about then this
22 store clerk. What was her name?

23 A: Ursula Dean.

24 Q: Did you do any type of investigation to
25 determine exactly who she worked for?



1 A: I wasn't doing an investigation, I was doing a
2 regulatory inspection and I did talk to her and
3 she told me that when she had to call her boss,
4 who was Malkesh Patel that told me that, that
5 who she worked for.

6 Q: She worked for Malkesh Patel?

7 A: That's what I read in the report.

8 Q: That's what you read in the report?

9 A: Malkesh Patel, correct.

10 Q: I see.

11 A: Uh-huh. She handed me the phone and I had a
12 conversation with Malkesh Patel, who identified
13 himself to me as the owner.

14 Q: And you testified at length -- not at length,
15 but you testified in regard to the DBA on the
16 license?

17 A: Yes, that's right.

18 Q: You testified what the DBA doing business as on
19 the license means, remember that?

20 A: Uh-huh. Yes, sir, I did.

21 Q: Is that yes?

22 A: Yes, sir, I'm sorry. Yes, sir.

23 Q: All right. Where did you see the words doing
24 business as anywhere on that license?

25 A: It is not printed on the license.



1 Q: Sir, if -- if the words doing business as is
2 not printed on the license, how are you able to
3 tell us what doing business as means on
4 license?

5 A: From my training and my experience as an
6 alcoholic beverage inspector with the State of
7 South Carolina.

8 Q: Yes, sir, so your -- but your training teaches
9 you how to interpret words that don't exist?

10 A: It teaches me how to understand an alcoholic
11 beverage license and identify the different
12 kinds and what the different things on the
13 license mean.

14 Q: Yes, sir, but you testified that what the words
15 doing business as mean on the license and those
16 words don't even appear on the license, do
17 they?

18 A: As -- I am trained to realize that, that bottom
19 section is for the purpose of identifying the
20 doing business as name and having done
21 thousands of alcoholic beverage license
22 inspections, that is consistent in every case
23 with the doing business license versus the
24 actual corporate name, which is above it.

25 Q: Now who is it that destroyed the machines?



1 A: Anderson County Sheriff's Office.

2 Q: Yes. Let's take a look at this final order in
3 regard to the machines. It says, by way of
4 consent agreement counsel for each party has
5 indicated that the parties maintained their
6 respective positions regarding the legality of
7 the machines at the time of the seizure,
8 correct?

9 A: That's what it says.

10 Q: All right. So the order of destruction was
11 issued pursuant to an order, which said that
12 the owner maintained his position that the
13 machines were legal?

14 A: And agreed that he would not -- not contest it.

15 Q: Right. So what basically happened was, there
16 was an agreement not to contest the
17 destruction. The owner continued to take the
18 position that the machines were legal and the
19 Department continued or the -- the Sheriff
20 continued -- said that they weren't, right?

21 A: Yes.

22 Q: So as a matter of fact, the Corner Mart
23 actually was dismissed from the action because
24 not a party -- proper party to the action,
25 right?



1 A: The Anderson County Magistrate's Office had a
2 practice, which has subsequently been changed,
3 where they would put the store -- sometimes
4 they would put the store name on their -- in
5 the -- as the -- as the Defendant.

6 Q: Right and actually the ---

7 A: And that was in ---

8 Q: --- language of the order reads '---

9 A: --- and that was simply an error on the part of
10 the magistrate's office.

11 Q: Right. Actually the Corner Mart should never
12 have been a party to the action ---

13 A: The Corner Mart is not a party, the machines
14 are.

15 Q: Right, so the Corner -- the Corner Mart,
16 whatever that is, should not have been a party
17 to the action?

18 A: The Corner Mart is the DBA of Meenaxi Inc. ---

19 Q: Right, and Meenaxi Inc. ---

20 A: --- 1010 Shockley Ferry Road.

21 Q: --- shouldn't have been a party to the action,
22 right?

23 A: They are not a party to the destruction action.

24 Q: Yeah, Meenaxi Inc. didn't even own these
25 machines, did they?



1 A: They did not.

2 Q: And as a matter of fact, the order provides
3 that the store and store owner are not proper
4 parties to this action, right?

5 A: Yes.

6 Q: So the ultimate decision in regard to what to
7 do with the machines was decided between
8 whoever owned the machines and the sheriff's
9 department, right?

10 A: That is -- that's correct.

11 Q: Who actually owned the machines?

12 A: According to what Mr. Patel told me, Mitesh
13 Patel was the owner of the machines of Encore
14 Entertainment.

15 Q: Well, were they owned by Mitesh Patel or Encore
16 Entertainment or both?

17 A: I was told that it was Mitesh Patel of Encore
18 Entertainment that's what I was told by Mr.
19 Patel, the owner of the store.

20 Q: Now let's talk about this concept of value.
21 You said that the -- that the -- the -- what
22 you get from the machine has no value?

23 A: Yes.

24 Q: Whether something has a value or not really is
25 in the eye of the person -- person purchasing



1 it, doesn't it?

2 A: Can you explain that?

3 Q: Let me ask you this. How many different items
4 can be purchased from Products Direct?

5 A: There is a number. I can't tell you how many.

6 Q: Well, I thought you did this investigation?

7 A: I followed up and checked Products Direct, but
8 I didn't count every item that they have for
9 sale?

10 Q: Well, how many items did you check for pricing?

11 A: I saw a number of items for sale and I compared
12 several. The one that I reported on was an MP3
13 player.

14 Q: How many is several?

15 A: I can't tell you how many. There are -- you
16 pull up a screen and there could be 20 or 30
17 items on the screen and I didn't record how
18 many were on the screen that I looked at.

19 Q: Would it surprise you to learn that Products
20 Direct has over 25,000 items for sale?

21 A: It would not surprise me.

22 Q: And you compared one?

23 A: That's correct.

24 Q: So you can say that one out of 25,000 wasn't
25 price competitive?



1 A: That's correct and I can also say I've never
2 actually had to walk into McDonald's and step
3 over hamburgers from their Monopoly game
4 because people throw them away. It's the
5 receipts that show -- what they do with them
6 shows that they don't have any value and that
7 people don't play for the purpose of going to
8 Products Direct to buy overpriced items, they
9 go in because they want to play poker.

10 Q: Give me the name of one person -- one person
11 that you know of who has thrown away a Products
12 Direct receipt?

13 A: Well, if you would give me some time to get my
14 case reports out, I could certainly give you
15 some.

16 Q: I just want one today.

17 A: I can't give you any right now, I'd have to get
18 my case reports and look at my different cases.
19 I've done -- I've done many where I've
20 interviewed people and I have their names in my
21 reports.

22 Q: Right, sir, you can't give me one today?

23 A: No, I cannot. I'm sorry.

24 Q: Well let's talk about these machines. As I
25 understand it, they purport to be sweepstakes



1 machines, correct?

2 A: Correct.

3 Q: The way it works is, you put in a dollar in the
4 machine and you get a coupon worth two dollars
5 towards the purchase price of an item, right?

6 A: Yes, the coupons are -- yes, printed out by the
7 machine.

8 Q: All right. And a person then can take that
9 coupon and order online and use the two dollars
10 that he gets for his dollar ---

11 A: I can't say that it's two dollars.

12 Q: What is it?

13 A: I can't tell you. I don't know.

14 Q: It's more than a dollar, right?

15 A: It could be, I can't tell you. I can't testify
16 ...

17 Q: Well, sir, are you able to testify it's less?

18 A: No, I can't.

19 Q: So you don't know what a person gets for his
20 dollar?

21 A: I can say that I've seen them crumpled up and
22 thrown on the floor, which tells me they aren't
23 worth a whole lot to the people that are
24 playing.

25 Q: To some people who are playing, right?



1 A: To the people that I've seen.

2 Q: As a matter of fact, you don't know who threw
3 these receipts on the floor?

4 A: I do not.

5 Q: You don't know why they were thrown on the
6 floor?

7 A: I -- from my experience, I can tell you why
8 they were thrown on the floor, yeah, because
9 they have no value.

10 Q: The actual people -- well, sir, let's talk
11 about value?

12 A: Sure.

13 Q: Do you get -- if I put a dollar in a Products
14 Direct machine, do I get a two dollar coupon
15 back?

16 A: You get whatever it prints out to you --
17 whatever value they determine that it is worth
18 that dollar, they'll print it out on the
19 machine.

20 Q: Do I get a five dollar coupon out?

21 A: I don't know what it gives you.

22 Q: You get, though, a coupon that is worth
23 something if you want to buy an item, right?

24 A: That's -- yes, that's what their structure is,
25 yes.



1 Q: And as you know or as you've told us that you
2 can go online and see literally thousands of
3 items that they have for sale, right?

4 A: Yes.

5 Q: And then you can use your coupon in order to
6 buy the items?

7 A: Yes.

8 Q: And when you buy the item -- when you buy your
9 coupon, and you get twice the value, five times
10 the value, 10 times the value of your dollar,
11 then what happens is, you're allowed to play
12 one of the games for free, right?

13 A: No, that's not how that works. You don't go to
14 Products Direct to buy your merchandise or
15 whatever it is you do first that happens after
16 the fact.

17 Q: Right.

18 A: You just put your money in and you play.

19 Q: Right. You put your money in ---

20 A: And you play your illegal games.

21 Q: --- and you get your coupon out?

22 A: And you play your illegal games.

23 Q: Hold on. Wait a minute. And I know you're
24 going to say they're illegal games and you can
25 claim that you're some sort of expert being



1 trained by somebody in something to determine
2 they're illegal games, right?

3 A: Uh-huh. Yes.

4 Q: Who trained you?

5 A: The State Law Enforcement Division,, other
6 specifically, Lieutenant Colin Lee. We also
7 had the Attorney General's Office, a man named
8 Bob Shattell, who's in the gambling industry
9 for 30 some years.

10 Q: How long did this training last?

11 A: Five days, eight hours each day.

12 Q: What were the credentials of the people who
13 trained you?

14 A: They were all highly credentialed. They had
15 been in the industry for a very long time, been
16 involved in gambling investigations in several
17 states around the country. I -- I could go on,
18 but I'd have to get my criteria for you and I
19 could certainly do that, but we'd have to come
20 back at another time for that.

21 Q: All right. Well, let's take a look at how this
22 game works. You -- you take a dollar bill and
23 you put it in the machine, right?

24 A: Yes.

25 Q: You got a coupon that says it's worth more than



1 the dollar towards the purchase price, right?

2 A: I can't tell you what the coupon says. If we
3 have a picture of one, I can show you what --
4 tell you what that particular coupon says, but
5 I can't tell you if it's -- in your
6 hypothetical situation what it's going to tell
7 you.

8 Q: Well, once you get your coupon, your basically
9 buying a coupon, you're allowed to play the
10 games for free, right?

11 A: The money you put in goes to play the games.
12 The credits load on the screen based on the
13 amount of money that you put in and that's
14 what's used to play the games.

15 Q: The more -- the more coupons you buy, the more
16 credits you get to play?

17 A: The more money you put in, the more credits you
18 get to play.

19 Q: Right. And the way -- well let me ask you
20 this, the rules of this thing are clearly
21 printed and established on the wall, are they
22 not?

23 A: The rules are -- there were rules that were
24 printed in places, but the -- that doesn't make
25 them legal. It's still illegal games on the



1 machines.

2 Q: I just want to know what the rules say?

3 A: I -- I can't tell you what the rules say off
4 the top of my head. I'm sorry.

5 Q: Those rules actually come up on the machine
6 when you turn it on, do they not?

7 A: Some -- in some cases they do.

8 Q: All right. Well, sir, you say you inspected
9 these machines. Let's talk about what the
10 rules said. We know according to the machine,
11 no purchase was necessary to play, we know you
12 didn't play it, we know you don't know what you
13 get for the money you get in, and we know that
14 when you buy something, you get something for
15 your money that the games come upon on the
16 machines, credit to play the machines, right?

17 A: I know that there are illegal games on those
18 machines according to statute, which is what I
19 need to do my investigation and enforce the
20 law. The rules that are on these machines are
21 no bearing on how I enforce the law.

22 Q: Well there's actually a -- was a statute on the
23 books that says that sweepstakes machines were
24 lawful ...

25 A: That's not correct.



1 Q: Oh, there were -- it's not correct?

2 A: I'm assuming you're referring to 61-580.

3 Q: Right, you know that, right?

4 A: Yeah, it's not sweepstakes for gambling
5 machines. The -- the legislature never
6 intended for gambling machines to be legal only
7 inside of a licensed premises, which would say
8 that you'd have to carry your illegal machine
9 throughout the State of South Carolina and then
10 it became illegal only inside the licensed
11 premises.

12 Q: So now you're an expert and tell us what the
13 legislature intended, right?

14 A: Common sense can tell a person that it's not --
15 that something isn't ---

16 Q: You claiming to be ---

17 A: --- illegal on the outside the door.

18 Q: --- an expert and tell us what the legislature
19 intended?

20 A: I have read case law that -- that also backs
21 that up.

22 Q: Well, actually what the legislature did was to
23 change the law.

24 A: They reworded the law to clarify it, they
25 didn't change it.



1 Q: Well, whether they reworded it and changed it
2 and it took an act of the legislature to
3 basically reword it, to change it, didn't it?

4 A: It took an act of legislature.

5 Q: All right. So in order to clarify the law,
6 they had to change the law, right?

7 A: Yes.

8 Q: Well, since you are an expert in knowing the
9 intent of the legislature and why they do
10 things, why don't you tell us why it was that
11 they decided to clarify the law? What was
12 unclear?

13 A: I don't think there was anything unclear, but
14 there were people who claimed it wasn't.

15 Q: Well, sir, we know that you're an expert in
16 telling us what the legislature intends to do
17 and why ---

18 **MR. ACQUAVIVA:** Your Honor, I would object. He's
19 never stated he was an expert in legislative
20 intent.

21 **THE COURT:** Yeah, you're a little over the line
22 there.

23 Q: Sir, explain to me why the -- the legislature
24 deemed the law needed clarification?

25 A: I can't tell you exactly why they did that



1 other than the fact that they felt it needed to
2 be reworded and it had to do with people
3 complaining that they didn't think it was clear
4 to them.

5 Q: Actually, what happened is, the -- the 61- --
6 was it 4-580?

7 **THE COURT:** Is there a question here?

8 **MR. MOORE:** Yes, I was -- I am getting to the
9 question, Your Honor.

10 **THE COURT:** Okay.

11 Q: Actually, 61-4-580 required there to be games
12 of chance and a prize if the sweepstakes were
13 played inside an ABC licensed premiss, did it
14 not?

15 A: I disagree with that.

16 Q: It authorized games of chance.

17 A: No, it authorized legitimate corporate
18 sweepstakes, like Coke-Cola and what not. It
19 did not -- it never authorized gambling.

20 Q: Ah, but it authorized games of chance and
21 actually used the word games of chance in the
22 code section, did it not?

23 A: I can't specifically tell you if it did or not,
24 but I can tell you that games of chance have
25 been illegal in the South -- in the State of



1 South Carolina for a very long time.

2 **MR. MOORE:** Your Honor, does counsel have the -- the
3 Title 61?

4 **MS. ACQUAVIVA:** Yes.

5 **MR. MOORE:** May I borrow that for a minute?

6 **THE COURT:** Is this a legal argument or have we got
7 -- I mean, this is ...

8 **MR. MOORE:** My problem is this, Your Honor, the
9 Court -- the Court and again, I'm not trying to
10 argue. The Court has told me I can cross-
11 examine. This gentleman was allowed to give
12 his legal opinions because he somehow or
13 another supposedly knows the law. If he claims
14 to be a legal opinion, he's given legal
15 opinions to the Court, he's put legal opinions
16 into his report that was offered into evidence,
17 he's provided the Court on and on with legal
18 opinions, it would seem to me that ---

19 **THE COURT:** My only problem here is that you've
20 asked him the question. He's given his answer
21 and now you've moved on to giving your argument
22 it seems like, which I really want to hear your
23 argument, I just would like to hear it at the
24 proper time.

25 **MR. MOORE:** I just would -- would -- he's told me



1 what is permitted and is not permitted and he's
2 told me something, which I don't think comports
3 with the code. If I could basically ask him to
4 look at the code and see if we can agree to
5 what it says.

6 **THE COURT:** Okay.

7 Q: Now, sir, if you look at section three. It
8 basically says ---

9 **MS. ACQUAVIVA:** Your Honor, if I -- I may object.
10 Subsection three is not relevant to the matter
11 today either. We're here under subsection
12 five.

13 **MR. MOORE:** Your Honor, we're -- our -- our position
14 is that these things would've been operated
15 pursuant to section three, 61-4-580, section
16 (3)(A).

17 **THE COURT:** Give me the code section again. It's 61
18 what?

19 **MR. MOORE:** Dash 4-580, (3)(A).

20 **THE COURT:** Okay. So as I understand it, Ms.
21 Acquaviva's position is that the violation was
22 a violation of subsection five, but you're
23 trying to say that it was permitted under
24 subsection three, but subsection three doesn't
25 -- doesn't define something that's permitted,



1 it defines something that is not permitted.

2 **MR. MOORE:** No, it does -- it does define what's
3 permitted. Let me show you how this thing
4 reads. If you start out at 61-4-580, it says
5 this, no owner of a permit authorizing the sale
6 of beer or wine may knowingly commit any of the
7 following acts upon a licensed premiss. All
8 right?

9 **THE COURT:** Uh-huh (affirmative response).

10 **MR. MOORE:** Then it says, permit gambling or games
11 of chance, so you may not permit gambling or
12 games of chance, right?

13 **THE COURT:** Okay. But these are the ---

14 **MR. MOORE:** But then it says, except game promotions
15 including contests, games of chance, or
16 sweepstakes in which the elements of chance and
17 prize are present and which comply with the
18 following, so the exception says that if you
19 have an ABC permit, except game promotions
20 including contests, games of chance, or
21 sweepstakes in which the elements of chance and
22 prize are present and which comply with the
23 following. Now if the words except means
24 except, then games of chance are authorized as
25 long as the elements of chance and prize are



1 present. If you meet the following three
2 items, if it is conducted and offered in
3 connection with the sale, promotion, or
4 advertisement of a product or service, which it
5 was, you got a -- you got a -- you bought the
6 coupon, that no purchase payment, entry fee, or
7 proof is required as a condition of the game,
8 it's not, and all material advertizing the game
9 clearly disclosed that no purchase or payment
10 is necessary to enter and provide details on
11 the free method of participation. Now we know
12 that in regard to the materials were
13 advertized. He's told us that. They were on
14 the wall. He's told us that the machine says,
15 no purchase necessary to play. He hasn't
16 brought the rules, but he's basically has said
17 that the machine clearly provides that no
18 purchase is necessary and there is a way to get
19 free method of participation. He's -- he's
20 basically told us that the elements of chance
21 and prize are available and that this is a game
22 of chance. All of which come under the
23 exception. Now what they're saying is, you had
24 to look at the gaming machine section, which
25 says that generally in a gaming machine, you're



1 not supposed to be able to gamble and that's
2 fine, but if you read the two provisions
3 together, it appears that this is an exception
4 to the generalized rule and that if you buy it
5 in connection with the -- if you give the
6 ability to play in connection with the purchase
7 of a product and there is a way to play for
8 free, and the rules are proposed, you may have
9 it. As a matter of fact, games of -- you have
10 to have a game of chance and you have to have
11 a game of chance and a payment in order to come
12 under the exception. It has to be a game of
13 chance, that's the only thing that's
14 authorized. Now he's told us that, that's not
15 true, but we just read the code section that
16 says it is and I'm wanting him to explain to me
17 how he can say something's not true, when the
18 code section says it is.

19 **THE COURT:** Well, that's really for me to -- that's
20 for you to argue in -- in your oral argument
21 and for -- for me to determine. Not for him.

22 **MR. MOORE:** The problem I have with this is, I
23 totally agree with you, but up until this
24 point, this man has been allowed to give legal
25 conclusion upon legal conclusion upon legal



1 conclusion and the only defense that I've had
2 to that is, Mr. Moore, I'm going to let him
3 give his legal conclusions, but you'll have the
4 right to fully cross-examine. If he's able --
5 if he's able to give legal conclusions for the
6 State, then he should be able to provide the
7 legal conclusions to the defense.

8 **THE COURT:** I agree, but you've asked him those
9 questions. He's given his answers. Is there
10 another question that you wanted to ask him?

11 **MR. MOORE:** Yes, ma'am.

12 Q: I want to make positive that we understand that
13 the -- the ability to play goes along with the
14 purchase of an item, all right?

15 A: That statute does not provide an exception for
16 27-10, which makes poker, keno, blackjack, and
17 slot machine games illegal, which is what is on
18 those games -- on those machines.

19 Q: May I ask him -- may I ask the Court to direct
20 him to answer my question?

21 **THE COURT:** Yeah, you need to answer the question
22 that he's asked you.

23 A: Yes, ma'am.

24 Q: Sir, you basically, the -- the game promotion
25 was offered in conjunction with the sale of



1 these coupons, right?

2 A: Yes.

3 Q: And there does -- the rules and it clearly says
4 on the machine that no purchase, payment, or
5 entry fee is required, right?

6 A: It says that.

7 Q: And there were materials advertising the
8 promotion and the rules clearly displaced on
9 the machine itself or on the wall?

10 A: On the machine.

11 Q: Now when you went in, there was no money in the
12 machine?

13 A: Correct.

14 Q: It was unplugged?

15 A: Excuse me. Yes.

16 Q: And we have no way today to actually test this
17 particular machine to see exactly what you
18 could play on it because it's been destroyed,
19 right?

20 A: It has been destroyed, but it was ruled illegal
21 by a magistrate.

22 Q: The -- did you ever see poker played on the
23 machine?

24 A: Did I -- did I ever see poker played on that
25 machine, no, I did not.



1 Q: Blackjack?

2 A: I saw those games on the machines.

3 Q: Did you see it played?

4 A: I -- no, I'm sorry, no, I did not see them

5 played.

