STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND)) S.C. State Law Enforcement Division) Appellant-Plaintiff)) VS.)) A Montana Deluze 2 Machine, and) Video Solutions I, Inc.) Respondents -Defendants)	IN THE MAGISTRATE COURT FOR RICHLAND COUNTY Mag.Ct.Case No. 2022-cv-40107-00687 **Appeal No.: 2023-CP-40-04886** CERTIFICATE OF TRANSMITTAL TO THE COURT OF COMMON PLEAS

The original complaint and all associated paper work in reference to the above listed civil case is being transmitted for disposition to the court listed below:

Date of Transmittal: September 29, 2023

Transmitted to:

Transmitted by: Richland County Upper Township Magistrate Court
By and through Calhoun County St. Matthews Magistrate Court as designated magistrate judge

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

Comments: Return and Attachments on Civil Appeal from magistrate court to the Court of Common Pleas Non-Jury

Received and verified by _____ on _____.
Richland County Office of the Clerk of Court

STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND)) S.C. State Law Enforcement Division) Appellant-Plaintiff)) VS.)) A Montana Deluze 2 Machine, and) Video Solutions I, Inc.) Respondents -Defendants)	IN THE MAGISTRATE COURT FOR RICHLAND COUNTY Mag.Ct.Case No. 2022-cv-40107-00687 **Civil Appeal No.: 2023-CP-40-04886** RETURN OF THE CIVIL APPEAL

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

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

JUDGE Jeffrey P Bloom

St. Matthews Magistrate
2833 Old Belleville Road / P O Box 191
St. Matthews, SC 29135
Phone: (803) 874-1112
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September 29, 2023

STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND)) S.C. State Law Enforcement Division) Appellant-Plaintiff)) VS.)) A Montana Deluze 2 Machine, and) Video Solutions I, Inc.) Respondents -Defendants)	IN THE MAGISTRATE COURT FOR RICHLAND COUNTY Mag.Ct.Case No. 2022-cv-40107-00687 **Civil Appeal No.: 2023-CP-40-04886** MAGISTRATE COURT RETURN

ON APPEAL TO THE FIFTH CIRCUIT COURT OF COMMON PLEAS

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

SUMMARY

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

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

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

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

Jeffrey P. Bloom – Magistrate

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

THE RECORD IN THIS CASE – ATTACHMENTS:

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

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

[C] Appellant's Exhibits # 1 – 5

[D] Respondent's Exhibits # 1 – 2

[E] Respondent's Post-Seizure Request for a Hearing and Pre-Trial Brief dated May 5, 2022 [5 pp.]

[F] Appellant's Memorandum In Support of Destruction dated December 16, 2023 [17 pp.]

[G] Richland County magistrate court Order of Destruction / Notice of Post-Seizure Hearing and case file correspondence/documents [9 pp.] (duplicate pages not included but can be submitted on request)

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STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND)) S.C. State Law Enforcement Division) Appellant-Plaintiff)) VS.)) A Montana Deluze 2 Machine, and) Video Solutions I, Inc.) Respondents -Defendants)	IN THE MAGISTRATE COURT FOR RICHLAND COUNTY Mag.Ct.Case No. 2022-cv-40107-00687 **Civil Appeal No.: 2023-CP-40-04886** MAGISTRATE COURT RETURN

ATTACHMENT A:

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

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	Case No.: 2022-CV-40107-00687
COUNTY OF RICHLAND	)	
	)	
S.C State Law Enforcement Division, Plaintiff	)	
v.	)	**ORDER**
	)	
A Montana Deluxe 2 machine; and Video Solutions I, Inc. Defendants	)	

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

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

INTRODUCTION.

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

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

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

BACKGROUND.

On or about April 20, 2022, SLED agents conducted an alcohol inspection at the Tavern on Broad, which is a licensed alcohol location located at 7949 Broad River Road, Suite 90 in Irmo, South Carolina, and owned by Honeycutt.[1] During this inspection, SLED agents observed what they believed to be an illegal gaming device on which individuals gambled and received cash payouts at the bar.

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

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

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

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

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

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

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

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

EXHIBITS.

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

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

All exhibits were submitted and accepted without objection.

STIPULATIONS.

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

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

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

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

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

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

RELEVANT STATUTES.