6 Q: Did you ever attempt to pull up the -- the logo

7 that says poker and see what actually came up

8 when you pushed that?

9 A: Yes.

10 Q: You did?

11 A: Yes.

12 Q: What came up?

13 A: Poker.

14 Q: I see. Well, how were you able to do that if

15 you didn't put any money in?

16 A: You can bring -- when you touch the icon, it

17 will display the game, but it doesn't allow you

18 to play ---

19 Q: I see.

20 A: --- until you put money into the machine.

21 Q: Well, okay, let me ask you this way. Did you

22 ever put -- make the thing come up to where it

23 would actually play poker?

24 A: I did not.

25 Q: Thank you so much for answering my question.



1 A: Thank you.

2 MR. ACQUAVIVA: I have no redirect, Your Honor.

3 THE COURT: You can step down then.

4 MR. BIELAWSKI: Thank you, ma'am.

5 MR. ACQUAVIVA: That's the Department's only witness,
6 so we rest.

7 THE COURT: Okay.

8 MR. BIELAWSKI: Do you want me to leave these here?

9 THE COURT: Yes, please. All right. Do y'all want
10 to take a lunch break or Mr. Moore?

11 MR. MOORE: Your Honor, I ---

12 THE COURT: How many witnesses do you have?

13 MR. MOORE: --- I do have some motions and I do have
14 one witness. I think we can move quick.

15 THE COURT: How -- how long do you think your
16 witness is going to be?

17 MR. MOORE: Ten minutes, but I do have a motion.

18 THE COURT: You can -- huh?

19 MR. MOORE: I do have a motion.

20 THE COURT: Oh, I figured you would. Why don't we
21 take a short break. People might need to feed
22 their meters or something. Let's take a 15
23 minute break and then we'll come back. Okay?

24 MADAME COURT REPORTER: All rise.

25 (Off the Record)



1 **THE COURT:** All right. So Mr. Moore, you had
2 something you wanted to talk about?

3 **MR. MOORE:** I -- I do, Your Honor. If -- if I
4 might?

5 **THE COURT:** Of course.

6 **MOTION TO DISMISS**

7 **MR. MOORE:** At this point in time, I would make a
8 motion to dismiss, Your Honor, on several
9 bases. First of all, Your Honor, I believe as
10 the State has acknowledged, they have the
11 burden to prove that these machines were in
12 fact illegal gaming devices. The Department
13 has told us the way you do that is on a machine
14 by machine basis and everyone has acknowledged
15 that my client was not a party to the action in
16 Anderson County. The license here actually is
17 in two names. It's in Mr. Patel's name and in
18 the name of Meenaxi Inc. The State of South
19 Carolina, acting through law enforcement, has
20 destroyed the machines. They destroyed the
21 machines after the citation, which we have in
22 evidence, was issued, so the machines were
23 allowed to be destroyed at a time when the
24 Department of Revenue knew or should've known
25 those machines would be subject to question.



1 As the Court has said, the final order is not
2 dispositive on the issue of whether they're
3 legal or illegal nor as to how they operate.
4 The best evidence of those machines and what
5 they are and how they operated are going to be
6 the machines themselves. Now for some reason
7 totally unknown to us, the State of South
8 Carolina as destroyed the relevant evidence
9 that would be necessary in this case. There
10 are a host of cases dealing with spoilation of
11 evidence and what happens when one side
12 intentionally destroys a piece of evidence that
13 is relevant and necessary in a case. In this
14 case, the State of South Carolina as through
15 its own accord destroyed the most relevant
16 evidence at all, which would basically be the
17 machines. If we're entitled to due process,
18 which I think we are, and if the machines and
19 how they operate are the subject of controversy
20 and if the officer is unable to tell us how
21 these two machines actually operated because
22 they didn't operate them, the only way we could
23 actually see how the machines operated and
24 know whether they were games of chance, illegal
25 games of chance, games of skill, whatever,



1 would be to have the machines here or to play
2 them or at least to have somebody who had
3 actually played them. We don't have either, so
4 in this case, there has been a spoilation of
5 the necessary evidence that somebody would have
6 to have in order to tell us how -- how these
7 two machines actually operated. The evidence
8 has been subject to intentional spoilation and
9 I have yet to hear of any justified excuse as
10 to why SLED or the Department of Revenue would
11 have allowed these machines to be destroyed
12 when it knew that this action was basically
13 pending. Now we might say that well they didn't
14 know, but they clearly did know because the
15 SLED agent has told us that he knew everything
16 that was going on. He's the one that actually
17 identified the orders, he told us what the
18 orders were, he knew the order of destruction,
19 and was basically involved in the entire
20 process according to his own testimony. If
21 these machines are relevant evidence, how can
22 I test them, how can I look at them, how can I
23 cross-examine as to them, when the State in its
24 own discretion in a court order that I'm not a
25 party to, destroyed them. Well, they may say



1 well the order allowed their destruction. The
2 order did allow their destruction, but it
3 didn't say to destroy them. They had every way
4 in the world to preserve those machines until
5 this case could be tried. They didn't do it.
6 They have destroyed the most important,
7 relevant evidence in this case in regard to the
8 validity or invalidity of these machines and as
9 to how they operate. The State has the burden
10 of proof. They had to be able to prove that
11 these machines were illegal gaming devices.
12 The way they do that is to either somebody can
13 tell us how these two machines actually worked,
14 which they didn't, or bring the machines in and
15 show us the machines work and let the Court
16 decide. How is it possible for this Court to
17 make a determination on how these machines work
18 without somebody either telling you how they
19 work, which he didn't do, or showing you the
20 machines themselves and demonstrating them in a
21 courtroom, but even if he says -- even if the
22 State says it, I having the constitutional
23 right to cross-examine. I can't test it. I
24 can't cross-examine it. I can't even look at
25 it. They took it, they held it, and they



1 destroyed it. We had no possible opportunity
2 to see anything, so Your Honor, based upon that
3 first objection, I honestly believe this case
4 should be dismissed without the machine and
5 with it being intentionally destroyed, there's
6 no way for the Court to make a decision and
7 there's no way for the Defendant to receive due
8 process of the law. That's our first motion.

9 **THE COURT:** Oh, okay.

10 **MS. ACQUAVIVA:** Thank you, Your Honor. I think this
11 is more of a jurisdictional issue and to make
12 my argument a more common sense one, if we --
13 if the license holder was charged with sub --
14 under subsection 585 and the underlying crime
15 was murder, we would not have a murder trial in
16 this courtroom today. In the same vein, it is
17 not this Court's decision to determine to -- to
18 look at the machines and determine whether
19 they're illegal. The evidence that we use in
20 our burden to produce would, you know, in the
21 case of a murder, would be evidence of a
22 conviction. Here, it's evidence that the
23 magistrate who, pursuant to 12-27 -- 12-21-2712,
24 has jurisdiction to determine whether or not
25 these machines are legal or illegal. We have



1 provided the orders from the court that has
2 jurisdiction to determine the legality of the
3 machines and that Court has said that these
4 machines are illegal. That satisfies one of
5 the three elements that we have to prove to
6 sustain at violation of subsection 585.

7 **MR. MOORE:** May I respond to that, Your Honor? Due
8 pro -- due process isn't jurisdictional, it
9 applies to civil cases, administrative law
10 cases. It applies to all cases and the rules
11 in regard to spoliation of evidence clearly
12 apply both to civil cases and to criminal
13 cases.. The order of the magistrate -- it
14 certainly is a magistrate's job to make a
15 determination as to whether or not machines
16 should be destroyed or not and that's fine, he
17 did that in a case to which we were not a party
18 with a consent order, which simply says
19 everybody maintains their position and go ahead
20 and destroy the machines. We're not a party to
21 that. We're not bound by that. It has
22 actually no evidentiary value at all.

23 **THE COURT:** Well, Mr. Moore, did you request that
24 those machines be preserved and -- and subpoena
25 them to have them in Court today?



1 **MR. MOORE:** Actually here is that I thought, and I'm
2 amazed that they have destroyed the machines,
3 I -- we've been up here time after time to see
4 the machines here, they're not here. I don't
5 know why. But it's not our burden of proof.

6 **THE COURT:** I've never had machines in my courtroom.

7 **MR. MOORE:** They've been up here before. I can
8 promise you that. I've been in cases when
9 they've been here. It's not our burden of
10 proof, it's theirs.

11 **THE COURT:** Well, I understand that. They've
12 presented some evidence, which is the
13 magistrate's order.

14 **MR. MOORE:** And there in lies ---

15 **THE COURT:** And your going to have an opportunity to
16 present evidence to refute that.

17 **MR. MOORE:** But there in lies the problem, there in
18 lies one of the problems, the magistrate's
19 order actually should have no evidentiary value
20 of any type. It's not a court of record and we
21 were not a party to it.

22 **THE COURT:** Well, as I understood it, you were a
23 party to it until you objected to being a party
24 to it and then you were released.

25 **MR. MOORE:** We were not a party to it at the time



1 the order was issued. As a matter of fact, the
2 magistrate clearly ruled in his final order
3 that we were dismissed because we weren't a
4 proper party to it and should never have been
5 a party to it and ...

6 **THE COURT:** And was that upon your -- your motion to
7 be dismissed from the action?

8 **MR. MOORE:** I don't think so. Actually, I think we
9 brought the issue up.

10 **THE COURT:** But do you ...

11 **MR. MOORE:** I think we brought the issue up that we
12 should not be ...

13 **THE COURT:** Okay. So you didn't want to be a party
14 to that action and you could've intervened if
15 he -- if he dismissed you without your consent?

16 **MR. MOORE:** I could have asked to intervene, but
17 why. At that point in time, the machines were
18 out of our location, someone was saying they're
19 illegal, we had no dog in that fight. Why pay
20 me to drive to Anderson, South Carolina to
21 defend an action where we're out of. We don't
22 have a dog in that fight.

23 **THE COURT:** Okay.

24 **MR. MOORE:** This is not our fight. That fight is
25 between whoever owns that machine and the



1 Court. We're out of here. There's no reason
2 to do that. I just want to be out, which at
3 the time the Judge said, you're right, you're
4 not a proper party to the action. We wind up
5 with a final order clearly indicating that
6 we're not a party to the action. We're not
7 bound by that order. How in the name of
8 goodness can I be bound by an order or even
9 have any evidentiary value of an order on a
10 case where I'm not a party. Now if the
11 magistrate's court were a court of record, then
12 there might be some sort of precedential value
13 of something along those lines, but the
14 magistrate's court is not a court of record.
15 It's specifically made not a court of record,
16 so it doesn't even have -- you can't even cite
17 it's precedent. It has no value at all and
18 certainly the factual findings of that order
19 are not binding on us. We weren't able to be
20 there to participate. We didn't -- we didn't
21 -- we didn't fight it.

22 **THE COURT:** I agree that it's not binding. I don't
23 think anybody's argued that it's binding, but
24 it is evidence that the -- that the machines
25 were found by the magistrate to be illegal.



1 MR. MOORE: Right. And -- and so ---

2 THE COURT: And so your ---

3 MR. MOORE: --- and so what they're ...

4 THE COURT: --- motion to get back to what your
5 motion is, is that as I understand it is that
6 the State hasn't met its burden to prove that
7 the machines were illegal.

8 MR. MOORE: My position is this, that -- that's
9 going to be a motion, but that's not the motion
10 in front of the Court right now. What has to
11 happen now is this, there has to be a
12 determination made by this Court as to whether
13 the machines were legal or illegal, whether
14 they were unlawful gaming devices. They have
15 that burden of proof. Now they had in their
16 possession and control the most critical piece
17 of evidence to the whole case, the machines,
18 and then knowing they have that burden of proof
19 and knowing that the order of a magistrate
20 certainly isn't binding or controlling, they go
21 out and destroy the most important piece of
22 evidence.

23 THE COURT: Well, in light of the fact that you did
24 not ask for the machines to be maintained or
25 subpoena the machines to be brought here today,



1 I'm -- I can't go along with that -- with
2 dismissing the case on that ground.

3 **MR. MOORE:** But, Your Honor, we don't have the
4 burden of proof.

5 **THE COURT:** I understand that.

6 **MR. MOORE:** And even if we had subpoenaed them, they
7 wouldn't be here because they have the burden
8 of proof. We -- we can't -- we can't ---

9 **THE COURT:** They've presented some evidence.

10 **MR. MOORE:** Yes, ma'am. The next motion we would
11 make, Your Honor, is we'd like to renew all of
12 the evidential objections that we've made and
13 we also would move to dismiss on the grounds
14 that there has been no evidence and this is a
15 very valid argument, there's been no evidence
16 that my client knowingly permitted illegal
17 machines on the premises. There's no doubt
18 that he knowingly permitted the machines on the
19 premises, but there has been no proof that he
20 actually knew those machines were illegal when
21 they were being permitted on the premises and
22 they have to prove, I believe, knowingly
23 permitted illegal gaming on the premises. It's
24 -- the actual language has escaped me right
25 now, but it says basically you have to



1 knowingly permit gambling on the premises.
2 There's no proof of any evidence that he knew
3 they were illegal gambling.

4 **THE COURT:** Okay.

5 **MR. ACQUAVIVA:** Your Honor, we have to prove that
6 the Respondent knew the machines were there.
7 We don't have to prove that he knew they were
8 illegal because knowledge of the law is
9 presumed and ignorance of the law is not an
10 excuse, therefore, anybody can say, I didn't
11 know that I couldn't have marijuana in my
12 store. I didn't know that poker was a gambling
13 game and I couldn't have that in my store.
14 That is not a proper excuse and that is not
15 what we have to establish. All we have to
16 establish is that the machines were there
17 because they're contraband per se and they're
18 illegal to possess. So he just had to know
19 they were there and the testimony showed that
20 he told the SLED agent about his business
21 arrangement for having the machines there, so
22 clearly he knew the machines were on his
23 premises.

24 **THE COURT:** I think there certainly at least an
25 inference that he -- that he knew the machines



1 were illegal and that's -- that's a fact --
2 fact-finding that'll need to be made, but --
3 but I think that they've presented enough
4 evidence to certainly overcome a motion to
5 dismiss on that point.

6 **MR. MOORE:** And I have one more, Your Honor.

7 **THE COURT:** Okay.

8 **MR. MOORE:** I would move to dismiss because there's
9 been an improper jointure of parties in the
10 action. If the Court will look at Exhibit
11 Number -- if the Court will look at Exhibit
12 Number Eight. The license is basically held by
13 Malkesh Patel and Meenaxi Inc. This action as
14 captioned by the administrative law court, does
15 not have Mr. Malkesh Patel's name as a party to
16 the action and as Mr. Malkesh Patel is listed
17 clearly as one of the owners of the permit in
18 addition to the corporation, the Department has
19 actually had a non-jointure of an indispensable
20 party and therefore there's no way that a final
21 decision can be issued in this case as the
22 State has failed to name those parties who have
23 an interest in the action.

24 **MR. ACQUAVIVA:** Your Honor, the Department's records
25 indicate that the license -- this specific



1 license, 32057436, belongs to Meenaxi
2 Incorporated doing business as Corner Mart.
3 Mr. Patel may be a principal of the
4 corporation. There may be other principals.
5 I can't speak as to why his name was on the
6 license, but our records indicate that the
7 license entity is Meenaxi Incorporated. Now if
8 that's not true, then I would submit that there
9 are other issues with false information being
10 provided to the Department regarding the
11 application.

12 **MR. MOORE:** Your Honor, what's in the Department's
13 records is not in evidence. What basically the
14 Court should hear my motion on I would suspect
15 is what's actually in the evidence. The SLED
16 agent, who apparently knows an awful lot about
17 this according to him, testified that the
18 license was in the name of both and they
19 actually put the license in evidence and I
20 would assume that they would accept the fact
21 that they're license is what they're license
22 says it is. Now they even claim the license
23 has wording on it that's not there, but the
24 license is what the license is. The license
25 appears to have been issued to Mr. Patel and



1 the corporation. Why they did that is without
2 explanation, but we have in evidence, the
3 actual license and we have nothing in the
4 record about what the Department's records may
5 or may not show. What we have in evidence is
6 actually the license. They're attempting to
7 revoke the license that belongs to a person who
8 is not a party to the action, which I would
9 respectfully submit that the jurisdictional
10 requirement would require that the necessary
11 parties to the action be made a party to the
12 action.

13 **THE COURT:** Well, and if Mr. Patel had asked to
14 intervene, he certainly would've been allowed
15 to do that on that argument.

16 **MR. MOORE:** That's not the point. The point is
17 basically this, they brought the action, we
18 didn't. They basically have got to ...

19 **THE COURT:** Are you saying that Mr. Patel doesn't
20 have -- didn't have notice of this action? Is
21 he not at the same address as the corporation?

22 **MR. MOORE:** My problem is this, Your Honor, the
23 inclusion of parties to the action is what is
24 know as a jural act J-U-R-A-L. It is incumbent
25 upon a Plaintiff or a Petitioner to name the



1 appropriate parties to the action. Rule of
2 civil procedure require that. There are
3 jointure rules, which clearly provide that who
4 is and who is not a party of the action is not
5 up to the Defendant. It's not up to me to fix
6 their pleas.

7 **THE COURT:** Well, this is an administrative action
8 and this is -- my role is to determine whether
9 -- whether everyone is getting due process ---

10 **MR. MOORE:** But the question is this, Your Honor ---

11 **THE COURT:** --- which ---

12 **MR. MOORE:** --- what is there -- what is there
13 anywhere in this record, anywhere in this
14 record, that gives Mr. Patel -- that places Mr.
15 Patel within the jurisdiction of this Court?
16 Let's assume the Court issues an order revoking
17 his license for a day ---

18 **THE COURT:** We don't -- there's nothing -- there's
19 nothing about this that requires jurisdiction
20 of Mr. Patel. This is an action about this
21 license.

22 **MR. MOORE:** The license is in Mr. Patel's name.

23 **THE COURT:** And if Mr. Patel wants to intervene, I
24 would -- I would agree with you that he -- he
25 probably has a right to intervene.



1 MR. MOORE: The problem is he ...

2 THE COURT: Is Mr. Patel in the courtroom?

3 MR. MOORE: He is and has no desire to intervene.
4 The problem is this, that it's not his
5 responsibility to fix their pleadings. They
6 brought the action against who they chose to
7 bring the action. The fact that they chose to
8 bring the action against someone who doesn't
9 hold the license is on them, not on him.

10 THE COURT: Well, I have to disagree with you there.
11 They brought the action against Meenaxi
12 Incorporated, which is a holder of the license.
13 There is -- there are two names, even taking
14 your argument and looking only at the face of
15 the license itself, it says Malkesh Patel,
16 Meenaxi Incorporated.

17 MR. MOORE: Right. Both.

18 THE COURT: It has -- has that both as -- as the
19 licensee.

20 MR. MOORE: Sure.

21 THE COURT: With the same address.

22 MR. MOORE: Exactly. They're both ---

23 THE COURT: So ---

24 MR. MOORE: --- they're both licensees.

25 THE COURT: Mr. Patel is here in the courtroom. If



1 he'd like to intervene, if he feels like he --
2 if you feel like he's not getting due process
3 unless he can intervene, then I'd be happy to
4 entertain a motion to intervene, but I'm not
5 going to dismiss this action on that basis.

6 **MR. MOORE:** Your Honor, he does not want to
7 intervene. The problem is this, all right.
8 Let's assume the Court issues an order against
9 the parties who are actually before the Court
10 that order is not binding on Mr. Patel.

11 **THE COURT:** This order -- the order would not have
12 anything to do with Mr. Patel, it would be a
13 revocation of this license.

14 **MR. MOORE:** It's his license.

15 **THE COURT:** And that's why I said, if he wants to
16 intervene, he has the right to intervene
17 because he is -- his name is on the license.

18 **MR. MOORE:** Thank you, ma'am. He chooses not to
19 intervene and we -- we'll stand on the legal
20 argument. I thank you so much.

21 **THE COURT:** Okay. All right. Do you have a -- have
22 another ...

23 **MR. MOORE:** I have one -- one witness.

24 **THE COURT:** Okay.

25 **MR. MOORE:** We call Mr. Patel.



1 **MADAME COURT REPORTER:** If you'll raise your right
2 hand. Do you solemnly swear that the testimony
3 you're about to give in this matter is the
4 truth, the whole truth, and nothing but the
5 truth, so help you God?

6 **MR. PATEL:** Yes.

7 **MADAME COURT REPORTER:** State your name for the
8 record and spell it, please.

9 **MR. PATEL:** Malkesh Patel.

10 **MADAME COURT REPORTER:** If you'll spell it for me,
11 please?

12 **MR. PATEL:** M-A-L-K-E-S-H.

13 **MALKESH PATEL,** having been duly sworn, testifies as
14 follows:

15 **MR. PATEL - DIRECT EXAMINATION BY MR. MOORE:**

16 Q: Mr. Patel, where do you live?

17 A: Anderson.

18 Q: Are you a citizen of this country?

19 A: Yes.

20 Q: How long have you been a citizen?

21 A: Fourteen years.

22 Q: The location that we're talking about is -- is
23 owned and operated by your corporation, is that
24 right?

25 A: Right.



1 Q: What's the name of that corporation?

2 A: Meenaxi Inc.

3 Q: Do you try as best you can to operate that
4 business in according with the law?

5 A: Yes.

6 Q: The ABC license is in your name and in the
7 corporation's name, is that correct?

8 A: Yes.

9 Q: Have you, to your knowledge, ever been
10 personally made a party to this action?

11 A: No.

12 Q: Now let's talk about the corporation. I
13 believe it's a small convenience store, is that
14 right?

15 A: Correct.

16 Q: You sell gasoline?

17 A: Correct.

18 Q: You sell crackers and drinks and that sort of
19 thing?

20 A: Right.

21 Q: Typical convenience store?

22 A: Right.

23 Q: How many people are employed by you?

24 A: Two.

25 Q: If you lost your ABC license, would you have to



1 close the store?

2 A: Yes.

3 Q: The store would then become unprofitable?

4 A: Yes.

5 Q: The ability to sell beer and wine is the
6 difference between the store being profitable
7 and not profitable?

8 A: Right.

9 Q: Now would you ever intentionally do anything to
10 violate the law?

11 A: No.

12 Q: The owner of these machines -- how long have
13 these machines been in your location before
14 they were picked up?

15 A: Six months -- six, three months. I'm not sure.

16 Q: Three to six months. Did you ever play them?

17 A: No.

18 Q: Did you ever operate them?

19 A: No.

20 Q: Did you even know specifically how they
21 operated?

22 A: No.

23 Q: Now if a person basically won a hand, did you
24 pay them whatever the machine said pay them?

25 A: Yes.



1 Q: All right. Did you do it the way the owner of
2 the machine said do it?

3 A: Yes.

4 Q: Were the rules of the machine posted?

5 A: Yes.

6 Q: Now who actually owned the machines?

7 A: Encore Entertainment.

8 Q: Did you believe the machines to be legal or
9 illegal at the time they were placed in your
10 location?

11 A: Legal.

12 Q: Did you believe the machines to be legal or
13 illegal during the period of time that you
14 operated them?

15 A: Legal.

16 Q: Did you believe them to be legal or illegal at
17 the time they were picked up?

18 A: It was legal.

19 Q: Why is it that you were of the impression that
20 the machines were legal?

21 A: The owner had provided a court order from
22 Greenville saying the machine was legal.

23 **MR. ACQUAVIVA:** Objection, Your Honor, the court
24 order is not here today, that's hearsay.

25 **MR. MOORE:** He -- he's not offering the court order



1 for the truth of the matter certainly, Your
2 Honor, he's simply talked of the order to show
3 his state of mind as to why he believed it was
4 legal.

5 **THE COURT:** The objection is overruled.

6 Q: Did you actually read the court order?

7 A: Not in details.

8 Q: Did you look at the court order?

9 A: Yes.

10 Q: After looking at the court order, did you
11 believe the machines to be legal?

12 A: Yes.

13 Q: If you had not had the benefit of the court
14 order from Greenville, would you have allowed
15 the machines in the store?

16 A: No.

17 Q: All right. Now at some point in time, prior to
18 these machines being seized, did you learn that
19 law enforcement was taking the position they
20 were illegal?

21 A: Yes.

22 Q: When you learned that law enforcement was
23 taking the position that they were illegal, did
24 you unplug them?

25 A: Yes.



1 Q: Once you learned that law enforcement
2 considered them illegal, did you allow them to
3 be played anymore?

4 A: No.

5 Q: Did you tell the owner to come and get them?

6 A: Yes.

7 Q: And had the owner picked them up by the time
8 law enforcement showed up on your location?

9 A: Yes.

10 Q: Did you have any idea that you were doing
11 anything wrong?

12 A: No.

13 Q: To this day, do you still believe the machines
14 to have been legal?

15 A: Yes.

16 Q: Was there any way in the world for you to have
17 the machines pre-cleared as being legal except
18 by way of court order?

19 A: Yes.

20 Q: That's the only way you had?

21 A: Yes, by the court order.

22 Q: Did you rely upon the court order from
23 Greenville in allowing these machines to come
24 into your location?

25 A: Yes.



1 Q: Did you rely upon what you were told about the
2 legality of the machines?

3 A: Yes.

4 Q: Did you question the legality?

5 A: No.

6 Q: Well, did you question before he put them in,
7 didn't you?

8 A: Yes, I mean, I asked the question, yeah, but
9 they said it was legal, presented the court
10 order from Greenville.

11 Q: And once you had the court order and assurances
12 they were legal, you allowed them in?

13 A: Correct.

14 Q: When you learned -- when you learned that law
15 enforcement took a different view, you
16 unplugged them and didn't allow them to be
17 played?

18 A: Right.

19 Q: I don't have any further questions. Thank you.

20 **THE COURT:** Ms. Acquaviva?

21 **MR. PATEL - CROSS-EXAMINATION BY MS. ACQUAVIVA:**

22 Q: Good afternoon, Mr. Patel.

23 A: Good afternoon.

24 Q: You said you -- you sell gasoline at your
25 store?



1 A: Right.

2 Q: So someone comes with a truck and fills the
3 gasoline tanks?

4 A: Yes.

5 Q: Do you ask them to see a court order to prove
6 that the gasoline is legal before you allow
7 them to pump it into your tanks?

8 A: The person purchasing gas asking me for court
9 order?

10 Q: Do you ask the person that you're buying the
11 gas from to prove that the gas is legal to be
12 sold?

13 A: I don't understand your question. The person,
14 customer, coming into my location ---

15 Q: No, the seller of the gas, the supplier of the
16 gasoline.

17 A: Yes. We have bill of right, bill of letter, to
18 bring it to us every time to tell them which
19 terminal, which gas it comes to.

20 Q: But do you ask them for a court order to prove
21 that, that's gasoline and that it's legal?

22 A: No.

23 Q: No. When you get -- you purchase soda to keep
24 in your store ---

25 A: Yes.



1 Q: --- you don't -- you just assume that, that's
2 actually soda in those bottles, correct?

3 A: Yes.

4 Q: You don't ask the Pepsi supplier for a court
5 order to prove that it's legal, do you?

6 A: No.

7 Q: But you needed a court order to know that these
8 machines were legal?

9 A: Yes.

10 Q: So you allowed something that you weren't --
11 there was suspicion as to whether or not it was
12 legal to be in your store?

13 A: It was legal at that time according to
14 Greenville Court.

15 Q: Did you verify that with the Greenville Court?

16 A: No.

17 Q: No, so you don't really know if it was legal at
18 that time or not?

19 A: It was legal according to the Greenville Court.

20 Q: But again, you did not verify it?

21 A: I didn't -- I didn't read the details, but
22 yeah, it was legal.

23 Q: And you stated on the day SLED came in to see
24 those machines, you knew those machines were
25 illegal on that day?



1 A: Yes, the owner called me and told me to unplug
2 the machines.

3 Q: So you were possessing illegal gaming machines
4 to your knowledge?

5 A: I was waiting for them to come pick up the
6 machines before SLED go there.

7 Q: Okay. So the answer to my question is yes, you
8 were possessing illegal gambling machines on
9 February 26, 2013?

10 A: If they passed the law that day, yes, which was
11 inoperable. The machine was unplugged. Nobody
12 played it.

13 Q: I have no further questions.

14 **MR. PATEL - RE-DIRECT EXAMINATION BY MR. MOORE:**

15 Q: I have just one more question. Department of
16 Revenue had licensed these machines?

17 A: Correct. Just like beer or retail license to
18 sell Pepsi or sell DHEC from gas, just like the
19 machine had a license.

20 Q: These machines had a ---

21 A: South Carolina ...

22 Q: --- a license sticker from the Department of
23 Revenue on it?

24 A: Correct.

25 Q: Okay. Thank you.



1 THE COURT: Okay. You can step down.

2 MR. MOORE: That's our case, Your Honor.

3 THE COURT: All right. Then, do we have some
4 closing arguments?

5 CLOSING ARGUMENTS:

6 MS. ACQUAVIVA: Thank you, Your Honor. As I stated
7 in my opening, we are here today because the
8 Department has determined that on February 26,
9 2013, Meenaxi Incorporated, the permit holder
10 in this action, violated 61-4-580, subsection
11 5, by permitting an act, which constitutes a
12 crime, specifically, permitting illegal gaming
13 machines to be on the licensed premises in
14 violation of 12-21-2710. In order to sustain
15 a violation, the Department had to prove three
16 things, that the machines were on the licensed
17 premises, that the license holder knew the
18 machines were on the premises, and that the
19 machines were illegal, and the Department has
20 proven all three of those things here today.
21 You heard from testimony that the machines were
22 found on the licensed premises. You also heard
23 that the licence holder knew the machines were
24 there. In fact, he had an agreement with the
25 machine owner to keep them there. You also



1 heard testimony that even the machine -- the
2 license holder knew the machines were illegal
3 or it was at least brought to his attention
4 that they were illegal on the date in question,
5 and there are court orders from the magistrate
6 finding these two particular machines that were
7 in his store illegal. Now I'd like to, in my
8 closing, address some of the legal arguments
9 that came up throughout the hearing. First I'd
10 like to address the no purchase necessary
11 sticker that was on the machines. The Supreme
12 Court of South Carolina has held in State
13 versus 192 coin operated video game machines
14 that, that doesn't matter. It doesn't matter
15 how the machines could be used. Could they be
16 used for a legal purpose, could they be used
17 for a sweepstakes, perhaps, it matters how the
18 machines were actually being used and the Court
19 stated, the machines are illegal to possess
20 regardless of their intended, possible, or
21 other capable uses and regardless of whether
22 the machines are used in connection with a
23 sweepstakes promotion, furthermore, the
24 legislature has clarified subsection three of
25 61-4-580, to say that the sweepstakes provision



1 is not an exception to 2710 -- 12-21-2710, so
2 just because the machine also has a sweepstakes
3 function, does not make it a legal gambling
4 device. It is illegal pursuant to 12-21-2710
5 and that satisfies permitting a crime for
6 subsection five. Next, I'd like to address the
7 licensing scheme. The courts have also held
8 that just because something is licensed doesn't
9 make it legal. In State versus one coin
10 operated video game, the Supreme Court ruled
11 that under long-standing precedent, licensing
12 schemes do not render legal products or devices
13 that are illegal under other provisions of
14 state law, so you could put a license on
15 anything, that doesn't make it legal if it's
16 illegal under the South Carolina Code.
17 Finally, I'd like to address the reference to
18 the agreement that was in the final court
19 order, I believe, Respondent's Exhibit Four.
20 Just because the parties in that action agreed
21 to disagree, essentially, it did not change the
22 result. The court order still states that
23 these machines are deemed illegal. Anybody who
24 had an interest in the machines because the
25 magistrate case was against, was an in rem



1 proceeding, it was against the machine, not any
2 people. Anybody with an interest could've
3 fought that, they could've intervene, they
4 could've appealed, but instead, they chose to
5 agree to disagree and we're left with a court
6 order that says these machines are illegal and
7 order to be destroyed, therefore, the
8 Department would submit that we have
9 established that subsection five of 61-4-580
10 was violated by the Respondent. We have also
11 -- haven't really heard any mitigating evidence
12 other than he received a court order that said
13 it was legal, but we've heard throughout this
14 hearing that it's a machine by machine basis,
15 so a court order about some other machine
16 really doesn't have any effect on the machines
17 at issue. We also heard that he unplugged the
18 machines and took all the money out when he
19 heard SLED was coming, which again shows that
20 he had some kind of culpability. He knew
21 something, perhaps, was wrong and based on
22 that, I don't think there are mitigating
23 factors and that revocation is appropriate in
24 this case. Thank you.

25 **MR. MOORE:** If it please, Your Honor, these cases



1 have bothered me ever since I first started
2 dealing with them and I don't mean to preach,
3 but these cases really bother me deep down
4 inside. People, who are law-abiding citizens,
5 and who want to abide by the law, ought to be
6 able to know before they do something whether
7 it's lawful or unlawful. You have this code
8 section, 60 -- 61-4-580, which seems to say
9 that as long as you have an ABC license,
10 there's an exception in regarding games of
11 chance as long as you give a prize and meet
12 certain other requirements, which they meet.
13 So you wind up with a device that appears to
14 comply with the law, but you're not sure and
15 you go to the State of South Carolina and you
16 say to them, hey, I want to know whether this
17 machine is lawful or not and they say, we'll
18 license it, but we're not going to tell you.
19 So you're out here and you want to do business.
20 You want to operate the machine. You're in
21 what we call the land of the free, which to me
22 is becoming less and less the land of the free,
23 but you're in the land of the free and you want
24 to have the freedom to engage in business. You
25 don't know if the machine is right or not. You



1 go to them and you say, hey, before I go out
2 and risk going to jail, before I go out and
3 risk losing my business, would you let me know
4 if this is okay, and they say, we're not going
5 to tell you. We're not going to tell you.
6 We'll license it for you. We'll let you put it
7 out, but we're not going to tell you if it's
8 okay or not. We'll take your money, but we're
9 not going to tell you. So the customers go out
10 and there is a related case in Greenville where
11 the circuit court says, they're legal. The
12 Products Direct machines, the sweepstakes
13 machines, are legal. If a person can't rely on
14 a court order, what can he rely on. Well, rely
15 on the statute. The statute was so unclear at
16 the time that the South Carolina Legislature
17 determined it was necessary to clarify it, so
18 the South Carolina Legislature by judicial fiat
19 has -- has legislated that the law in the area
20 was unclear and it was. The law had not been
21 clarified at the time this man had his machines
22 picked up. So we have our legislature
23 recognizing that at the time these machines
24 were picked up, the law as to whether it was
25 lawful or not was unclear. Now the State has



1 the unmitigated audacity to come in and say
2 that a person is charged with the knowledge of
3 the law and at the same time the legislature
4 says the law is unclear, so what is somebody
5 like Mr. Patel charged with, knowledge that the
6 law is unclear, so we're going to take punitive
7 action against a citizen for conducting his
8 affairs as best he knows how in regard to a law
9 that everyone acknowledges nobody knows what it
10 means. That's where we are. It is
11 interesting, they say that here is a court
12 order saying the machines were illegal and this
13 is some evidence that they were, it's not
14 dispositive, it's just some evidence that the
15 machines were illegal. There are things in the
16 law known as negative implications by something
17 not happening, certain things can be applied --
18 implied. You have a sworn SLED officer, sworn
19 to uphold the law, there's no evidence that any
20 criminal charges were ever brought. The way we
21 really determine if a crime was committed is
22 charge the man with a crime, have the case
23 tried, disposed of, then we'll know. Why is it
24 that the State of South Carolina chose not to
25 bring a criminal action. They're telling you



1 a criminal action took place. The officer,
2 under his sworn duty if he sees a crime, he's
3 obligated to arrest. He's obligated to charge.
4 He's obligated to prosecute by his oath. He
5 chose not to do that. The great question. Why
6 is it Officer that you claim there was a
7 criminal act committed in your presence and you
8 didn't choose to prosecute anybody. The only
9 negative implication is, there would be a
10 problem with such a criminal prosecution and of
11 course there would be because A, the machines
12 were probably illegal at the time, but they
13 certainly could not show any criminal intent or
14 criminal actions on the part because of the
15 mess in the law. Now certainly the negative
16 implication of a lack of criminal prosecution
17 is every bit as strong as a magistrate ruling
18 in a case that we weren't a party to. Let's
19 ask ourselves, why is it -- they -- why they
20 would've proved to you a crime was committed.
21 Why is it Mr. SLED Officer, you didn't charge
22 somebody with a crime? If you saw a crime, you
23 saw a criminal act, you knew it was there,
24 where's the warrant, where's the ticket, where
25 is the criminal charge. Remember, he's taken



1 an oath as a law enforcement officer, if you
2 see a criminal violation of the law, he's duty
3 bound to charge. He didn't do it. There is
4 yet to be any criminal finding of any criminal
5 wrongdoing on the part of anyone and there --
6 but better yet, there's not even been any
7 criminal charges filed. If we want to talk
8 about what's binding in regard to what is
9 criminal and not, what would be binding would
10 be a finding of a magistrate in a criminal
11 charge, which was never brought. We don't have
12 any of that. They want to go back and rely on
13 some magistrate somewhere writing some warrant
14 in a case that we weren't in a party to nor had
15 a right to challenge or opportunity or desire
16 to challenge. No criminal charge, at all.
17 Then, the gentleman sits up there and he says,
18 well, I don't know how this machine operated.
19 We never operated it. We never tested it. All
20 we did was plug it in and saw that these games
21 came up and that was enough for us. Well, how
22 did it operate, what did it operate, where did
23 it operate, who operated it, was it ever
24 operated, was it ever operated illegally, was
25 it even illegal? Well, the magistrate says it



1 was. What's amazing to me, now this is
2 testimony that ought to bother any liberty-
3 loving citizen anywhere and I mean that. The
4 testimony in this case is that the magistrate
5 issued a pre-destruction order without ever
6 even testing the machine. The pre-destruction
7 order that was issued on these machines was
8 done without it ever being tested. Now the
9 State is so proud to say we judge these on a
10 machine by machine basis. Now that's the way
11 -- the way they use that language is not the
12 way the Supreme Court intended it to be used,
13 but let's use theirs, machine by machine basis.
14 Well, Mr. Magistrate, how in the name of God is
15 it possible for you to have issued an order
16 against a citizen to destroy private property
17 without even testing the machine to see how it
18 functioned. Wow. That's scary. Ex parte
19 order issued by a magistrate who never even
20 operated the machine. The truth of the matter
21 is, the destruction order went through and the
22 machine was destroyed without any judicial
23 officer ever looking at the machine to see how
24 it operated. Does that scare you? It scares
25 me. Where -- where are we going? Are due



1 process or the bill of rights just suggestions?
2 I've practiced law 40 years and the older I
3 get, the more I'm becoming convinced that the
4 -- the courts are pretty much treating them as
5 more or less as suggestions than actual rights,
6 inalienable rights of citizens endowed by our
7 Creator are words on a piece of paper unless
8 they are enforced. Unless we deem the Fourth
9 Amendment against illegal search and seizure,
10 the Fifth Amendment guarantee of due process,
11 Tenth Amendment pursuit of happiness and to be
12 free, or free and ordered society requires that
13 the orders of society be free and be ordered.
14 How in the name of God, can a man have punitive
15 action taken by the State on a machine that is
16 declared by somebody else to be illegal without
17 even looking at it, and without even having any
18 way to clarify the law and to see to begin with
19 that it's okay. It's beyond my ability to
20 comprehend how they can look in the mirror and
21 treat people this way. I mean, if they want to
22 basically come out and stop the machines, fine,
23 but they know the law was ambiguous, they know
24 the law was unclear. The case in Greenville
25 before Judge Gary Hill, he's a great judge, a



1 good friend of mine, he ruled the machines to
2 be legal after a hearing. The State came back
3 and said, well, some of this wasn't properly in
4 the record, so he said okay, we'll vacate it
5 and send it back to get more of the evidence in
6 the record. That same judge heard the
7 additional evidence and again ruled them to be
8 legal while the appeal was in the process of
9 going back to Judge Hill, the legislature
10 changed the law, so we'll never know. At this
11 point in time, we'll never know if those
12 machines were legal or illegal under 61-4-580.
13 The legislature said they didn't know. The only
14 circuit judge to ever hear it said they're
15 legal. The magistrate who was sent back to
16 said they were legal and poor old Mr. Patel,
17 who is in this country lawfully, just trying to
18 sell gas and beer and doughnuts, what is he to
19 do. The competitor down the street has got the
20 machines. The competitor up the street has got
21 the machines. The people of the State want to
22 play them, but for some reason our
23 paternalistic state has said the only people
24 you can gamble with in this State is the State.
25 The State has declared a monopoly on gambling.