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

S.C. Code Ann. §12-21-2710 is the South Carolina Legislature's determination of the types of machines and devices that are illegal to possess or operate in South Carolina. In other words, it defines "prohibited machines." This law states in its entirety:

> SECTION 12-21-2710. Types of machines and devices prohibited by law; penalties.
>
> It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, **or any video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of** poker, blackjack, keno, lotto, bingo, or craps, **or any machine or device licensed pursuant to Section 12-21-2720 and used for gambling** or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, ***but the provisions of this section do not extend*** **to coin-operated** ***nonpayout*** **pin tables,** ***in-line pin games,*** or to automatic weighing, measuring, musical, and vending machines **which are constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance.** (emphasis added).
>
> Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for a period of not more than one year, or both.
>
> [court's note: This following section does not appear relevant to the issues at bar, but is included so that the entire statute, as amended, is set forth herein].
>
> This section does not apply to the development, manufacture, processing, selling, possessing, provision of technical aid, or transporting of any printed materials, gaming equipment, devices, or other materials, software, or hardware used or designated for use in out-of-state jurisdictions by a gaming device manufacturer. A gaming device manufacturer is a manufacturing entity that is in good standing with

> the South Carolina Secretary of State's Office, is registered with the United States Department of Justice Gambling Device Registration Unit, is authorized to do business in the State of South Carolina, and has all appropriate business licensure and zoning authorization necessary to operate a manufacturing facility in the jurisdiction in which the manufacturing facility is located. Any transportation of gaming devices authorized in this section must comply with all applicable federal laws. This section may not be construed so as to prohibit communications between persons in this State and persons involved with such legal lotteries or gaming devices relative to such printed materials, equipment, devices, or other materials, software, or hardware.

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

> SECTION 12-21-2712. Seizure and destruction of unlawful machine, devices, etc.
>
> Any machine, board, or other device prohibited by Section 12-21-2710 must be seized by any law enforcement officer and at once taken before any magistrate of the county in which the machine, board, or device is seized who shall immediately examine it, and if satisfied that it is in violation of Section 12-21-2710 or any other law of this State, direct that it be immediately destroyed.

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

> SECTION 12-21-2721. Confiscation of coin-operated machines.
>
> Coin-operated machines or devices **licensed pursuant to Section 12-21-2720 are not subject to confiscation under Section 12-21-2712 due to any violation of** Sections 16-19-30, 16-19-40, 16-19-50, or 16-19-130. (emphasis added).

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

RELEVANT CASE LAW.

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

Video Poker and Gambling Machine Cases.

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

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

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

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

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

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

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

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

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

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

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

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[3] Video Game Machines Act. S.C. Code Ann. §12-21-2770 to -2808, later repealed in Act 125.

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

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

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

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

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

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

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

In *Union County Sheriff's Office v. Henderson*, 395 S.C. 516, 719 S.E.2d 665 (2011), a confidential informant played one of seven video gambling machines. *Id.* 395 S.C. at 518-19, 719 S.E.2d at 666. The defense argued that law enforcement could not show which of the seven machines the informant had actually played and that some of the machines were inoperable. *Id.* The court found those facts immaterial, but including the fact that the hard drive of each machine showed they had been played multiple times, and held that the burden of proof was on the owner of the machines to show that the machines were not gambling devices. *Id.* The Court stated that §12-21-2710 "…makes it unlawful to possess illegal gambling machines, even if they are not

fully operational. The mere possession of the gambling machines, or even their component parts, is unlawful." *Union County* at 519-20, 719 S.E.2d at 666, *citing 192 Coin-Op, supra.*

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

Pinball Machine Cases.

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

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

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

had no knowledge of the lessee making cash payouts. *Id.* The Court held that the machines were not subject to seizure or confiscation because they were specifically exempted by the statute: "…'[T]he statutory law leaves no question but that, while the use of any such machine for an actual gambling transaction might support a charge against the individual for gambling, the machine itself, when one within the specific situation,' exemption is not subject to confiscation." *Id.* at 534, 144 S.E.2d at 720.

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

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

Statutory Construction Cases.

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

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

[6] The predecessor statute was §52-15-10.

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

In *Senate by & through Leatherman v. McMaster*, 425 S.C. 315, 821 S.E.2d 908 (2018), the Court addressed the Governor's authority to make a recess appointment to a State board where the State Senate did not act on the nomination during its regular session, and so the Governor made the appointment in July after the Senate had recessed. *Id.* 425 S.C. at 317-18, 821 S.E.2d at 909. The Court first noted it was acting carefully with restraint and with respect for the other branches of State government: "Our role is to rule upon this controversy with requisite restraint, with a keen eye focused upon our one and only responsibility – to interpret (the statute) in accordance with our rules of statutory construction." *Id.* 425 S.C. at 317, 821 S.E.2d at 909. In ruling in favor of the Governor's authority under a specific statute for such power, the Court stated: "…'[W]e read the statute as a whole and in a manner consonant and in harmony with its purpose. We therefore should not concentrate on isolated phrases within the statute… [W]e must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the

statute] to have some efficacy, or the legislature would not have enacted it into law.'" *Id.* at 322, 821 S.E.2d at 912. (citations omitted).