1 They have the lottery, so it's illegal if you
2 gamble, unless you gamble with us. Isn't that
3 -- isn't that great. It's illegal for you to
4 gamble, unless the house -- unless the State
5 can be the house. Jesus Christ, a government
6 mandated monopoly on gaming activity telling
7 all of us how we can spend our money. I gamble
8 every time I take a contingency fee case.
9 Stewart Longo gambles every time he builds a
10 spec house. As a matter of fact, the essential
11 linchpin of free enterprise is gambling, taking
12 a chance. I can gamble on a spec house and I
13 can gamble on the stock market, and I can
14 gamble on a contingency fee, but I can't put a
15 quarter in a machine. Thank you, pappa South
16 Carolina. Oh, wait a minute, it's okay if we
17 use your monopolistic power of the legislature
18 to dictate who we can and cannot gamble with.
19 I can gamble with the lottery commission, but
20 I can't put a quarter in a video machine, even
21 though the people want to, they're going to
22 protect me from me. I love it. America. You
23 know, there is a principal of law called
24 estoppel and counsel is absolutely correct,
25 just because a machine is licensed doesn't mean



1 it's legal, but it also doesn't mean that the
2 State should not be stopped from taking
3 positions inconsistent with that license.
4 There's a case called City of Abbeville versus
5 Abbeville Arms or Abbeville Arms versus the
6 City of Abbeville. That case deals with
7 governmental estoppel. That case says this, if
8 a private citizen changes his position in
9 reliance upon State activity, the State can and
10 should be stopped to take action inconsistent
11 with the governmental action. Now in this
12 case, the State of South Carolina is perfectly
13 willing to accept a license fee and to grant a
14 license. A license under the common law means
15 the right to do something. So the Department
16 of Revenue on the one hand represents that this
17 machine has the right to be operated and on the
18 other hand says that if you operate it, we'll
19 take your -- we will take punitive action
20 against you. In my humble opinion, I agree
21 with them. The fact that it had a license on
22 it does not mean that it was legal. It doesn't
23 mean it was illegal, but it does mean, once
24 they licensed it that people, citizens, have
25 the right to rely upon the actions of their



1 government. Is -- is that an outrageous
2 position to take that I as a citizen have a
3 right to rely upon the actions of my
4 government? If my government gives me a
5 driver's license, I should have the right to
6 assume I can drive a car. If the State of
7 South Carolina takes money and licenses a
8 machine, I should be able to assume I can
9 operate the machine. They did that. They knew
10 what the machine was. They knew it all along.
11 They put the license on the machine. How in
12 world can they represent to a person that a
13 machine is okay and then come in and take
14 punitive action against that person because
15 he's done what they've licensed him to do? Now
16 again, I agree, the fact that there's a license
17 on it, does not make it legal, but the fact
18 that there's a permit or a license does say
19 that a person has a right to rely -- or should
20 have a right to rely on what's been licensed
21 and they should be stopped to take punitive
22 action, especially when the law is so
23 inherently unclear and muddled that the
24 legislature deems it necessary to go in and
25 issue a clarification and actually if you look



1 at the wording of the statute, it basically
2 does in legislative history say that the law
3 needs to be clarified in the area and they were
4 making the modifications to 61-4-580 in order
5 the clarify it. Well, if it needed to be
6 clarified, then that means it was unclear
7 before it got clarified and is it right, is it
8 decent, is it moral, is it just, is it
9 equitable to take punitive measures against a
10 person who is dealing with a muddled, unclear
11 law that's so unclear the legislature decrees
12 it as such. I respectfully submit three things
13 in this case, A, they have not proven that
14 this machine was operated in violation or was
15 on the premises in violation of the criminal
16 law. Second of all, they haven't proven that
17 the gentleman had the requisite intent to do
18 anything wrong or knowledge that the machine
19 was wrong, and thirdly of all, the -- the most
20 important is basically this, they haven't
21 proven that punitive action against somebody
22 under these circumstances would be something
23 that would be just, morally fair, right, or
24 consistent with jural concepts of historically
25 jurisprudence. When the man is doing the best



1 he can and has assurances that the thing is
2 legal and there is a lawful basis of the code
3 to say it's legal and all he's doing -- and
4 then -- then when he learns that there still
5 might be something wrong with it, he unplugs
6 them and calls the guy and tells him to come
7 take your machines, what more can you expect
8 from somebody. You know, to close him down for
9 a week or two or five, or six, and put people
10 out of business, destroy businesses under facts
11 like this, do they really contend that, that is
12 not major overkill. I respectfully submit that
13 if you do find the machines have been proven to
14 be illegal and I don't think the evidence
15 supports it, then there should be no fine or a
16 nominal five dollars or something. You don't
17 have to worry about him. He's not going to
18 have the machines back. He's learned his
19 lesson. The Department's position is -- is --
20 I'll tell what's actually happened, if you want
21 to really know what's happened, I -- I'll do
22 this by way of argument. It's not in the --
23 it's not in the record. What happened is that
24 when the machines came back, they started
25 basically treading on the turf of the lottery

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(803) 752-3445 / (800) 822-0896

1 commission and the lottery commission became
2 concerned that maybe their action was being
3 taken away and they got together with DOR and
4 the legislature and DOR basically has conducted
5 itself in conjunction with the lottery
6 commission as a way to basically try to make
7 positive that these machines are dead once and
8 for all. That's what they've done. The reason
9 why we're seeing such punitive action is
10 primary politically from the lottery commission
11 and it's -- it's grotesque. What's been done
12 here is grotesque. I -- I believe the machines
13 were legal. The machines -- and a lot of
14 people agree with that. There are judges all
15 over the State who agree with it, but even if
16 they weren't, some form of revocation of his
17 license is unconscionable and I thank you for
18 putting up with me and I thank you for
19 listening to me.

20 **THE COURT:** You're always interesting to listen to.
21 Anything else, Ms. Acquaviva?

22 **MS. ACQUAVIVA:** A brief rebuttal if I may, Your
23 Honor. The first thing I want to point out is
24 that none of us here wrote the laws and our job
25 is strictly to enforce the law as written and



1 that's all the Department is doing in this
2 case. As far as the penalty is concerned, our
3 penalty guidelines dictate revocation for any
4 violation of 61-4-585, not just gaming
5 machines, anybody who knowingly permits an act
6 on his premises that constitutes a crime, the
7 Department will seek revocation. Finally, I'd
8 like to address the facts that the Respondent's
9 decision to put machines on its premises, which
10 it at least had a suspicion that there could be
11 a problem with, evidenced by the fact that he
12 needed to see a court order to think they were
13 legal, is a business risk. Meenaxi
14 Incorporated made the business decision to risk
15 losing its license in exchange for the product
16 that it could get from having gaming machines
17 on the premises just like somebody makes any
18 decision, I could go out with a bunch of
19 friends and get in my car and drive drunk, I'm
20 making a decision if I can't to get home and
21 not pay for a taxi, but I'm risking getting
22 caught. It's the same thing here, Mr. Moore
23 went on and on talking about how business in
24 this country is important and it is, but every
25 businessman has to make a decision. They have



1 to weigh the risks and the -- and the benefits
2 of the things they put in their store and Mr.
3 Patel, Meenaxi Incorporated chose to put a
4 suspicious machine, as evidenced by the fact
5 that they needed a court order, in his store.
6 He thought the risk of losing his license was
7 outweighed by the benefit of making a lot of
8 money and therefore, we would submit that he
9 should -- revocation is not punitive, it's the
10 same penalty for any type of violation of 585
11 and the fact that Meenaxi Incorporated chose to
12 take this risk with some kind of suspicion,
13 thinking that these machines could be illegal,
14 feels that revocation is appropriate in this
15 case. Thank you.

16 **THE COURT:** Okay. All right. Well, that concludes
17 our hearing then and I will take it under
18 advisement and look it all over and issue a
19 written order.

20 **MR. MOORE:** Thank you, ma'am.

21 **THE COURT:** Okay. Thanks.

22 **MADAME COURT REPORTER:** All rise.

23 **THE COURT:** Let's make sure I have all the exhibits
24 before anybody leaves the courtroom. I've only
25 got Petitioner's Eight up here on the bench



right now.

(There being nothing further, the hearing adjourned
at 1:54 p.m.)





South Carolina State Law Enforcement Division
Report of Investigation

To: Case File 54-13-4049

From: Special Agent Thomas Bielawski

Cross Ref#: n/a MAR 27 2013

Date: February 26, 2013

SCDOR
ABL SECTION

Subject: Malekesh Patel
d/b/a - Corner Mart
1010 E Shockley Ferry Rd
Anderson, SC 29621

320574366
Mailing Address:
713 Britton St
Anderson, SC 29624

SUMMARY OF EVENT:

On Wednesday, February 26th, 2013, a joint Alcoholic Beverage License (ABL) inspection of Corner Mart was conducted by SC State Law Enforcement Division (SLED) and Anderson County Sheriff's Office (ACSO) at the above location. ACSO Sgt. Scott Hamby was present during this inspection. During the inspection two video gaming machines were located and seized. They were examined by an Anderson County Magistrate and ruled illegal. An Order of Destruction was issued.

NARRATIVE:

On Wednesday February 26th, 2013, at approximately 1:10pm an ABL inspection was conducted at Corner Mart. I identified myself to store personnel on duty as SLED Special Agent Bielawski and I displayed my SLED issued credentials. Sgt. Hamby was in uniform and identified himself as well. During the inspection I noticed two video poker machines located in the front of the business by the main window, one bearing the name of "Product's Direct Sweepstakes" and the other bearing the name of "Gifts Surplus." These machines had been unplugged and turned off. Photographs were taken of these machines.

The clerk on duty in the business was Ursula Dean. Ms. Dean informed me that the owner of the business had been aware that SLED and ACSO were in the area. She said that the owner, Mr. Malakesh Patel, emptied the money from the machines, turned off the power switches, and unplugged them from the wall before our arrival today.

During subsequent inspection of the licensed premises I discovered the presence of a number of Product's Direct and Gifts Surplus sweepstakes coupons with redemption instructions. These coupons with complete redemption codes and instructions had all been discarded in the trash, on the floor, or were lying behind the gambling machines. Photos were taken of these sweepstakes coupons.

I plugged in the machines and turned them on to see what types of games were on them. I found card games and video "slot machine" spinning reel style games on these machines. Photographs were taken of the screens.

Sgt. Hamby seized the machines pursuant to SC State Statute 12-21-2712 and issued completed seizure documentation. We opened the machines with keys provided by Ms. Dean. There was no

SLED 54-13-4049

PETITIONER'S
EXHIBIT
1

Page 1



South Carolina State Law Enforcement Division
Report of Investigation



money inside either of the two machines. Sgt. Hamby completed the proper ACSO seizure documentation for the machines and provided Ms. Dean with copies.

Ms. Dean telephoned the store owner, Malakesh Patel, and handed me the phone. During my conversation with Mr. Patel he explained to me the nature of his arrangement with machine owner, Mitesh Patel of Encore Entertainment (864) 356 5109. Malakesh Patel said that he is not related to Mitesh Patel. Mitesh Patel takes the money from the machines in Corner Mart every Monday or Tuesday. Malakesh Patel said that he splits the revenue generated from these machines equally in a 50% - 50% split with Mitesh Patel.

I issued an administrative citation to Ms. Dean for violation of **SC State Statute 61-4-580 (5), Permitting games that constitute a crime under the laws of the state**, and I explained the administrative violation process to her.

Anderson County Magistrate Lollis subsequently examined these machines and ruled them in violation of **SC State Statute 12-21-2710**, which prohibits certain kinds of video gaming machines. Magistrate Lollis issued an Order of Destruction for these machines.

The machines were transported to ACSO for storage.



VIOLATION REPORT

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

LICENSEE

Malekesh Patel Meenaxi Inc

BUSINESS ADDRESS Anderson 29624

1010 E. Shockley Ferry Rd

MAILING ADDRESS IF DIFFERENT

713 Britton St, Anderson 29621

LICENSE NO.

32057436

BQ

BW

RL

SC

SB

BUSINESS NAME

Corner Mart

OFFENSE

Permitting games that
constitute a crime under the
laws of this state. 12-21-7710

STATUTE

REGULATION

61-4-588(5)

DATE

TIME

AI NO.

2/5/13

1:18 PM

ASSISTING OFFICERS

Asbill, Casey

CONF. NO.

SUMMONS ISSUED

N/A

Bielawski

AGENT

NO.

X Ursula D. Dean

SIGNATURE OF LICENSEE OR OPERATOR

CASE NO.:

DATE:

OFF. CODE:

2/25/13

004292342

AD 800-631-6883

PETITIONER'S
EXHIBIT

SUMMARY BOOK

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

2013CV0410100842
CASE NUMBER

FEB 27 14
PM 4:01

S.C. State Law Enforcement Division
Plaintiff(s))
Vs)
Corner Mart)
1010 Shockley Ferry Rd.)
Anderson, SC 29624)
Defendant(s))

IN THE MAGISTRATES COURT

ORDER OF DESTRUCTION/
NOTICE OF POST SEIZURE
HEARING

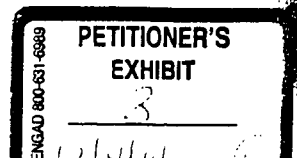
Pursuant to S.C. Code Ann. §12-21-2712, the above listed machine(s) was seized on February 26, 2013, from Corner Mart (business) at 1010 Shockley Ferry Rd. 29624 (address) by the Plaintiff and brought before me on February 26, 2013, for examination to determine if the machine(s) is prohibited pursuant to S.C. Code Ann. §12-21-2710.

Upon careful examination of the machine(s), I find the machine(s) 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 machine(s) 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(s). Otherwise, the machine(s) will be destroyed.**

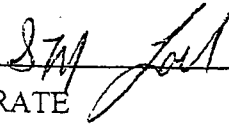
Pursuant to state law, the State Law Enforcement Division is authorized to retain, expend, and carry forward all monies associated with illegal gaming devices seized by the Division, once orders of destruction and awarding of these monies have been received

MV166



from a court of competent jurisdiction. I find that \$N/A was seized by the Division and shall be retained for the purposes provided by the law.

AND IT IS SO ORDERED.


MAGISTRATE

March 1, 2013

MVI66

ROA000000160

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE MAGISTRATE'S COURT

Case No.: 2013CV0410100842

South Carolina Law Enforcement Division,)
Plaintiff,)
v.)
One (1) Products Direct Machine)
and One (1) Gift Surplus machine,¹)
Defendants.)

THIS IS A CERTIFIED TRUE
COPY. [Signature]

SUMMARY COURT

FINAL ORDER

FEB 14, 14

PM 2:28:22

This matter was scheduled for a post-seizure hearing on December 17, 2013. This hearing was requested to contest the legality of one (1) Products Direct video gaming machine and one (1) Gift Surplus video gaming machine ("Machines") that were each seized from the Corner Mart convenience store located at 1010 E. Shockley Ferry Road in Anderson, South Carolina. The Plaintiff was represented in this matter by Assistant Attorney General Adam L. Whitsett of the South Carolina Attorney General's Office. The Machines were represented in this matter by Attorney S. Jahue Moore of Moore, Taylor & Thomas, P.A. Prior to the hearing in this matter, counsel informed this Court that the parties had reached an agreement to resolve this matter.

By way of background, the Machines were seized by law enforcement from the Corner Mart convenience store located at 1010 E. Shockley Ferry Road in Anderson, South Carolina. Pursuant to S.C. Code Ann. § 12-21-2712, The Honorable Samuel M. Lollis, an Anderson

¹ The parties stipulate that the original caption should be amended to list only the machines as the defendants in this civil forfeiture action and that the store and store owner are not proper parties to this action. See Union County Sheriff's Office v. Henderson, 395 S.C. 516, 719 S.E.2d 665, 666 n.1 (2011) ("Since this forfeiture action is *in rem*, the proper defendants are only the seized machines and equipment which are the subject of the Order of Destruction.")



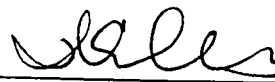
County Magistrate subsequently examined the Machines and determined each to be in violation of S.C. Code Ann. § 12-21-2710 and issued the attached Order of Destruction.

By way of consent agreement, counsel for each party has indicated that the parties maintain their respective positions regarding the legality of the Machines at the time of the seizure in this matter. However, in order to amicably resolve this matter, the owner of the Machines has agreed to withdraw the request for a post-seizure hearing in this matter, and the Plaintiff does not oppose this withdrawal.

Accordingly, I hereby accept the owner's withdrawal of the request for a post-seizure hearing in this matter.

THEREFORE, based on the foregoing and all applicable laws of the State of South Carolina, IT IS HEREBY ORDERED, DECREED and ADJUDGED that the Order of Destruction that is attached hereto and incorporated by reference herein is hereby upheld in its entirety. All of the Machines at issue in this action are found to be in violation of South Carolina Code Ann. § 12-21-2710 and I hereby order their destruction.

IT IS SO ORDERED.



Wynée D. Eubanks
Presiding Anderson County Magistrate

Anderson, South Carolina
December 18, 2013



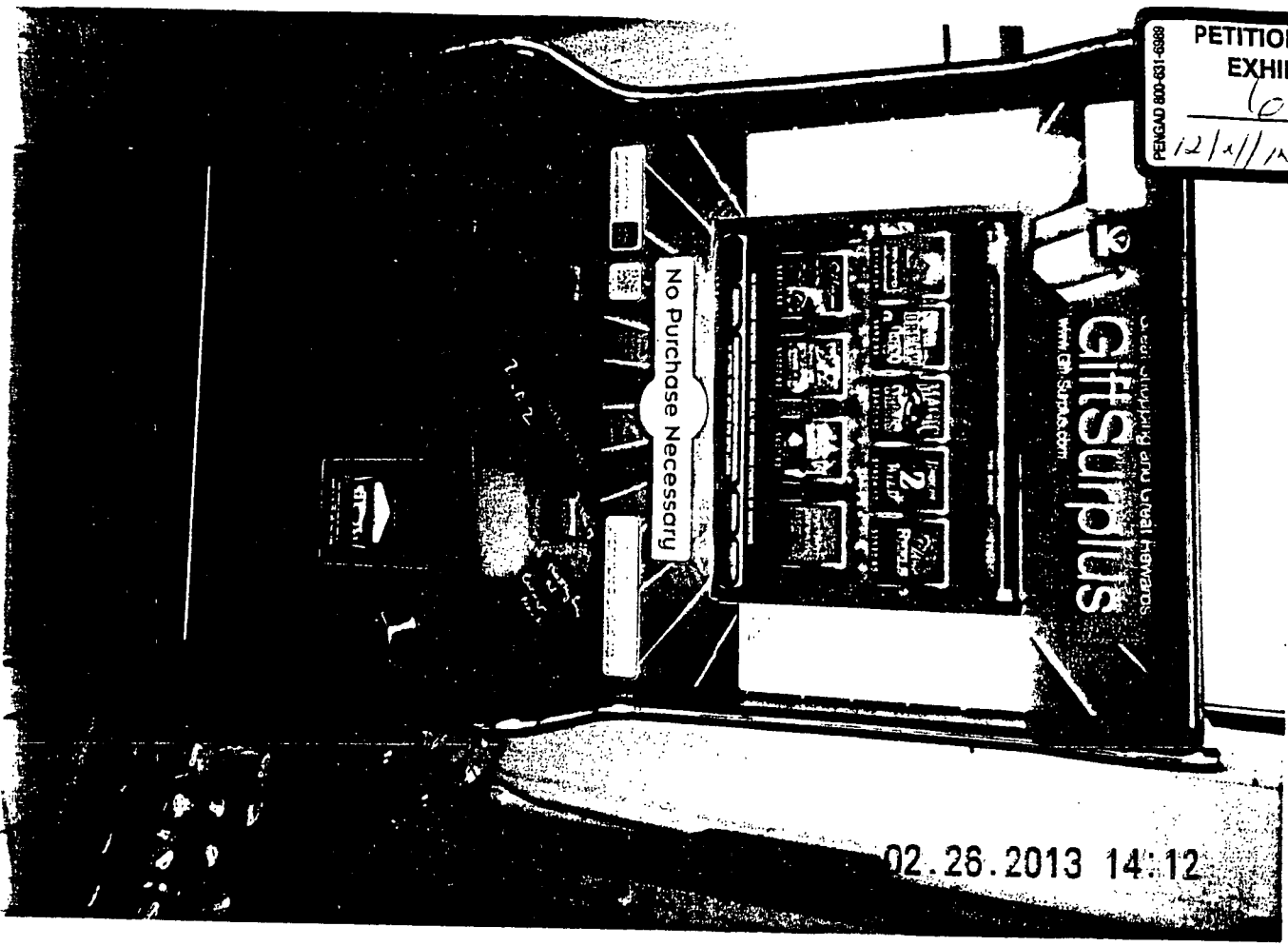
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PETITIONER'S
EXHIBIT
12/21/14



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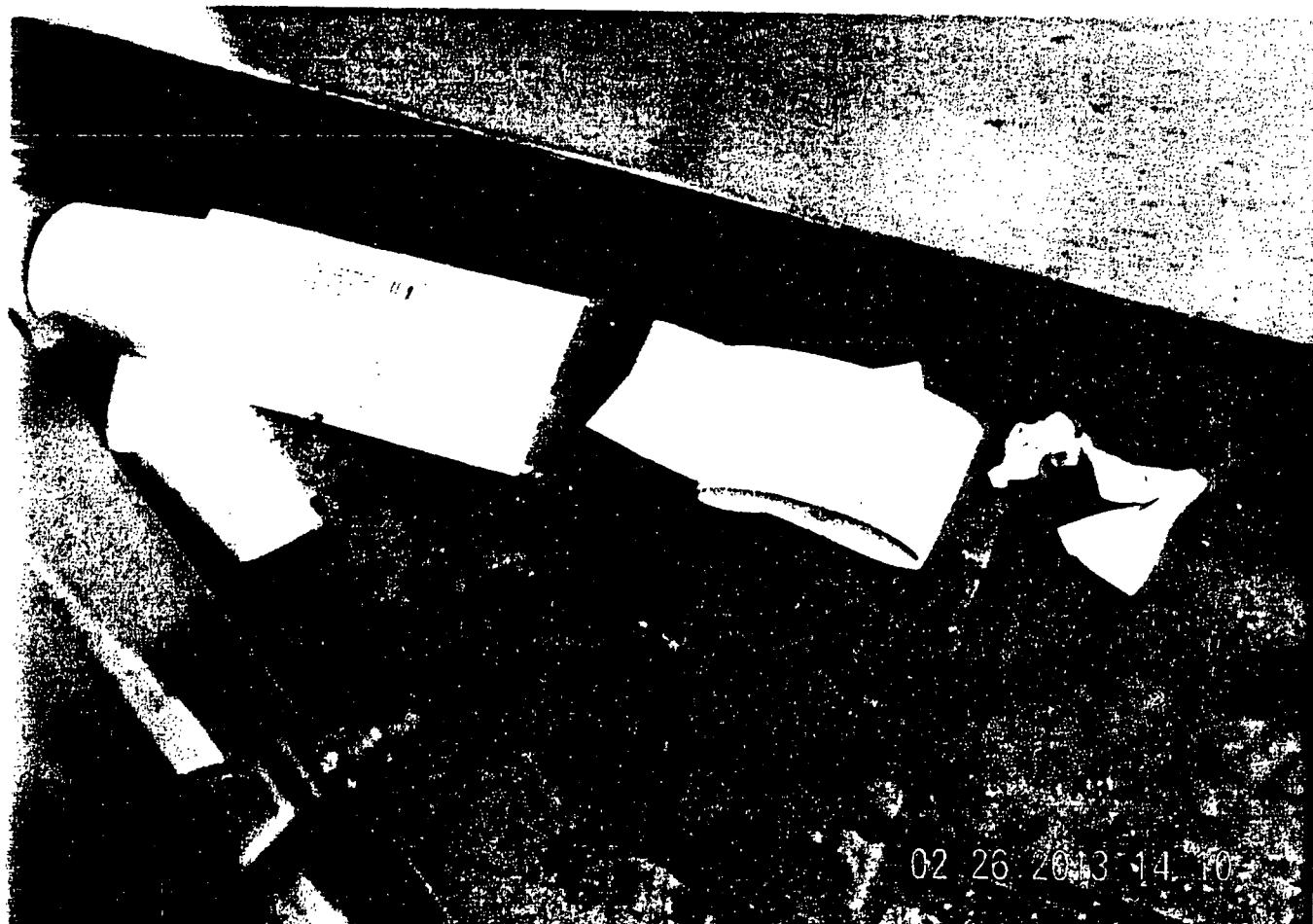
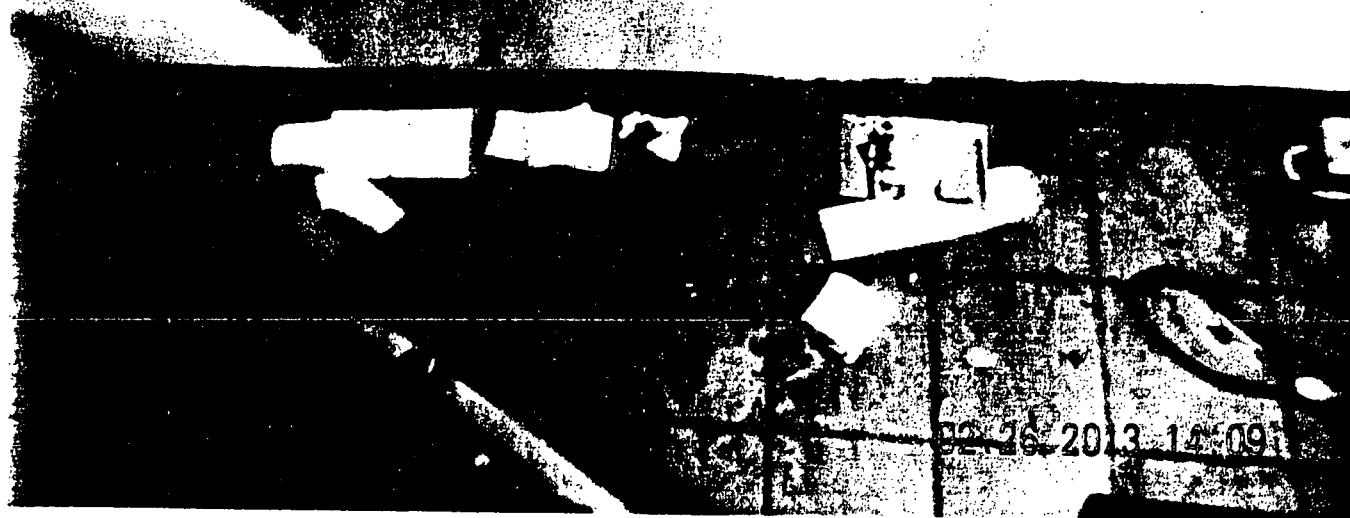
entry will win a
reveal your entries
see if you have won

Cash prizes must be
redemption other
redemption before
prizes. All prizes are
to verification

All federal state and loc.
are the sole responsible

The sponsors reserve
entries money and odds
contained in the sweepstake
without notice. The
sponsors and its affiliates
do not conduct any
other business that may
affect the integrity of the game

This sweepstake is open to
all persons who are
residents of the United States
and who are at least 18 years
old at the time of registration.
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old at the time of registration.



SOUTH CAROLINA DEPARTMENT OF REVENUE

ABL-567
(Rev. 8/9/10)
4282

PBG

OFF PREMISES BEER AND WINE

13

ACABL 2753446008
MALKESH PATEL
MEENAXI INC
713 BRITTON ST
ANDERSON SC 29621-2614

LICENSE NO. 320574366
FILE NO. 32057436-6
DATE ISSUED: 01-19-2012
STIPULATIONS:00

CORNER MART
1010 E SHOCKLEY FERRY ROAD
ANDERSON, SC 29624

START DATE: 01/19/2012
END DATE: 11/30/2013
START TIME: 00:00
END TIME: 00:00

THIS LICENSE IS NOT TRANSFERABLE

OFFICE

..... You may not transfer this permit or license to another location or to another person.
If you sell all or a portion of your business, before the buyer can legally sell beer, wine or liquor, he or she MUST obtain his/her own permit or license. You can be held financially responsible for any violations of the law that take place by any person using your permit and/or license. You may be held financially responsible for injuries due to the negligent sale of these beverages by someone using your permit or license.

..... POST THIS IN A CONSPICUOUS PLACE

02.26.2013 14:22

PETITIONER'S
EXHIBIT

PENGAD 800-631-6668

12/4/14

02.26.2013 14:26

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,)
)
Petitioner,)
)
vs.)
)
Meenaxi, Inc., d/b/a Corner Mart,)
)
Respondent.)
_____)

Docket No.: 13-ALJ-17-0216-CC

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION AND/OR
MOTION FOR RELIEF FROM
JUDGMENT OR ORDER AND FOR
STAY**

**TO: LAUREN ACQUAVIVA, ESQUIRE, ATTORNEY FOR THE PETITIONER,
SOUTH CAROLINA DEPARTMENT OF REVENUE**

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through his undersigned counsel, will move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and Rule 29(D) of the Rules of Procedure for the Administrative Law Court, and such other authority as the Court may deem applicable and proper, before the Honorable Deborah Brooks Durden, Administrative Law Judge for a reconsideration, alteration or amendment of the Order of this Court dated January 8, 2015, granting Judgment to the Petitioner South Carolina Department of Revenue. A copy of Judge Durden's Order is attached hereto and incorporated herein as Exhibit A.

Additionally, the Respondent moves pursuant to Rule 29(E) of the Rules of Procedure for the Administrative Law Court for Stay of Final Order pending a hearing on the Respondent's Motion and any subsequent appeal. This Motion is made in part on the following grounds:

1. The Trial Court erred in finding and ruling as a matter of law that Respondent violated S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constituted a crime;

2. The Trial Court erred in finding and ruling as a matter of law that revocation of Respondent's off-premises beer and wine permit was an appropriate penalty in this case;
3. The Trial Court erred by revoking Respondent's off-premises beer and wine permit;
4. The Trial Court erred in finding and concluding as a matter of law that Respondent knowingly permitted an act on its premises that constituted a crime;
5. The Trial Court erred in finding and concluding as a matter of law that the Respondent violated S.C. Code Ann. § 61-4-580(5) (Supp. 2014);
6. The Trial Court erred in finding and ruling as a matter of law that the Respondent violated S.C. Code Ann. § 12-21-2710;
7. The Trial Court erred in finding and ruling as a matter of law that the Department met its burden of showing that the two machines in question in this case contained games of chance in violation of S.C. Code Ann. § 12-21-2710;
8. The Trial Court erred in finding and concluding as a matter of law that Malkesh Patel "knew the machines were illegal;"
9. The Trial Court erred in failing to apply the legislative exception set forth in S.C. Code Ann. § 61-4-580(3)(b);
10. The Trial Court erred in finding and concluding that "The coupon scheme was a thinly veiled artifice designed to conceal the fact that payment was made solely to play the games;"
11. The Trial Court erred in concluding and ruling as a matter of law that due process was not violated when "Malkesh Patel was not personally named as a party by the Petitioner in this action;"

12. The Trial Court erred in concluding and ruling as a matter of law that Malkesh Patel's due process rights were not violated;

13. The Trial Court erred in relying on the in rem magistrate court order submitted to her at hearing/trial;

14. The Trial Court erred in admitting the statements made by Ursula Dean to the officer during the inspection into evidence over Respondent's objection that they constituted hearsay;

15. The Trial Court erred in determining that the officer's inspection of the machines did not constitute an unlawful search and seizure;

16. The Trial Court erred in failing to apply estoppel to the Department's action seeking revocation of Respondent's off-premises beer and wine permit;

17. The Trial Court's penalty of revocation of Respondent's off-premises beer and wine permit is not supported by the evidence presented at trial and is therefore harsh;

18. The Trial Court's Order contains numerous errors with respect to its Findings of Fact and Conclusions of law;

19. The Findings of Fact are unsupported by the evidence presented at the hearing before the Court;

20. The Court's Order misconstrues and misapplies the applicable law to the facts of this case; and

21. The statutes relied on by the Administrative Law Judge are arbitrary and violated Respondent's Constitutional Protections afforded under South Carolina Law.

In addition, the Respondent moves for an Order staying the Court's Final Order and/or the effect of the Final Order on the grounds that it works a substantial hardship during the

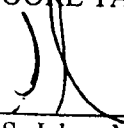
pendency of this motion (and subsequent appeal if necessary.)

This motion shall be based on the attached Order, a Memorandum of Law to be filed with the Court, and such other and further relief as this Court deems proper.

For the reasons set forth above, the undersigned would respectfully request an Order of reconsideration, alteration or amendment of its January 8, 2015, Order.

MOORE TAYLOR LAW FIRM, P.A.

BY:



S. Jahue Moore
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY FOR THE RESPONDENT

West Columbia, South Carolina

January 15, 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,)
)
Petitioner,)
)
vs.)
)
Meenaxi, Inc., d/b/a Corner Mart,)
)
Respondent.)
_____)

Docket No.: 13-ALJ-17-0216-CC

**NOTICE OF MOTION AND MOTION
FOR SUPERSEDEAS**

**TO: LAUREN ACQUAVIVA, ESQUIRE, ATTORNEY FOR THE PETITIONER,
SOUTH CAROLINA DEPARTMENT OF REVENUE**

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through his undersigned counsel, will move before the Honorable Deborah Brooks Durden, Administrative Law Judge, pursuant to Rule 241(d) of the South Carolina Rules of Civil Procedure and such other authority as the Court may deem applicable and proper, for a Writ of Supersedeas asking and requesting that the Court's Final Order and Decision be stayed pending an appeal in this action.

This motion is made on the grounds that Final Order and Decision of the Court dated January 8, 2015 and the Order dated January 26, 2015 denying the Respondent's Motion for Reconsideration and making no ruling as to the Respondent's request for a Stay of Proceedings pending Appeal, has the impact of revoking the Respondent's Beer and Wine permit which is an integral part of his business for an indefinite and lengthy period of time which would have the potential impact of bringing the Respondent to severe financial hardship ruin during the pendency of any appeal in this matter. This would have a severe impact not only on Respondent but its employees. Considering the impact on the Respondent and others of the decision, a Supersedeas should be granted suspending implementation of the Order pending an appeal of

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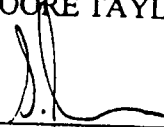
FEB 03 2015

this matter.

Respondent's counsel has informed Attorney for Petitioner of his intent to move for a Writ of Supersedeas and they will oppose it. However, Respondent believes that under the circumstances of this case such relief is appropriate and respectfully prays for the same.

MOORE TAYLOR LAW FIRM, P.A.

BY:



S. Jahue Moore
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY FOR THE RESPONDENT

West Columbia, South Carolina

February 4, 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,	)	Docket No. 13-ALJ-17-0216-CC
	)	
	)	
	)	
Petitioner,	)	
	)	
vs.	)	PETITIONER'S RESPONSE IN
	)	OPPOSITION TO RESPONDENT'S
	)	NOTICE OF MOTION AND
	)	MOTION FOR SUPERSEDEAS
	)	
Meenaxi, Inc., d/b/a Corner Mart,	)	
	)	
Respondent.	)	
	)	

**TO: S. JAHUE MOORE, ESQUIRE, ATTORNEY FOR THE RESPONDENT,
MEEXANXI, INC., D/B/A CORNER MART**

Pursuant to Rule 65, SCRPC, ALC Rule 29(E), S.C. Code Ann. § 1-23-380(2), and such other authority as the Court may deems applicable and proper, the Petitioner, South Carolina Department of Revenue (Department), submits this response in opposition to the Respondent's Notice of Motion and Motion for Supersedeas requesting that this Court's Final Order and Decision be stayed pending an appeal of this matter. The Department respectfully requests that the Court deny the relief sought by Respondent.

In this Court's Final Order and Decision, the Court found that (1) the Respondent violated S.C. Code Ann. § 61-4-580(5) by knowingly permitting an act on its premises that constitutes a crime – possessing unlawful gaming machines – and (2) revocation of the Respondent's beer and wine permit is the appropriate penalty for such violation. In its Motion, Respondent asserts that it will suffer severe financial hardship if its permit

remains revoked during the pendency of any appeal of this matter. The Department posits that the risk of public harm and the potential for ineffective enforcement of the alcohol laws, as will be explained more fully below, outweighs any potential financial hardship the Respondent may suffer. Thus, this Court's Final Order and Decision should not be stayed during the pendency of any appeal in this matter.

If the Court stays its Final Order and Decision and the Respondent is permitted to keep its beer and wine permit during the pendency of any appeal in this matter a risk of public harm exists. It is important to understand that a beer and wine permit is a privilege and not a right. See Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943). The Respondent's conduct demonstrates that it cannot be trusted to maintain this privilege any longer. In the Court's Findings of Fact, it found that Malkesh Patel (Mr. Patel), the sole owner of Meenaxi, Inc., emptied the money out of the illegal gaming machines and unplugged them once he knew law enforcement was in the area. Mr. Patel chose to put these illegal gaming machines in his store. Moreover, Mr. Patel chose to try and hide his actions in an attempt to avoid being caught. These actions by Mr. Patel demonstrate that he has complete disregard for the alcohol laws of this State, and intentionally attempted to hide violations of the alcohol laws from law enforcement. Permitting a person who blatantly disregards the alcohol laws of this State to keep his alcohol license creates an unnecessary risk of public harm. Thus, because Mr. Patel blatantly disregards the alcohol laws of this State, this Court should deny the Respondent's request for a stay.

Additionally, permitting the Respondent to maintain the privilege of keeping its beer and wine permit creates a risk for potential ineffective enforcement of the alcohol

laws. Specifically, while the appeal is pending, the Respondent can circumvent the effect of having a revoked permit by applying for a new permit at a different location and, thus, completely avoid the consequences of its actions. Pursuant to S.C. Code Ann. § 61-4-520(3), the Department must not issue a beer and wine permit unless "[t]he applicant, within two years before the date of application, has not had revoked a beer or a wine permit issued to him." Thus, if the revocation remains in effect during the appeal, the Respondent cannot obtain a new beer and wine permit for two years from the date of the Order. If, however, the revocation is stayed, the Respondent can apply for a new permit and avoid the consequences of the revocation of the permit at issue in this case. By the time the Court of Appeals, and potentially the Supreme Court, issues a decision in this matter, the Respondent could already have started a new business. If that is allowed to happen, the revocation of the permit at issue would not affect the Respondent as it already would have obtained a new permit.

Furthermore, allowing the Respondent to continue to hold a permit allows the Respondent to avoid the consequences of its actions. An appeal will take several months if not years to resolve. By delaying the hearing in this matter at the Administrative Law Court and now appealing, the Respondent will be able to operate for several years after being caught with illegal gaming machines. Allowing the Respondent to avoid the consequences of its actions for years further hinders the Department's efforts to enforce the alcohol laws. If permit holders are able to avoid the consequences of their actions so easily, the Department's attempts to enforce the alcohol laws will be ineffective. To that extent, this Court should deny Respondent's Motion to avoid the risk of potential ineffective enforcement of the alcohol laws.

Finally, the Respondent's arguments are unpersuasive. Revocation of the Respondent's beer and wine permit does not mean that it cannot continue to operate a convenience store. While the Respondent may lose some revenue due to the inability to sell beer and wine, it will not be completely out of business. Moreover, it was the Respondent's own actions that put the viability of the store in jeopardy. Mr. Patel chose to have illegal gaming machines in the store, and he chose to try and cover up his illegal activities. These actions are what caused the revocation in this matter.

Additionally, the Respondent's statement that this Court's Order "has the impact of revoking the Respondent's beer and wine permit . . . for an indefinite and lengthy period of time" is inaccurate. As discussed above, the Respondent would be eligible to apply for a new beer and wine permit in two years. Two years is not indefinite nor is it a lengthy amount of time. So while the Respondent may suffer some financial hardship, it would not be severe. Therefore, Respondent failed to demonstrate that it will suffer irreparable harm if its license is revoked pending the appeal. Since the Respondent failed to demonstrate it will suffer irreparable harm, and the risks of staying this Court's Final Order and Decision outweigh the risks of not staying the Order, the Department respectfully requests that the relief sought by Respondent be denied.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lauren Acquaviva".

Lauren Acquaviva (Bar No. 100528)

Counsel for Litigation

Sean G. Ryan (Bar No. 76585)

Managing Counsel for Litigation

Milton G. Kimpson (Bar No. 7917)

General Counsel for Litigation

Columbia, South Carolina
February 6, 2015

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
FEB 19 2015

APPEAL FROM ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. 13-ALJ-17-0216-CC

Meenaxi, Inc., d/b/a Corner Mart Appellant,

v.

South Carolina Department of Revenue Respondent.

NOTICE OF APPEAL

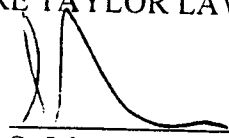
Meenaxi, Inc., d/b/a Corner Mart, hereby appeals the following Orders of the
Honorable Deborah Brooks Durden, Administrative Law Judge:

- (1) The Order dated January 8, 2015 (Attached as Exhibit "A"); and
- (2) The Order dated January 26, 2015 denying Appellant's Motion for Reconsideration (Attached as Exhibit "B").

Appellant received written notification of Judge Durden's Order denying its
Motion for Reconsideration on January 27, 2015.

MOORE TAYLOR LAW FIRM, P.A.

BY:



S. Jahue Moore
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY APPELLANT
MEENAXI, INC.

West Columbia, South Carolina

February 17, 2015

FILED

January 8, 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

Docket No. 13-ALJ-17-0216-CC

RECEIVED

FEB 19 2015

South Carolina Department of Revenue,

Petitioner,

vs.

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

ORDER

SC Court of Appeals

APPEARANCES: For Petitioner: Lauren Acquaviva, Esquire
For Respondent: S. Jahue Moore, Esquire

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 12-60-2540(A) for a contested case hearing requested by Meenaxi, Inc., d/b/a Corner Mart (Respondent) against the South Carolina Department of Revenue (Department) contesting the revocation of the Respondent's beer and wine permit due to the presence of illegal gambling machines on the licensed premises. The Respondent exhausted all prehearing remedies with the Department and filed a timely request for a contested case hearing before the ALC.

ISSUES

1. Did the Respondent violate S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constituted a crime?
2. If so, is the revocation of the Respondent's off-premises beer and wine permit an appropriate penalty?

FINDINGS OF FACT

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses.

This Court has personal and subject matter jurisdiction. Notice of the date, time and place of the hearing was timely given to all parties. A hearing of this matter was held on December 4, 2014.

During the hearing, Malkesh Patel testified that he is the sole owner of Meenaxi, Inc. He had notice of this proceeding and was invited by the Court to intervene.

EXHIBIT

A

The Department issued an off-premises beer and wine permit to Meenaxi, Inc., which does business as Corner Mart. Corner Mart is located at 1010 East Shockley Ferry Road, Anderson, South Carolina. The alcohol permit at issue in this proceeding is number 32057436-6. The Respondent held this permit on February 26, 2013.

On February 26, 2013, at approximately 1:10 p.m., South Carolina Law Enforcement Division (SLED) agents and deputies from the Anderson County Sheriff's Office entered the licensed premises to conduct an Alcohol Beverage License inspection. During the inspection, the officers found two video gaming machines--one Products Direct Sweepstakes machine and one Gift Surplus machine--on the licensed premises.

The officers spoke with Ursula Dean, who was the clerk on duty at the time of the inspection. Dean told the officers that Patel was aware that the officers were in the area. She went on to state that Patel had emptied money from the machines, turned off the power switches, and unplugged them from the wall. Dean was an employee and an agent of Patel and Meenaxi Inc., d/b/a Corner Mart. The answers she gave during the inspection were within the scope of her employment.

During his inspection of the premises, SLED Agent Thomas Bielawski found a number of discarded sweepstakes coupons and redemption instructions. The coupons were found in the trash, on the floor, and behind both machines.

Agent Bielawski plugged the machines in and turned on the power switches. Agent Bielawski was then able to see the type of games that were on the machines. I find, based on the testimony of Agent Bielawski and the related magistrate order, the two machines contained games of chance: poker, blackjack and keno on the Products Direct Sweepstakes machine; and poker and spinning reel style games on the Gift Surplus machine.

Both machines were seized pursuant to the officers' statutory authority. The officers opened the machines with keys provided by Dean. No money was found in either machine. After issuing a citation to Patel, the officers brought the two machines before Anderson County Magistrate Samuel Matthew Lollis. The Respondent requested a post-seizure hearing to contest the illegality of the machines. Magistrate Lollis examined the machines and determined that each machine was an illegal gambling device that violated South Carolina law. On March 1, 2013, Magistrate Loftis ordered the machines' destruction.

Corner Mart was originally named as a party in the related in rem action in magistrate's court to determine the legality of the machines at issue. Upon the motion of the counsel for Meenaxi, Inc., doing business as Corner Mart, Corner Mart was dismissed as the defendant. Meenaxi, Inc., d/b/a Corner Mart, had notice of the in rem action as well as an opportunity to be heard and was represented by counsel. Ultimately, the magistrate in the in rem action found the two machines were illegal and ordered their destruction.

Patel had knowledge that the machines were illegal. I find his testimony to the contrary to not be credible.

On March 28, 2013, the Department mailed the Respondent written notice of its intent to revoke the Respondent's off-premises beer and wine permit for violating the law by having the illegal gambling machines on his premises. On April 3, 2013, the Respondent timely protested the revocation of its off-premises beer and wine permit.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude, as a matter of law, the following:

The ALC has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2014), 1-23-301 et seq. (2005 & Supp. 2014), and 12-60-2540(A) (2000).