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

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

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

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

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

In *Kiriakides v. United Artists Commc'ns, Inc.,* 312 S.C. 271, 440 S.E.2d 364 (1994), in reviewing the eviction statute over a lease for a theater where the breach was trivial (late payment of increased rental amount though tenant continued to pay the base rate), the Court affirmed the trial judge's denial of the eviction. *Id.* 312 S.C. at 274-76, 440 S.E.2d at 366. "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Id.* 312 S.C. at 275, 440 S.E.2d at 366.

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

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

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

ARGUMENTS PRESENTED BY COUNSEL.

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

Plaintiff presented the following arguments.

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

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

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

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

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

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

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

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

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

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

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

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

> The substance of appellant's argument is that … with the advent of the computer, a video game machine is simply a box containing a computer which can be configured to play a variety of games, from poker to pacman; therefore the machine itself should not be considered illegal… Although … machines have changed … the substance of the statute has not. The relevant portions of the current version outlaw the same conduct as its predecessor. …If the General Assembly considered *Squires* outdated, it could have changed the statute to outlaw only the operation, not the mere possession, of gambling machines when it last amended the statute… The plain language of the statute makes clear the legislature's intent to outlaw mere possession of such machines. The statute makes it unlawful 'for any person to keep on his premises *or* operate' certain gambling machines. The circuit court correctly ruled possession of these machines is illegal, regardless of their intended use or operation.

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

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

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

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

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

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

Defendant presented the following arguments.

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

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

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

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

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

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

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

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

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

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

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

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

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

ISSUE AND COURT'S RULING.

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

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

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

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

ANALYSIS.

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

The Supreme Court has clearly communicated the scourge that was video poker and gambling in our State in affirming these same statutes. *Town of Mount Pleasant v. Chimento*, 401 S.C. 522, 737 S.E.2d 830 (2012); *Mims Amusement Co., supra.; Westside Quik Shop, supra.; Joytime, supra.* "Gaming machines have been illegal and subject to forfeiture as contraband in this state since the 1930's. This Court has deferred to the Legislature's determination of which gaming devices must be sacrificed for the *public welfare*." *Mims Amusement Co.,* 366 S.C. at 147, 621 S.E.2d at 347 (internal citation omitted; emphasis supplied). "…[O]ur State witnessed the dramatic growth of video gaming into a multi-billion dollar industry that became the subject of much public debate." *Westside Quik Shop*, 341 S.C. at 300, 534 S.E.2d 270 at 272. "Because the General Assembly was unable to agree on comprehensive video gaming legislation, the Governor, by Executive Order, called an extra session of the General Assembly…" *Joytime,* 338 S.C. at 638, 528 S.E.2d at 649. "I do not need to remind any person of the havoc wreaked upon

this State as a result of the 'pernicious' practice of video poker." *Chimento*, 401 S.C. at 537, 737 S.E.2d at 840 (Toal, C.J., concurring).

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

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

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

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

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

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

> …[P]laintiff is engaged in the business of supplying amusement devices for operation in retail business establishments. The equipment is furnished upon a lease arrangement with the retailer… plaintiff leased to various business establishments … certain coin-operated pin tables. The pin tables were so constructed that upon their successful manipulation free games were allowed as registered on the machine.
>
> An undercover agent … played the machines … accumulating a number of free games … The agent then requested and obtained from the operators of the establishments payment in cash based on the number of free games to his credit …The plaintiff had no connection with the day-to-day operation of the pin tables other than to service them upon call and had no knowledge of the transaction between the … business proprietors and the officer …

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

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

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

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

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

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

> It is clear that the devices permitted to be confiscated … are limited to those … in violation of 'any other law of this State.' [The] Section … makes it 'unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, punch board, pull board or other device … but specifically exempts from such prohibition 'coin-operated nonpayout pin tables with free play feature'."
>
> … 'the statutory law leaves no question but that, while the use of any such machine for an actual gambling transaction might support a charge against the individual for gambling, the machine itself, when one within the specific statutation' exemption is not subject to confiscation.

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

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

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

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

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

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

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

[10] The third statutory exemption is not relevant to the issues here.

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

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

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

[11] The case discussed in this quotation was *Squires, supra*.