The Respondent Knowingly Permitted an Act on Its Premises that Constitutes a Crime

The Respondent contends he did not know that he had committed a crime by allowing the machines on his premises. In South Carolina, a holder of a permit for off-premises beer and wine is prohibited from knowingly allowing any criminal act to occur on the licensed premises. S.C. Code Ann. § 61-4-580(5) (Supp. 2014). It is unlawful for any person to keep on his premises any video game machine in which "is deposited a coin or thing of value...for the play of poker, blackjack, keno, lotto, bingo, or craps...." S.C. Code Ann. § 12-21-2710. The presence of such a machine is a misdemeanor and, therefore, the Department can revoke the licensee's permit for off-premises beer and wine. *Id.* and S.C. Code Ann. § 61-4-580(5). The record contains sufficient evidence to meet the Department's burden of showing the two machines in question: contained games of chance in violation of § 12-21-2710; were located on the Respondent's premises; and that the Respondent knowingly permitted the machines to be placed on its premises. Agent Bielawski testified that the two machines contained illegal games of chance and that he found the two machines on the

Respondent's premises. Dean told Agent Bielawski that Patel had turned off, unplugged, and emptied the machines of money because he knew the officers were in the area. From this behavior, one can reasonably infer that Patel knew the machines were illegal.

Change in Law

The Respondent argued that the two machines were legal on the dates they were seized. S.C. Code Ann. § 61-4-580 was amended in 1999 to allow "certain legitimate promotions and sweepstakes where specific requirements were met which did not otherwise violate South Carolina law." Op. S.C. Atty. Gen., 2013 WL 3243060 (June 14, 2013). The amendment was meant to make an "exemption from the previous absolute prohibition on all 'gambling or games of chance' ...[and] not [create] a broad exception to all of the laws pertaining to gambling or games of chance in South Carolina and certainly not an exemption to specific prohibitions of § 12-21-2710." Id. The statute was amended again in 2013, but only to clarify the legislature's intent that it was not meant to create an exemption to the State's ban on gaming machines found in § 12-21-2710. Id.

The Respondent argues that the two machines fit the exception outlined in § 61-4-580(3), which was created in the 1999 amendment. Among other requirements, the machine in question must have "no purchase payment, entry fee, or proof of purchase...as a condition of entering the game promotion or receiving a prize." S.C. Code Ann. § 61-4-580(3)(b). The Respondent argued the machines required payment for coupons, which could be redeemed online for a variety of merchandise. The Respondent went on to explain that, after the coupons were purchased, the games on the machines were free to play. However, the two machines in this case clearly required payment in order to play the games. Agent Bielawski testified that both machines had bill acceptors on the front of the machine. After the machines were turned on, Agent Bielawski saw the logos for the various games, but was unable to play the games without putting money into the machine. Furthermore, Agent Bielawski found discarded coupons on the floor by the machines. Based on his investigation, he discovered the coupons could only be redeemed on a website that featured incredibly overpriced merchandise. I find that these coupons have no value. Many coupons were discarded on the floor by patrons. Payments put into the machines were to play the games and were not related to a patron's bona fide intention to acquire the coupons. The coupon scheme was a thinly veiled artifice designed to conceal the fact that payment was made solely to play the games.

Due Process

The Respondent argues that due process was violated when Patel was not personally named as a party by the Petitioner in this action. Due process is "flexible and calls for such procedural protections as the particular situation demands." Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 561, 505 S.E.2d 598, 603 (Ct. App. 1998) (quoting Stono River Envtl. Protection Assn v. South Carolina Dept of Health and Envtl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 341 (1991)). Due process requires "notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.* at 562, 505 S.E.2d at 603. As the sole owner of Meenaxi, Inc., Patel was aware of this proceeding and, in fact, was present in the courtroom. The Court invited Patel to formally intervene in the proceeding and he declined. Because Patel had the opportunity to meaningfully participate in this case, but declined to do so, the Petitioner did not violate his due process rights.

Res Judicata

The Respondent claims that the in rem magistrate order has no res judicata or collateral estoppel effect in this case. While this argument is an accurate statement of the principles of res judicata and collateral estoppel, it is beside the point. The Department did not argue that the magistrate's order has preclusive effect nor does this Court consider it a binding conclusion. The underlying magistrate order is evidence that the two machines seized during the search were illegal.

Admissibility of Statements by Dean

The Respondent argues that any statements Dean made to the officer during their inspection of the machines constitute hearsay and, therefore, should not be admissible. The statements that Dean made to Agent Bielawski at the time the two machines were seized were recorded in his investigative report. Agent Bielawski's report is admissible as an exception to the hearsay rule because the report is a record of a regularly conducted activity. SCRE 803(6). In addition, Dean's statements were an admission of a party in this case. SCRE 1007. As mentioned above, her statements were made as an employee and an agent of Patel and Meenaxi, Inc. and were within the scope of her employment. Therefore, by virtue of the rules of agency, her statements can be attributed to Meenaxi, Inc.

Unlawful Search

The Respondent argued that the officers did not have a warrant when they inspected the

Respondent's premises and, therefore, the search was unlawful. Under S.C. Code Ann. §§ 61-4-230 and 61-6-4190, SLED has the right to inspect the licensed premises. In addition, any gaming machine that contains games of chance as prohibited under S.C. Code Ann. § 12-21-2710 must "be seized by any law enforcement officer and at once taken before any magistrate of the county...who shall immediately examine it, and if satisfied that it is in violation [of the law]...direct that it be immediately destroyed." S.C. Code Ann. § 12-21-2712. The officers' inspection of the two machines was made pursuant to that authority.

Estoppel

The Respondent argued that the Department had issued licenses for both machines to be used in South Carolina and, therefore, should be prevented from now finding they were illegal. The argument in essence is an argument that the Department should be estopped from revoking the Respondent's off-premises beer and wine permit. Under South Carolina law, "[t]he party asserting estoppel bears the burden of establishing all its elements." Estes v. Roper Temp. Servs., 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct. App. 1991). A party asserting estoppel against the government must prove "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." Grant v. City of Folly Beach, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001), see also Abbeville Arms v. City of Abbeville, 273 S.C. 491, 257 S.E.2d 716 (1979). Citizens are presumed to know the law and are charged with exercising "reasonable care to protect [their] interest[s]." Smothers v. U.S. Fidelity and Guar. Co., 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct. App. 1996). Absent even one element, estoppel will not lie against a government entity. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229. The Respondent has not shown that any of the three essential elements were present. In particular, the Respondent was not able to show that it was reasonable for him to rely on the license from the Department that was affixed to the outside of the machine to conclude the machines were legal. During his testimony, the Respondent admitted that he knew the machines were illegal on the date they were seized. The Respondent also admitted that he never investigated whether these two machines in particular were legal at the time he placed them in his store. As the Respondent has not met his burden, the Department is not estopped from taking the position that the gaming machines on the licensed premises were illegal.

Proper Penalty

According to the Department's penalty guidelines, revocation of the Respondent's permit is appropriate in these circumstances. Based on my finding of fact that the Respondent knew or should have known that the machines were illegal and the lack of mitigating evidence, I find no reason to deviate from the penalty provided for in the guidelines and imposed by the Department.

ORDER

IT IS THEREFORE ORDERED that, for the reasons set forth above the Respondent's off-premises beer and wine permit is hereby revoked.

IT IS SO ORDERED.

Deborah Brooks Durden

Deborah Brooks Durden
Administrative Law Judge

January 8, 2015
Columbia, South Carolina

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FEB 19 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,

Petitioner,

vs.

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

Docket No. 13-ALJ-17-0216-CC

**ORDER DENYING RESPONDENT'S
MOTION FOR RECONSIDERATION**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of counsel for Respondent, Meenaxi, Inc., d/b/a Corner Mart, seeking reconsideration of the Court's Order filed on January 8, 2015. The arguments in the motion merely reiterate the arguments made by Petitioner at the hearing. Those issues were carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

IT IS HEREBY ORDERED that Respondent's Motion for Reconsideration, alteration or amendment of its January 8, 2015 Order is **DENIED**.

AND IT IS SO ORDERED.

Deborah Brooks Durden

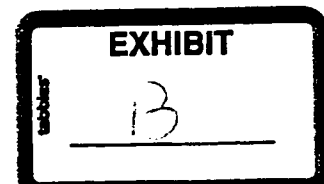
Deborah Brooks Durden
Administrative Law Judge

January 26, 2015
Columbia, South Carolina

FILED

January 26, 2015

SC ADMIN. LAW COURT



CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin E. Coleman

Robin E. Coleman

Judicial Aide to Deborah Brooks Quidley

RECEIVED

FEB 19 2015

SC Court of Appeals

January 26, 2015
Columbia, South Carolina

FILED

January 26, 2015

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

SEP 19 2015

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Court of Appeals

Case No. 13-ALJ-17-0216-CC

Meenaxi, Inc., d/b/a Corner Mart Appellant,

v.

South Carolina Department of Revenue Respondent.

APPELLANT'S PETITION FOR STAY AND SUPERSEDEAS

The Appellant above named files this Verified Petition pursuant to Rule 241 of the South Carolina Appellate Court Rules and hereby petitions this most Honorable Court as follows:

This is a Petition for a Stay and Supersedeas in a civil action pursuant to Rule 241 of the South Carolina Appellate Rules of Practice.

This case involves an Appeal from an Order of the Administrative Law Court revoking the Appellant's off-premises wine and beer permit.

In February 2013, the South Carolina Department of Revenue determined a violation of the license conditions had occurred and assessed a penalty of revocation of the off-premises beer and wine permit. A certified copy of the January 8, 2015, Order is attached as Exhibit 1.

Following the assessment of the penalty, the Appellant filed a Notice of Motion

and Motion for Reconsideration and/or Motion for Relief from Judgment or Order and For Stay. Appellant moved, in part, on the grounds that Judge Durden's Order contained errors of fact and law, and further that the penalty of revocation was not supported by the evidence presented to the Court, was harsh, capricious and unfair. This motion is attached as Exhibit 2.

The Honorable Deborah Brooks Durden, Administrative Law Judge, issued an Order Denying Appellant's Motion for Reconsideration on January 26, 2015. A certified copy of this order is attached as Exhibit 3.

Appellant then filed a Notice of Motion and Motion for Supersedeas on February 2, 2015. A copy of this motion is attached as Exhibit 4. The Honorable Deborah Durden issued an Order Denying Appellant's Motion for Supersedeas on February 10, 2015. A certified copy of this Order is attached hereto as Exhibit 5.

Attached hereto is an affidavit of Malkesh Patel, Exhibit 6.

Contemporaneously herewith, the Appellant is filing an Appeal of the Order of the Honorable Deborah Brooks Durden.

The undersigned has consulted with attorneys for the South Carolina Department and informed them that he would be filing a Petition for Writ of Supersedeas and Stay. They have indicated to the undersigned that the Department does object to a Supersedeas in this case.

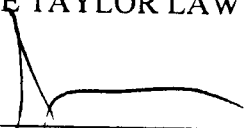
The Appellant seeks an Order pursuant to Rule 241 of the Appellate Court Rules, including, but not limited to Rule 241(d) suspending or staying the Order of the Lower Court pending an appeal in this action.

Based on the material presented to the Court by way of Affidavit of Malkesh

Patel, and the verified Petition, it is clear that a Supersedeas is necessary in order to prevent insolvency of the Appellant's business, to prevent irreparable harm, and to preserve the Status Quo. The Appellant has already lost his license and his business is suffering irreparable harm. The undersigned respectfully requests that the Court issue its Order Ex Parte as soon as possible to prevent further harm to the Appellant and his business.

Wherefore the undersigned prays that the Court issue its Order Ex Parte granting Appellant a Writ of Supersedeas and Stay and such other and further relief as the Court deems just and proper.

MOORE TAYLOR LAW FIRM, P.A.

BY: 

S. Jahue Moore
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY APPELLANT
MEENAXI, INC.

West Columbia, South Carolina

February 17, 2015

FILED

January 8, 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

SC ADMIN. LAW COURT

South Carolina Department of Revenue,

Docket No. 13-ALJ-17-0216-CC

Petitioner,

vs.

ORDER

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

APPEARANCES: For Petitioner: Lauren Acquaviva, Esquire
For Respondent: S. Jahue Moore, Esquire

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 12-60-2540(A) for a contested case hearing requested by Meenaxi, Inc., d/b/a Corner Mart (Respondent) against the South Carolina Department of Revenue (Department) contesting the revocation of the Respondent's beer and wine permit due to the presence of illegal gambling machines on the licensed premises. The Respondent exhausted all prehearing remedies with the Department and filed a timely request for a contested case hearing before the ALC.

ISSUES

1. Did the Respondent violate S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constituted a crime?
2. If so, is the revocation of the Respondent's off-premises beer and wine permit an appropriate penalty?

FINDINGS OF FACT

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses.

This Court has personal and subject matter jurisdiction. Notice of the date, time and place of the hearing was timely given to all parties. A hearing of this matter was held on December 4, 2014.

During the hearing, Malkesh Patel testified that he is the sole owner of Meenaxi, Inc. He had notice of this proceeding and was invited by the Court to intervene.

Certified to be a true and correct copy
of the original record on file with the
South Carolina Administrative Law Court

EXHIBIT

1

The Department issued an off-premises beer and wine permit to Meenaxi, Inc., which does business as Corner Mart. Corner Mart is located at 1010 East Shockley Ferry Road, Anderson, South Carolina. The alcohol permit at issue in this proceeding is number 32057436-6. The Respondent held this permit on February 26, 2013.

On February 26, 2013, at approximately 1:10 p.m., South Carolina Law Enforcement Division (SLED) agents and deputies from the Anderson County Sheriff's Office entered the licensed premises to conduct an Alcohol Beverage License inspection. During the inspection, the officers found two video gaming machines--one Products Direct Sweepstakes machine and one Gift Surplus machine--on the licensed premises.

The officers spoke with Ursula Dean, who was the clerk on duty at the time of the inspection. Dean told the officers that Patel was aware that the officers were in the area. She went on to state that Patel had emptied money from the machines, turned off the power switches, and unplugged them from the wall. Dean was an employee and an agent of Patel and Meenaxi Inc., d/b/a Corner Mart. The answers she gave during the inspection were within the scope of her employment.

During his inspection of the premises, SLED Agent Thomas Bielawski found a number of discarded sweepstakes coupons and redemption instructions. The coupons were found in the trash, on the floor, and behind both machines.

Agent Bielawski plugged the machines in and turned on the power switches. Agent Bielawski was then able to see the type of games that were on the machines. I find, based on the testimony of Agent Bielawski and the related magistrate order, the two machines contained games of chance: poker, blackjack and keno on the Products Direct Sweepstakes machine; and poker and spinning reel style games on the Gift Surplus machine.

Both machines were seized pursuant to the officers' statutory authority. The officers opened the machines with keys provided by Dean. No money was found in either machine. After issuing a citation to Patel, the officers brought the two machines before Anderson County Magistrate Samuel Matthew Lollis. The Respondent requested a post-seizure hearing to contest the illegality of the machines. Magistrate Lollis examined the machines and determined that each machine was an illegal gambling device that violated South Carolina law. On March 1, 2013, Magistrate Loftis ordered the machines' destruction.

Corner Mart was originally named as a party in the related in rem action in magistrate's court to determine the legality of the machines at issue. Upon the motion of the counsel for Meenaxi, Inc., doing business as Corner Mart, Corner Mart was dismissed as the defendant. Meenaxi, Inc., d/b/a Corner Mart, had notice of the in rem action as well as an opportunity to be heard and was represented by counsel. Ultimately, the magistrate in the in rem action found the two machines were illegal and ordered their destruction.

Patel had knowledge that the machines were illegal. I find his testimony to the contrary to not be credible.

On March 28, 2013, the Department mailed the Respondent written notice of its intent to revoke the Respondent's off-premises beer and wine permit for violating the law by having the illegal gambling machines on his premises. On April 3, 2013, the Respondent timely protested the revocation of its off-premises beer and wine permit.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude, as a matter of law, the following:

The ALC has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2014), 1-23-301 et seq. (2005 & Supp. 2014), and 12-60-2540(A) (2000).

The Respondent Knowingly Permitted an Act on Its Premises that Constitutes a Crime

The Respondent contends he did not know that he had committed a crime by allowing the machines on his premises. In South Carolina, a holder of a permit for off-premises beer and wine is prohibited from knowingly allowing any criminal act to occur on the licensed premises. S.C. Code Ann. § 61-4-580(5) (Supp. 2014). It is unlawful for any person to keep on his premises any video game machine in which "is deposited a coin or thing of value...for the play of poker, blackjack, keno, lotto, bingo, or craps...." S.C. Code Ann. § 12-21-2710. The presence of such a machine is a misdemeanor and, therefore, the Department can revoke the licensee's permit for off-premises beer and wine. *Id.* and S.C. Code Ann. § 61-4-580(5). The record contains sufficient evidence to meet the Department's burden of showing the two machines in question: contained games of chance in violation of § 12-21-2710; were located on the Respondent's premises; and that the Respondent knowingly permitted the machines to be placed on its premises. Agent Bielawski testified that the two machines contained illegal games of chance and that he found the two machines on the

Respondent's premises. Dean told Agent Bielawski that Patel had turned off, unplugged, and emptied the machines of money because he knew the officers were in the area. From this behavior, one can reasonably infer that Patel knew the machines were illegal.

Change in Law

The Respondent argued that the two machines were legal on the dates they were seized. S.C. Code Ann. § 61-4-580 was amended in 1999 to allow "certain legitimate promotions and sweepstakes where specific requirements were met which did not otherwise violate South Carolina law." Op. S.C. Atty. Gen., 2013 WL 3243060 (June 14, 2013). The amendment was meant to make an "exemption from the previous absolute prohibition on all 'gambling or games of chance'...[and] not [create] a broad exception to all of the laws pertaining to gambling or games of chance in South Carolina and certainly not an exemption to specific prohibitions of § 12-21-2710." Id. The statute was amended again in 2013, but only to clarify the legislature's intent that it was not meant to create an exemption to the State's ban on gaming machines found in § 12-21-2710. Id.

The Respondent argues that the two machines fit the exception outlined in § 61-4-580(3), which was created in the 1999 amendment. Among other requirements, the machine in question must have "no purchase payment, entry fee, or proof of purchase...as a condition of entering the game promotion or receiving a prize." S.C. Code Ann. § 61-4-580(3)(b). The Respondent argued the machines required payment for coupons, which could be redeemed online for a variety of merchandise. The Respondent went on to explain that, after the coupons were purchased, the games on the machines were free to play. However, the two machines in this case clearly required payment in order to play the games. Agent Bielawski testified that both machines had bill acceptors on the front of the machine. After the machines were turned on, Agent Bielawski saw the logos for the various games, but was unable to play the games without putting money into the machine. Furthermore, Agent Bielawski found discarded coupons on the floor by the machines. Based on his investigation, he discovered the coupons could only be redeemed on a website that featured incredibly overpriced merchandise. I find that these coupons have no value. Many coupons were discarded on the floor by patrons. Payments put into the machines were to play the games and were not related to a patron's bona fide intention to acquire the coupons. The coupon scheme was a thinly veiled artifice designed to conceal the fact that payment was made solely to play the games.

Due Process

The Respondent argues that due process was violated when Patel was not personally named as a party by the Petitioner in this action. Due process is “flexible and calls for such procedural protections as the particular situation demands.” Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 561, 505 S.E.2d 598, 603 (Ct. App. 1998) (quoting Stono River Env'tl. Protection Assn v. South Carolina Dept of Health and Env'tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 341 (1991)). Due process requires “notice, an opportunity to be heard in a meaningful way, and judicial review.” Id at 562, 505 S.E.2d at 603. As the sole owner of Meenaxi, Inc., Patel was aware of this proceeding and, in fact, was present in the courtroom. The Court invited Patel to formally intervene in the proceeding and he declined. Because Patel had the opportunity to meaningfully participate in this case, but declined to do so, the Petitioner did not violate his due process rights.

Res Judicata

The Respondent claims that the in rem magistrate order has no res judicata or collateral estoppel effect in this case. While this argument is an accurate statement of the principles of res judicata and collateral estoppel, it is beside the point. The Department did not argue that the magistrate's order has preclusive effect nor does this Court consider it a binding conclusion. The underlying magistrate order is evidence that the two machines seized during the search were illegal.

Admissibility of Statements by Dean

The Respondent argues that any statements Dean made to the officer during their inspection of the machines constitute hearsay and, therefore, should not be admissible. The statements that Dean made to Agent Bielawski at the time the two machines were seized were recorded in his investigative report. Agent Bielawski's report is admissible as an exception to the hearsay rule because the report is a record of a regularly conducted activity. SCRE 803(6). In addition, Dean's statements were an admission of a party in this case. SCRE 1007. As mentioned above, her statements were made as an employee and an agent of Patel and Meenaxi, Inc. and were within the scope of her employment. Therefore, by virtue of the rules of agency, her statements can be attributed to Meenaxi, Inc.

Unlawful Search

The Respondent argued that the officers did not have a warrant when they inspected the

Respondent's premises and, therefore, the search was unlawful. Under S.C. Code Ann. §§ 61-4-230 and 61-6-4190, SLED has the right to inspect the licensed premises. In addition, any gaming machine that contains games of chance as prohibited under S.C. Code Ann. § 12-21-2710 must "be seized by any law enforcement officer and at once taken before any magistrate of the county...who shall immediately examine it, and if satisfied that it is in violation [of the law]...direct that it be immediately destroyed." S.C. Code Ann. § 12-21-2712. The officers' inspection of the two machines was made pursuant to that authority.

Estoppel

The Respondent argued that the Department had issued licenses for both machines to be used in South Carolina and, therefore, should be prevented from now finding they were illegal. The argument in essence is an argument that the Department should be estopped from revoking the Respondent's off-premises beer and wine permit. Under South Carolina law, "[t]he party asserting estoppel bears the burden of establishing all its elements." Estes v. Roper Temp. Servs., 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct. App. 1991). A party asserting estoppel against the government must prove "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." Grant v. City of Folly Beach, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001), see also Abbeville Arms v. City of Abbeville, 273 S.C. 491, 257 S.E.2d 716 (1979). Citizens are presumed to know the law and are charged with exercising "reasonable care to protect [their] interest[s]." Smothers v. U.S. Fidelity and Guar. Co., 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct. App. 1996). Absent even one element, estoppel will not lie against a government entity. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229. The Respondent has not shown that any of the three essential elements were present. In particular, the Respondent was not able to show that it was reasonable for him to rely on the license from the Department that was affixed to the outside of the machine to conclude the machines were legal. During his testimony, the Respondent admitted that he knew the machines were illegal on the date they were seized. The Respondent also admitted that he never investigated whether these two machines in particular were legal at the time he placed them in his store. As the Respondent has not met his burden, the Department is not estopped from taking the position that the gaming machines on the licensed premises were illegal.

Proper Penalty

According to the Department's penalty guidelines, revocation of the Respondent's permit is appropriate in these circumstances. Based on my finding of fact that the Respondent knew or should have known that the machines were illegal and the lack of mitigating evidence, I find no reason to deviate from the penalty provided for in the guidelines and imposed by the Department.

ORDER

IT IS THEREFORE ORDERED that, for the reasons set forth above the Respondent's off-premises beer and wine permit is hereby revoked.

IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

January 8, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, A. Taylor Rollins, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



A. Taylor Rollins
Staff Attorney to Deborah Brooks Durden

January 8, 2015
Columbia, South Carolina

RECEIVED

JAN 14 2015

SC Court of Appeals

FILED

JAN 08 2015

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,)
)
Petitioner,)
)
vs.)
)
Meenaxi, Inc., d/b/a Corner Mart,)
)
Respondent.)
_____)

Docket No.: 13-ALJ-17-0216-CC

**NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION AND/OR
MOTION FOR RELIEF FROM
JUDGMENT OR ORDER AND FOR
STAY**

**TO: LAUREN ACQUAVIVA, ESQUIRE, ATTORNEY FOR THE PETITIONER,
SOUTH CAROLINA DEPARTMENT OF REVENUE**

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through his undersigned counsel, will move pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure and Rule 29(D) of the Rules of Procedure for the Administrative Law Court, and such other authority as the Court may deem applicable and proper, before the Honorable Deborah Brooks Durden, Administrative Law Judge for a reconsideration, alteration or amendment of the Order of this Court dated January 8, 2015, granting Judgment to the Petitioner South Carolina Department of Revenue. A copy of Judge Durden's Order is attached hereto and incorporated herein as Exhibit A.

Additionally, the Respondent moves pursuant to Rule 29(E) of the Rules of Procedure for the Administrative Law Court for Stay of Final Order pending a hearing on the Respondent's Motion and any subsequent appeal. This Motion is made in part on the following grounds:

1. The Trial Court erred in finding and ruling as a matter of law that Respondent violated S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constituted a crime;



2. The Trial Court erred in finding and ruling as a matter of law that revocation of Respondent's off-premises beer and wine permit was an appropriate penalty in this case;
3. The Trial Court erred by revoking Respondent's off-premises beer and wine permit;
4. The Trial Court erred in finding and concluding as a matter of law that Respondent knowingly permitted an act on its premises that constituted a crime;
5. The Trial Court erred in finding and concluding as a matter of law that the Respondent violated S.C. Code Ann. § 61-4-580(5) (Supp. 2014);
6. The Trial Court erred in finding and ruling as a matter of law that the Respondent violated S.C. Code Ann. § 12-21-2710;
7. The Trial Court erred in finding and ruling as a matter of law that the Department met its burden of showing that the two machines in question in this case contained games of chance in violation of S.C. Code Ann. § 12-21-2710;
8. The Trial Court erred in finding and concluding as a matter of law that Malkesh Patel "knew the machines were illegal;"
9. The Trial Court erred in failing to apply the legislative exception set forth in S.C. Code Ann. § 61-4-580(3)(b);
10. The Trial Court erred in finding and concluding that "The coupon scheme was a thinly veiled artifice designed to conceal the fact that payment was made solely to play the games;"
11. The Trial Court erred in concluding and ruling as a matter of law that due process was not violated when "Malkesh Patel was not personally named as a party by the Petitioner in this action;"

12. The Trial Court erred in concluding and ruling as a matter of law that Malkesh Patel's due process rights were not violated;

13. The Trial Court erred in relying on the in rem magistrate court order submitted to her at hearing/trial;

14. The Trial Court erred in admitting the statements made by Ursula Dean to the officer during the inspection into evidence over Respondent's objection that they constituted hearsay;

15. The Trial Court erred in determining that the officer's inspection of the machines did not constitute an unlawful search and seizure;

16. The Trial Court erred in failing to apply estoppel to the Department's action seeking revocation of Respondent's off-premises beer and wine permit;

17. The Trial Court's penalty of revocation of Respondent's off-premises beer and wine permit is not supported by the evidence presented at trial and is therefore harsh;

18. The Trial Court's Order contains numerous errors with respect to its Findings of Fact and Conclusions of law;

19. The Findings of Fact are unsupported by the evidence presented at the hearing before the Court;

20. The Court's Order misconstrues and misapplies the applicable law to the facts of this case; and

21. The statutes relied on by the Administrative Law Judge are arbitrary and violated Respondent's Constitutional Protections afforded under South Carolina Law.

In addition, the Respondent moves for an Order staying the Court's Final Order and/or the effect of the Final Order on the grounds that it works a substantial hardship during the

pendency of this motion (and subsequent appeal if necessary.)

This motion shall be based on the attached Order, a Memorandum of Law to be filed with the Court, and such other and further relief as this Court deems proper.

For the reasons set forth above, the undersigned would respectfully request an Order of reconsideration, alteration or amendment of its January 8, 2015, Order.

MOORE TAYLOR LAW FIRM, P.A.

BY:



S. Jahue Moore
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY FOR THE RESPONDENT

West Columbia, South Carolina

January 15, 2015

FILED

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

January 8, 2015

SC ADMIN. LAW COURT

South Carolina Department of Revenue,

Docket No. 13-ALJ-17-0216-CC

Petitioner,

vs.

ORDER

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

APPEARANCES: For Petitioner: Lauren Acquaviva, Esquire
For Respondent: S. Jahue Moore, Esquire

STATEMENT OF THE CASE

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to S.C. Code Ann. § 12-60-2540(A) for a contested case hearing requested by Meenaxi, Inc., d/b/a Corner Mart (Respondent) against the South Carolina Department of Revenue (Department) contesting the revocation of the Respondent's beer and wine permit due to the presence of illegal gambling machines on the licensed premises. The Respondent exhausted all prehearing remedies with the Department and filed a timely request for a contested case hearing before the ALC.

ISSUES

1. Did the Respondent violate S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constituted a crime?
2. If so, is the revocation of the Respondent's off-premises beer and wine permit an appropriate penalty?

FINDINGS OF FACT

Based upon the evidence presented, I make the following findings of fact, taking into consideration the burden on the parties to establish their respective cases by a preponderance of the evidence and taking into account the credibility of the witnesses.

This Court has personal and subject matter jurisdiction. Notice of the date, time and place of the hearing was timely given to all parties. A hearing of this matter was held on December 4, 2014.

During the hearing, Malkesh Patel testified that he is the sole owner of Meenaxi, Inc. He had notice of this proceeding and was invited by the Court to intervene.

EXHIBIT

A

The Department issued an off-premises beer and wine permit to Meenaxi, Inc., which does business as Corner Mart. Corner Mart is located at 1010 East Shockley Ferry Road, Anderson, South Carolina. The alcohol permit at issue in this proceeding is number 32057436-6. The Respondent held this permit on February 26, 2013.

On February 26, 2013, at approximately 1:10 p.m., South Carolina Law Enforcement Division (SLED) agents and deputies from the Anderson County Sheriff's Office entered the licensed premises to conduct an Alcohol Beverage License inspection. During the inspection, the officers found two video gaming machines--one Products Direct Sweepstakes machine and one Gift Surplus machine--on the licensed premises.

The officers spoke with Ursula Dean, who was the clerk on duty at the time of the inspection. Dean told the officers that Patel was aware that the officers were in the area. She went on to state that Patel had emptied money from the machines, turned off the power switches, and unplugged them from the wall. Dean was an employee and an agent of Patel and Meenaxi Inc., d/b/a Corner Mart. The answers she gave during the inspection were within the scope of her employment.

During his inspection of the premises, SLED Agent Thomas Bielawski found a number of discarded sweepstakes coupons and redemption instructions. The coupons were found in the trash, on the floor, and behind both machines.

Agent Bielawski plugged the machines in and turned on the power switches. Agent Bielawski was then able to see the type of games that were on the machines. I find, based on the testimony of Agent Bielawski and the related magistrate order, the two machines contained games of chance: poker, blackjack and keno on the Products Direct Sweepstakes machine; and poker and spinning reel style games on the Gift Surplus machine.

Both machines were seized pursuant to the officers' statutory authority. The officers opened the machines with keys provided by Dean. No money was found in either machine. After issuing a citation to Patel, the officers brought the two machines before Anderson County Magistrate Samuel Matthew Lollis. The Respondent requested a post-seizure hearing to contest the illegality of the machines. Magistrate Lollis examined the machines and determined that each machine was an illegal gambling device that violated South Carolina law. On March 1, 2013, Magistrate Loftis ordered the machines' destruction.

Corner Mart was originally named as a party in the related in rem action in magistrate's court to determine the legality of the machines at issue. Upon the motion of the counsel for Meenaxi, Inc., doing business as Corner Mart, Corner Mart was dismissed as the defendant. Meexnaxi, Inc., d/b/a Corner Mart, had notice of the in rem action as well as an opportunity to be heard and was represented by counsel. Ultimately, the magistrate in the in rem action found the two machines were illegal and ordered their destruction.

Patel had knowledge that the machines were illegal. I find his testimony to the contrary to not be credible.

On March 28, 2013, the Department mailed the Respondent written notice of its intent to revoke the Respondent's off-premises beer and wine permit for violating the law by having the illegal gambling machines on his premises. On April 3, 2013, the Respondent timely protested the revocation of its off-premises beer and wine permit.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude, as a matter of law, the following:

The ALC has jurisdiction over this matter pursuant to S.C. Code Ann. §§ 1-23-600 (Supp. 2014), 1-23-301 et seq. (2005 & Supp. 2014), and 12-60-2540(A) (2000).

The Respondent Knowingly Permitted an Act on Its Premises that Constitutes a Crime

The Respondent contends he did not know that he had committed a crime by allowing the machines on his premises. In South Carolina, a holder of a permit for off-premises beer and wine is prohibited from knowingly allowing any criminal act to occur on the licensed premises. S.C. Code Ann. § 61-4-580(5) (Supp. 2014). It is unlawful for any person to keep on his premises any video game machine in which "is deposited a coin or thing of value...for the play of poker, blackjack, keno, lotto, bingo, or craps...." S.C. Code Ann. § 12-21-2710. The presence of such a machine is a misdemeanor and, therefore, the Department can revoke the licensee's permit for off-premises beer and wine. *Id.* and S.C. Code Ann. § 61-4-580(5). The record contains sufficient evidence to meet the Department's burden of showing the two machines in question: contained games of chance in violation of § 12-21-2710; were located on the Respondent's premises; and that the Respondent knowingly permitted the machines to be placed on its premises. Agent Bielawski testified that the two machines contained illegal games of chance and that he found the two machines on the

Respondent's premises. Dean told Agent Bielawski that Patel had turned off, unplugged, and emptied the machines of money because he knew the officers were in the area. From this behavior, one can reasonably infer that Patel knew the machines were illegal.

Change in Law

The Respondent argued that the two machines were legal on the dates they were seized. S.C. Code Ann. § 61-4-580 was amended in 1999 to allow "certain legitimate promotions and sweepstakes where specific requirements were met which did not otherwise violate South Carolina law." Op. S.C. Att'y. Gen., 2013 WL 3243060 (June 14, 2013). The amendment was meant to make an "exemption from the previous absolute prohibition on all 'gambling or games of chance' ...[and] not [create] a broad exception to all of the laws pertaining to gambling or games of chance in South Carolina and certainly not an exemption to specific prohibitions of § 12-21-2710." Id. The statute was amended again in 2013, but only to clarify the legislature's intent that it was not meant to create an exemption to the State's ban on gaming machines found in § 12-21-2710. Id.

The Respondent argues that the two machines fit the exception outlined in § 61-4-580(3), which was created in the 1999 amendment. Among other requirements, the machine in question must have "no purchase payment, entry fee, or proof of purchase...as a condition of entering the game promotion or receiving a prize." S.C. Code Ann. § 61-4-580(3)(b). The Respondent argued the machines required payment for coupons, which could be redeemed online for a variety of merchandise. The Respondent went on to explain that, after the coupons were purchased, the games on the machines were free to play. However, the two machines in this case clearly required payment in order to play the games. Agent Bielawski testified that both machines had bill acceptors on the front of the machine. After the machines were turned on, Agent Bielawski saw the logos for the various games, but was unable to play the games without putting money into the machine. Furthermore, Agent Bielawski found discarded coupons on the floor by the machines. Based on his investigation, he discovered the coupons could only be redeemed on a website that featured incredibly overpriced merchandise. I find that these coupons have no value. Many coupons were discarded on the floor by patrons. Payments put into the machines were to play the games and were not related to a patron's bona fide intention to acquire the coupons. The coupon scheme was a thinly veiled artifice designed to conceal the fact that payment was made solely to play the games.

Due Process

The Respondent argues that due process was violated when Patel was not personally named as a party by the Petitioner in this action. Due process is "flexible and calls for such procedural protections as the particular situation demands." Ogburn-Matthews v. Loblolly Partners, 332 S.C. 551, 561, 505 S.E.2d 598, 603 (Ct. App. 1998) (quoting Stono River Env'tl. Protection Assn v. South Carolina Dept of Health and Env'tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 341 (1991)). Due process requires "notice, an opportunity to be heard in a meaningful way, and judicial review." *Id.* at 562, 505 S.E.2d at 603. As the sole owner of Meenaxi, Inc., Patel was aware of this proceeding and, in fact, was present in the courtroom. The Court invited Patel to formally intervene in the proceeding and he declined. Because Patel had the opportunity to meaningfully participate in this case, but declined to do so, the Petitioner did not violate his due process rights.

Res Judicata

The Respondent claims that the in rem magistrate order has no res judicata or collateral estoppel effect in this case. While this argument is an accurate statement of the principles of res judicata and collateral estoppel, it is beside the point. The Department did not argue that the magistrate's order has preclusive effect nor does this Court consider it a binding conclusion. The underlying magistrate order is evidence that the two machines seized during the search were illegal.

Admissibility of Statements by Dean

The Respondent argues that any statements Dean made to the officer during their inspection of the machines constitute hearsay and, therefore, should not be admissible. The statements that Dean made to Agent Bielawski at the time the two machines were seized were recorded in his investigative report. Agent Bielawski's report is admissible as an exception to the hearsay rule because the report is a record of a regularly conducted activity. SCRE 803(6). In addition, Dean's statements were an admission of a party in this case. SCRE 1007. As mentioned above, her statements were made as an employee and an agent of Patel and Meenaxi, Inc. and were within the scope of her employment. Therefore, by virtue of the rules of agency, her statements can be attributed to Meenaxi, Inc.

Unlawful Search

The Respondent argued that the officers did not have a warrant when they inspected the

Respondent's premises and, therefore, the search was unlawful. Under S.C. Code Ann. §§ 61-4-230 and 61-6-4190, SLED has the right to inspect the licensed premises. In addition, any gaming machine that contains games of chance as prohibited under S.C. Code Ann. § 12-21-2710 must "be seized by any law enforcement officer and at once taken before any magistrate of the county...who shall immediately examine it, and if satisfied that it is in violation [of the law]...direct that it be immediately destroyed." S.C. Code Ann. § 12-21-2712. The officers' inspection of the two machines was made pursuant to that authority.

Estoppel

The Respondent argued that the Department had issued licenses for both machines to be used in South Carolina and, therefore, should be prevented from now finding they were illegal. The argument in essence is an argument that the Department should be estopped from revoking the Respondent's off-premises beer and wine permit. Under South Carolina law, "[t]he party asserting estoppel bears the burden of establishing all its elements." Estes v. Roper Temp. Servs., 304 S.C. 120, 122, 403 S.E.2d 157, 158 (Ct. App. 1991). A party asserting estoppel against the government must prove "(1) lack of knowledge and of the means of knowledge of the truth as to the facts in question, (2) justifiable reliance upon the government's conduct, and (3) a prejudicial change in position." Grant v. City of Folly Beach, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001), see also Abbeville Arms v. City of Abbeville, 273 S.C. 491, 257 S.E.2d 716 (1979). Citizens are presumed to know the law and are charged with exercising "reasonable care to protect [their] interest[s]." Smothers v. U.S. Fidelity and Guar. Co., 322 S.C. 207, 210-11, 470 S.E.2d 858, 860 (Ct. App. 1996). Absent even one element, estoppel will not lie against a government entity. Grant v. City of Folly Beach, 346 S.C. 74, 551 S.E.2d 229. The Respondent has not shown that any of the three essential elements were present. In particular, the Respondent was not able to show that it was reasonable for him to rely on the license from the Department that was affixed to the outside of the machine to conclude the machines were legal. During his testimony, the Respondent admitted that he knew the machines were illegal on the date they were seized. The Respondent also admitted that he never investigated whether these two machines in particular were legal at the time he placed them in his store. As the Respondent has not met his burden, the Department is not estopped from taking the position that the gaming machines on the licensed premises were illegal.

Proper Penalty

According to the Department's penalty guidelines, revocation of the Respondent's permit is appropriate in these circumstances. Based on my finding of fact that the Respondent knew or should have known that the machines were illegal and the lack of mitigating evidence, I find no reason to deviate from the penalty provided for in the guidelines and imposed by the Department.

ORDER

IT IS THEREFORE ORDERED that, for the reasons set forth above the Respondent's off-premises beer and wine permit is hereby revoked.

IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

January 8, 2015
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

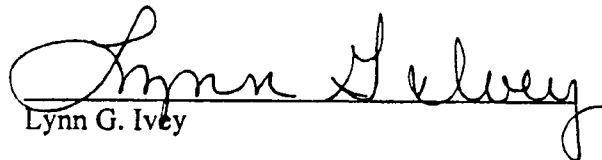
South Carolina Department of Revenue,)
)
Petitioner,)
)
vs.)
)
Meenaxi, Inc., d/b/a Corner Mart,)
)
Respondent.)
_____)

Docket No.: 13-ALJ-17-0216-CC

CERTIFICATE OF SERVICE

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, PA, hereby certify that I served a copy of the **Notice of Motion and Motion for Reconsideration and/or Motion for Relief from Judgment or Order and for Stay** on the following persons by placing a copy of same in the United States Mail, in an envelope with sufficient postage affixed thereto, addressed as follows:

Lauren Acquaviva, Esquire
Counsel for Litigation
South Carolina Department of Revenue
P.O. Box 12265
Columbia, SC 29211


Lynn G. Ivey

West Columbia, South Carolina

January 16, 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,

Petitioner,

vs.

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

Docket No. 13-ALJ-17-0216-CC

**ORDER DENYING RESPONDENT'S
MOTION FOR RECONSIDERATION**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the motion of counsel for Respondent, Meenaxi, Inc., d/b/a Corner Mart, seeking reconsideration of the Court's Order filed on January 8, 2015. The arguments in the motion merely reiterate the arguments made by Petitioner at the hearing. Those issues were carefully considered and ruled upon by this Court. This motion does not seek to correct manifest errors of law or fact or to present newly discovered evidence. Therefore,

IT IS HEREBY ORDERED that Respondent's Motion for Reconsideration, alteration or amendment of its January 8, 2015 Order is **DENIED**.

AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

January 26, 2015
Columbia, South Carolina

FILED

January 26, 2015

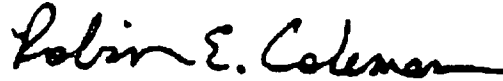
SC ADMIN. LAW COURT

Certified to be a true and correct copy
of the original record on file with the
South Carolina Administrative Law Court



CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

January 26, 2015
Columbia, South Carolina

FILED

January 26, 2015

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,)
)
Petitioner,)
)
vs.)
)
Meenaxi, Inc., d/b/a Corner Mart,)
)
Respondent.)
_____)

Docket No.: 13-ALJ-17-0216-CC

**NOTICE OF MOTION AND MOTION
FOR SUPERSEDEAS**

**TO: LAUREN ACQUAVIVA, ESQUIRE, ATTORNEY FOR THE PETITIONER,
SOUTH CAROLINA DEPARTMENT OF REVENUE**

YOU WILL PLEASE TAKE NOTICE that the Respondent, by and through his undersigned counsel, will move before the Honorable Deborah Brooks Durden, Administrative Law Judge, pursuant to Rule 241(d) of the South Carolina Rules of Civil Procedure and such other authority as the Court may deem applicable and proper, for a Writ of Supersedeas asking and requesting that the Court's Final Order and Decision be stayed pending an appeal in this action.

This motion is made on the grounds that Final Order and Decision of the Court dated January 8, 2015 and the Order dated January 26, 2015 denying the Respondent's Motion for Reconsideration and making no ruling as to the Respondent's request for a Stay of Proceedings pending Appeal, has the impact of revoking the Respondent's Beer and Wine permit which is an integral part of his business for an indefinite and lengthy period of time which would have the potential impact of bringing the Respondent to severe financial hardship ruin during the pendency of any appeal in this matter. This would have a severe impact not only on Respondent but its employees. Considering the impact on the Respondent and others of the decision, a Supersedeas should be granted suspending implementation of the Order pending an appeal of



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this matter.

Respondent's counsel has informed Attorney for Petitioner of his intent to move for a Writ of Supersedeas and they will oppose it. However, Respondent believes that under the circumstances of this case such relief is appropriate and respectfully prays for the same.

MOORE TAYLOR LAW FIRM, P.A.

BY:



S. Jahue Moore
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY FOR THE RESPONDENT

West Columbia, South Carolina

February 4, 2015

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

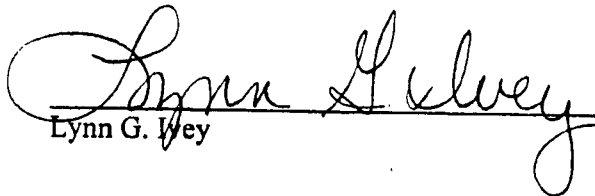
South Carolina Department of Revenue,)
)
Petitioner,)
)
vs.)
)
Meenaxi, Inc., d/b/a Corner Mart,)
)
Respondent.)
_____)

Docket No.: 13-ALJ-17-0216-CC

CERTIFICATE OF SERVICE

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, PA, hereby certify that I served a copy of the **Notice of Motion and Motion for Supersedeas** on the following persons by placing a copy of same in the United States Mail, in an envelope with sufficient postage affixed thereto, addressed as follows:

Lauren Acquaviva, Esquire
Counsel for Litigation
South Carolina Department of Revenue
P.O. Box 12265
Columbia, SC 29211


Lynn G. Ivey

West Columbia, South Carolina

February 4, 2015

FILED

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SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,

Petitioner,

vs.

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

Docket No. 13-ALJ-17-0216-CC

**ORDER DENYING RESPONDENT'S
MOTION FOR SUPERSEDEAS**

This matter is before the Administrative Law Court (ALC or Court) pursuant to the Motion for Supersedeas filed on February 4, 2015 by counsel for Respondent, Meenaxi, Inc., d/b/a Corner Mart (Respondent). On February 6, 2015, Petitioner, South Carolina Department of Revenue (Department), filed its Response in opposition to the Motion.

In the Final Order and Decision, this Court found that (1) the Respondent violated S.C. Code Ann. § 61-4-580(5) by knowingly permitting an act on its premises that constitutes a crime – possessing unlawful gaming machines; and (2) revocation of the Respondent's beer and wine permit is the appropriate penalty for that violation. In its Motion, Respondent asserts that it will suffer severe financial hardship if its permit is revoked during the pendency of any appeal of this matter. The Department argues that the risk of public harm and the potential for ineffective enforcement of the alcohol laws outweighs any potential financial hardship the Respondent may suffer.

"The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure." S.C. Code Ann. § 1-23-380. The effect of the granting of a supersedeas motion is to suspend or stay the matters decided in the order during the pendency of an appeal. In determining whether to grant an order for supersedeas, the Court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot. Rule 241 S.C. Rules of Appellate Procedure. In this case, I find that it is not necessary to stay the order to preserve jurisdiction of the appeal or

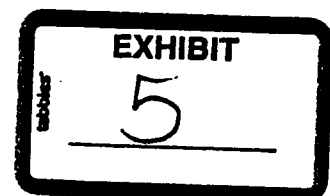
FILED

February 10, 2015

SC ADMIN. LAW COURT

Certified to be a true and correct copy
of the original record on file with the
South Carolina Administrative Law Court

scd page 1 of 3



prevent any issue from becoming moot. I find that granting a stay of the order would interfere with the Department's enforcement of this state's alcohol laws.

A beer and wine permit is a privilege and not a right. See Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943). The Respondent's conduct demonstrates that it should not be trusted to maintain this privilege any longer. The Court found that Malkesh Patel, the sole owner of Meenaxi, Inc., emptied the money out of the illegal gaming machines and unplugged them once he knew law enforcement was in the area. Patel chose to put these illegal gaming machines in his store and to try and hide his actions in an attempt to avoid being caught. These actions by Patel demonstrate disregard for the alcohol laws of this State, and an intentional attempt to hide violations of the alcohol laws from law enforcement. Permitting a person who disregards the alcohol laws of this State to keep his alcohol license creates an unnecessary risk of public harm.

Additionally, permitting the Respondent to maintain the privilege of keeping its beer and wine permit creates a risk of ineffective enforcement of the alcohol laws. Specifically, while the appeal is pending, the Respondent can circumvent the effect of having a revoked permit by applying for a new permit at a different location and, thus, completely avoid the consequences of its actions. Pursuant to S.C. Code Ann. § 61-4-520(3), the Department must not issue a beer and wine permit unless "[t]he applicant, within two years before the date of application, has not had revoked a beer or a wine permit issued to him." Thus, if the revocation remains in effect during the appeal, the Respondent cannot obtain a new beer and wine permit for two years from the date of the Order. If, however, the revocation is stayed, the Respondent can apply for a new permit and avoid the consequences of the revocation of the permit at issue in this case. By the time the Court of Appeals, and potentially the Supreme Court, issues a decision in this matter, the Respondent could already have started a new business. If that is allowed to happen, the revocation of the permit at issue would not affect the Respondent as it already would have obtained a new permit.

Allowing the Respondent to continue to hold a permit allows the Respondent to avoid the consequences of its actions. An appeal will take several months if not years to resolve. Respondent delayed the hearing in this matter at the ALC for 16 months by obtaining six continuances. By appealing the ALC decision, the Respondent would be able to operate for several years after being caught with illegal gaming machines before the license revocation would become effective. Allowing the Respondent to avoid the consequences of its actions for years hinders the Department's efforts to enforce the alcohol laws. Therefore,

IT IS HEREBY ORDERED that Respondent's Motion for Supersedeas seeking a stay of this Court's January 8, 2015 Order is **DENIED**.

AND IT IS SO ORDERED.

A handwritten signature in cursive script, reading "Deborah Brooks Durden", written in black ink.

Deborah Brooks Durden
Administrative Law Judge

February 10, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

February 10, 2015
Columbia, South Carolina

FILED

February 10, 2015

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 19 2015

APPEAL FROM ADMINISTRATIVE LAW COURT

26 Court of Appeals

Deborah Brooks Durden, Administrative Law Judge

Case No. 13-ALJ-17-0216-CC

Meenaxi, Inc., d/b/a Corner Mart.....Appellant,

v.

South Carolina Department of Revenue Respondent.

AFFIDAVIT

PERSONALLY appeared before me, Malkesh Patel, who, being duly sworn,
deposes and states that:

1. He is the sole owner of Meenaxi, Inc., d/b/a Corner Mart, the Appellant in the above captioned appeal.
2. He has knowledge of the affect of the Order dated January 8, 2015, on Appellant's business.
3. As the direct and proximate result of the lower court's order, the Appellant's sales have fallen by over 60%.
4. Due to this drastic decline in revenue, the Appellant has had to lay off two permanent full time employees who depended upon Appellant for their financial support and well-being.
5. If the Order remains in effect during the pendency of this appeal, then the undersigned will have no choice but to close the business.



SWORN to before me this 18th
day of February, 2015.

Lynn G. Ivey (SEAL)

Lynn G. Ivey
Notary Public for South Carolina
My Commission Expires: 1/8/23

M. Patel
Malkesh Patel

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 19 2015

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No. 13-ALJ-17-0216-CC

Meenaxi, Inc., d/b/a Corner Mart.....Appellant,

v.

South Carolina Department of Revenue..... Respondent.

VERIFICATION

PERSONALLY appeared before me, Malkesh Patel, who, being duly sworn, deposes and says that he is the sole owner of Meenaxi, Inc., d/b/a Corner Mart in the foregoing action; that he has read the within Petition for Stay and Supersedeas and knows the allegations contained therein to be true except as to those allegations which may be alleged to be upon information and belief, and as to those, he believes them to be true.


Malkesh Patel

SWORN to before me this 18th
day of February, 2015.

 (SEAL)

Lynn G. Ivey
Notary Public for South Carolina
My Commission Expires: 1/3/23

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Case No. 13-ALJ-17-0216-CC

Meenaxi, Inc., d/b/a Corner Mart.....Appellant,

v.

South Carolina Department of Revenue Respondent.

CERTIFICATION OF ATTORNEY

The undersigned, as an officer of this Court, pursuant to Appellate Rule 241 (6) hereby certifies as an officer of this Court that notice has been given to counsel for the State that he would seek a Supersedeas in this action. Counsel for the Department of Revenue indicates that she objects to the issuance of a Writ.

Contemporaneously herewith, the undersigned is serving the Petition on adverse counsel.



S. Jahue Moore, Esq.
Moore, Taylor, & Thomas, PA
Post Office Box 5709
West Columbia, SC 29169
(803)-796-9160
(803)-791-8410
Attorney for Appellant

February 18, 2015

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
HONORABLE DEBORAH BROOKS DURDEN, ADMINISTRATIVE LAW JUDGE

CASE NO. 13-ALJ-17-0216-CC

South Carolina Department of Revenue.....Respondent,

v.

Meenaxi, Inc., d/b/a Corner Mart.....Appellant.

**RESPONDENT'S RETURN TO
APPELLANT'S PETITION FOR STAY AND SUPERSEDEAS**

Pursuant to Rules 240(e) and 241, SCACR, the Respondent, South Carolina Department of Revenue (Department), submits this Return in opposition to the Appellant's Petition for Stay and Supersedeas, which requests that this Court stay the Administrative Law Court's (ALC) Final Order and Decision pending an appeal of this matter. The Department respectfully requests that the Court deny the relief sought by Appellant.

In the ALC's Final Order and Decision dated February 19, 2015, the ALC found that (1) the Appellant violated S.C. Code Ann. § 61-4-580(5) (2009) by knowingly permitting an act on its premises that constitutes a crime – possessing unlawful gaming machines – and (2) revocation of the Appellant's beer and wine permit is the appropriate

penalty for such violation. In its Petition, Appellant asserts that “a Supersedeas is necessary in order to prevent insolvency of the Appellant’s business, to prevent irreparable harm, and to preserve the status quo.” The Department posits that the risk of public harm and the potential for ineffective enforcement of the alcohol laws, as will be explained more fully below, outweigh any potential financial hardship the Appellant may suffer. Thus, the ALC’s Final Order and Decision should not be stayed during the pendency of any appeal in this matter.

Pursuant to Rule 241(c)(2), SCACR, the “appellate court should consider whether [an order imposing a supersedeas of matters decided in the lower court’s order] is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Supersedeas is not necessary in this matter as jurisdiction is not in jeopardy, and the issues in the appeal will not become moot during the course of this appeal. The Appellant has not alleged any facts nor are there any facts to support an assertion that the jurisdiction of this appeal is in jeopardy without supersedeas. To the contrary, jurisdiction remains with the ALC and the Appellate Courts of this State. Furthermore, the Appellant has not alleged any facts nor are there any facts to support an assertion that this matter will become moot during this appeal. The issues in this matter are whether the Appellant permitted an act which constitutes a crime on its licensed premises and whether revocation of the Appellant’s beer and wine permit is the appropriate penalty. These issues do not become moot without a supersedeas.

Furthermore, as explained herein, potential alcohol license or permit holders’ past actions impact their ability to obtain licenses and permits in the future. The Department looks at the licensing history of an applicant to determine whether to grant a license or

permit. South Carolina law prohibits the Department from issuing licenses or permits to applicants with prior revocations. See S.C. Code Ann. §§ 61-2-140, 61-4-520(3), and 61-6-110(4) (2009). Therefore, the issues in the appeal will not become moot but rather remain highly relevant and important going forward, as knowing whether the Appellant has a prior revocation on its record impacts its ability to obtain new licenses and permits in the future. Thus, because the facts in this matter do not support an order imposing a supersedeas as set forth in Rule 241(c)(2), SCACR, this Court should deny the Appellant's Petition.

Additionally, if the Court stays the ALC's Final Order and Decision, a risk to public harm exists as the Appellant will be permitted to keep its beer and wine permit during the pendency of the appeal. It is important to understand that a beer and wine permit is a privilege and not a right. See Feldman v. S.C. Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943). The Appellant's conduct demonstrates that it cannot be trusted to maintain this privilege any longer. This case involves illegal gaming machines on the Appellant's premises. In the ALC's Findings of Fact, it found that Malkesh Patel (Mr. Patel), the sole owner of Meenaxi, Inc., emptied the money out of the illegal gaming machines and unplugged them once he knew law enforcement was in the area. Mr. Patel chose to put these illegal gaming machines in his store. Moreover, Mr. Patel chose to try and hide his actions in an attempt to avoid being caught. These actions by Mr. Patel demonstrate that he has complete disregard for the laws of this State, and intentionally attempted to hide violations of both criminal and alcohol laws from law enforcement. Permitting a person who blatantly disregards the laws of this State, particularly the alcohol laws, to keep his alcohol license creates an unnecessary risk of public harm.

Thus, because Mr. Patel blatantly disregards the alcohol laws of this State, this Court should deny the Appellant's Petition for Stay.

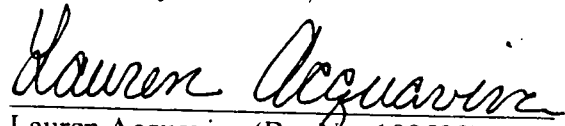
Additionally, permitting the Appellant to maintain the privilege of keeping its beer and wine permit creates a risk for potential ineffective enforcement of the State's alcohol laws. Specifically, while the appeal is pending, the Appellant can circumvent the effect of having a revoked permit by applying for a new permit at a different location and, thus, completely avoid the consequences of its actions. Pursuant to § 61-4-520(3), the Department must not issue a beer and wine permit unless "[t]he applicant, within two years before the date of application, has not had revoked a beer or a wine permit issued to him." Thus, if the revocation remains in effect during the appeal, the Appellant cannot obtain a new beer and wine permit for two years from the date of the Order. If, however, the revocation is stayed, the Appellant can apply for a new permit and avoid the consequences of the revocation of the permit at issue in this case. By the time this Court, and potentially the Supreme Court, issues a decision in this matter, the Appellant could already have started a new business. If that is allowed to happen, the revocation of the permit at issue would not affect the Appellant as it already would have obtained a new permit.

Furthermore, allowing the Appellant to continue to hold a permit allows the Appellant to avoid the consequences of its actions. This appeal could take several months if not years to resolve. By delaying the hearing in this matter at the ALC and now appealing, the Appellant will be able to operate for several years after being caught with illegal gaming machines. Allowing the Appellant to avoid the consequences of its actions for years further hinders the Department's efforts to enforce the State's alcohol

laws. If permit holders are able to avoid the consequences of their actions so easily, the Department's attempts to enforce the alcohol laws will be ineffective. To that extent, this Court should deny Appellant's Petition to avoid the risk of potential ineffective enforcement of the alcohol laws.

In conclusion, because the facts demonstrate that a supersedeas is not necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot, this Court should deny the Appellant's request for a stay. Additionally, the risks of staying the ALC's Final Order and Decision outweigh the risks of not staying the Order. Therefore, the Department respectfully requests that the relief sought by Appellant be denied.

Respectfully submitted,



Lauren Acquaviva (Bar No. 100528)

Counsel for Litigation

Sean G. Ryan (Bar No. 76585)

Managing Counsel for Litigation

Milton G. Kimpson (Bar No. 7917)

General Counsel for Litigation

P.O. Box 12265

Columbia, SC 29211

Phone: (803) 898-5110

Fax: (803) 896-0171

Attorneys for S.C. Department of Revenue

Email: AcquavL@sctax.org

Columbia, South Carolina
February 27, 2015

**South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM**

Last Name: _____ First: _____ Middle: _____
Meenaxi, Inc. d/b/a Corner Mart ☐ Mr. ☐ Miss Docket No. (To Be Completed by ALC)
☐ Mrs. ☐ Ms.
Mailing Address: _____ City: _____ State and Zip: _____
1010 East Shockley Ferry Road Anderson S.C. 29624
Home Number: _____ Work Number: _____ Cell Number: _____ *E-Mail Address: _____

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No

If No, please complete the following:

Are you represented by an Attorney? ☒ Yes ☐ No

Are you represented by a CPA? ☐ Yes ☐ No

Name of Attorney: S. Jahue Moore

Name of CPA: _____

Mailing Address: _____

Mailing Address: _____

P.O. Box 5709

City, State and Zip: _____

City, State and Zip: _____

West Columbia, SC 29171

Work Number, Cell Number and E-mail Address:
(w) 796-9160;

Work Number, Cell Number and E-mail Address: _____

(c) 315-9160; (e) jake@mttlaw.com

CASE INFORMATION

Name of the Agency that issued the decision:
(Example - Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, you must attach the agency decision. Is it attached? ☒ Yes ☐ No If no, please explain: _____

Date the decision was issued: May 8, 2013

Date the decision was received: May 9, 2013

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

The hearing is being requested because the machines are not illegal, or in the alternative, the Licensee had reason to believe the machines were not illegal. Licensee seeks a determination that the machines are not illegal, and the penalty imposed is unreasonably harsh

Payment via ☒ Check ☐ Money Order ☐ Cash for \$150
submitted today to the Administrative Law Court via

(applicable filing fee pursuant to ALC Rule 71) is being
☒ U.S. Postal Service ☐ Hand-delivery

May 21, 2013

X Your Signature or Signature of Attorney/CPA

Date

CERTIFICATE OF SERVICE (MUST BE COMPLETED)

Your Name: S. Jahue Moore

Date: 5/21/2013

City: W. Cola. State: S.C.

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing on all other parties to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

SC Administrative Law Court, 1205 Pendleton St. Ste 224, Columbia, SC 29201

Name and/or Agency Address

City, State and Zip

Lauren Acquaviva, Esquire

SC Department of Revenue, P.O. Box 12265

Columbia, SC 29211

City, State and Zip

Name and/or Agency Address

SC ADMIN. LAW COURT

X Your Signature or Signature of Attorney/CPA

Date

5-21-2013

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

South Carolina Department of Revenue,

Petitioner,

vs.

Meenaxi, Inc., d/b/a Corner Mart,

Respondent.

NOTICE OF ASSIGNMENT
(Contested Case)

DOCKET NO. 13-ALJ-17-0216-CC

NOTICE IS GIVEN that a request for a contested case hearing was filed on May 21, 2013. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2012), the **Honorable Deborah Brooks Durden**, Administrative Law Judge, has been assigned to preside in this matter. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scale.net.

A copy of any document or any other item filed with the Court shall be sent to all other parties at the time of filing. If a mailing address changes, or if an address is incorrect, the Court must be notified immediately of the correct address.

This the twenty-third day of May, 2013.

Ralph King Anderson, III
Chief Administrative Law Judge

By: _____

Jana E. Shealy
Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

FILED

MAY 23 2013

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolina Department of Revenue,	)	Docket No. 13-ALJ-17-0216-CC
	)	
Petitioner,	)	
v.	)	
	)	AGENCY INFORMATION SHEET
Meenaxi, Inc., d/b/a Corner Mart,	)	AND NOTICE OF APPEARANCE
	)	Contested Case
Respondent.	)	

1. Identifying information on the matter in controversy (Name and/or title of agency proceeding, statutory provisions giving rise to the controversy, file number or any other identifying information):

SLED File No.: 54-13-4049

Statutory & Regulatory Provisions: S.C. Code Ann. § 61-4-580(5) (2009) and S.C. Code Ann. §§ 12-21-2710 and 12-21-2712 (2000)

Has the agency staff issued a final written decision regarding its action or inaction in this matter?

X yes (Copy Attachment) _____no

2. Name, address and telephone numbers of all known parties and their attorneys, if represented:

Petitioner:

South Carolina Department of Revenue,
Lauren Acquaviva
Sean G. Ryan
Milton G. Kimpson,
Harry T. Cooper, Jr.,
PO Box 12265, Columbia, SC 29211;
(803) 898-5110, Fax: (803) 896-0171
(Counsels for Petitioner)

For Respondent:

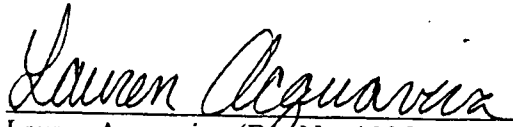
S. Jahue Moore, Esquire
PO Box 5709
West Columbia, SC 29171
(803) 796-9160

Respondent:

Meenaxi, Inc., d/b/a Corner Mart
1010 East Shockley Ferry Road
Anderson, SC 29624

Name, address and telephone number of any persons who have exercised their legal right to object to the issuance of the permit or license: N/A

Pursuant to ALC Rule 8(B), notice is hereby given that the undersigned is authorized to and will be representing the above named agency in this matter. Further, by my signature below, I certify that a copy of this information sheet has been served on all parties or their attorneys by first class mail on the date shown below.



Lauren Acquaviva (Bar No. 100528)
Counsel for Litigation
Sean G. Ryan (Bar No. 76585)
Managing Counsel for Litigation
Milton G. Kimpson (Bar No. 7917)
Chief Counsel of Litigation
Harry T. Cooper, Jr. (Bar No. 1383)
General Counsel
PO Box 12265
Columbia, SC 29211
Phone: (803) 898-5110
Fax: (803) 896-0171
Attorneys for South Carolina
Department of Revenue
AcquavL@sctax.org
courtorder@sctax.org

May 29, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

AUG 24 2015

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2015-000292

Meenaxi, Inc., d/b/a Corner Mart.....Appellant,

v.

South Carolina Department of Revenue Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.



S. Jahue Moore
John C. Bradley, Jr.
Moore Taylor Law Firm
Post Office Box 5709
Columbia, South Carolina 29171
(803) 796-9160
john@mttlaw.com
Attorneys for the Appellant

West Columbia, South Carolina

August 24, 2015