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

The proprietor in this case by his unlawful actions does not turn this nonpayout pinball machine into an illegal machine. In other words, the bad actor's unlawful actions do not subvert the statute itself by transforming an exempted machine into an illegal *per se* one – not unless the Court or Legislature say so. This court is certainly required to implement the Legislature's intention to ban, confiscate and order destruction of the listed gambling machines in the statute (i.e. – video poker machines, slot machines, etc.). This court is not authorized to insert its own preferences into the statute where none exist, and where the Court's prior interpretations have firmly recognized the exemption. "…[T]he words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." *Municipal Ass'n of S.C.,* 361 S.C. at 580, 606 S.E.2d at 470. This court will not expand the statute's operation absent specific guidance from the Court.

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

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

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

The court declines to adopt Plaintiff's rationale. First, the statute specifically exempts nonpayout pinball machines. This machine is a nonpayout machine. The fact that the proprietor was illegally, and contrary to his contractual agreement with the owner, making illegal cash payouts does not convert the mechanics of the pinball machine into a payout machine. If this court ignored the carve-out clause then it would render such clause as mere surplusage. "…[W]e must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage…" *Senate by & through Leatherman*, 425 S.C. at 322, 821 S.E.2d at 912.

As for the second argument, no evidence was presented to this court that there is a "keno" or "bingo" game on the machine. There is no stipulation that those games are on the machine.[12] The parties agreed that no witness testimony was needed. If those games are on the machine, this court has not heard evidence of it. The court has reviewed the Plaintiff's exhibits submitted in evidence without objection. The words "keno" or "bingo" do not appear on any of the pinball

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

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

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

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

> It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, **or any video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of** poker, blackjack, **keno**, lotto, **bingo**, or craps, **or *any machine or device licensed pursuant to Section 12-21-2720 and used for gambling*** or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine… (emphasis supplied).

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

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

> ***… but the provisions of this section do not extend*** **to coin-operated *nonpayout in tables, in-line pin games,*** or to automatic weighing, measuring, musical, and vending machines which are constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance. (emphasis supplied).

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

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

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

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

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

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

> Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for a period of not more than one year, or both.

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

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

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

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

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

CONCLUSION

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

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

Finally, this court has endeavored to apply the Legislature's statutes strictly without reading more or less into them. It has reviewed every case submitted to it including those on statutory construction. This court cannot sit "as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly." *Richland Cnty. Sch. Dist. 2 v. Lucas*, 434 S.C. 299, 306–07, 862 S.E.2d 920, 924 (2021) (internal citation omitted).

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

AND IT IS SO ORDERED.

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

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

STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND)) S.C. State Law Enforcement Division) Appellant-Plaintiff)) VS.)) A Montana Deluze 2 Machine, and) Video Solutions I, Inc.) Respondents -Defendants)	IN THE MAGISTRATE COURT FOR RICHLAND COUNTY Mag.Ct.Case No. 2022-cv-40107-00687 **Civil Appeal No.: 2023-CP-40-04886** MAGISTRATE COURT RETURN

ATTACHMENT B:

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

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

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

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

1. As a matter of legal error, the Magistrate did not effectuate the stated intent of the South Carolina Legislature – the prohibition of cash payouts for credits earned on video game machines – when interpreting S.C. Code Ann. § 12-21-2710 in this action.

2. As a matter of legal error, the Magistrate incorrectly applied South Carolina law and ordered the return of a gaming machine despite undisputed evidence of cash payouts paid for the play of the machine.

3. As a matter of legal error, the Magistrate determined that a machine that prints tickets that were redeemed for cash payouts was a "non-payout" in-line pinball game.

4. As a matter or legal error, the Magistrate applied an incorrect legal analysis to determine whether a machine violated South Carolina law.

5. As a matter of legal error, the Magistrate misinterpreted and misapplied the applicable South Carolina statutes and jurisprudence in this matter.

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

6. As a matter of legal error, the Magistrate did not correctly apply South Carolina jurisprudence finding that gaming machines, like the machine at issue in this action, are contraband *per se*.

7. As a matter of legal error, the Magistrate incorrectly applied S.C. Code Ann. § 12-21-2721 in this action despite there being no "violation of Sections 16-19-30, 16-19-40, 16-19-50, or 16-19-130".

8. As a matter of legal error, the Magistare found that the device on which "the proprietor engaged in unlawful gambling" was not subject to seizure and destruction in South Carolina.

9. As a matter of legal error, the Magistrate mischaracterized the machine's operating features.

10. As a matter of legal error, the Magistrate found that despite the machine having "video game features" and showing "the different game options and scoring…in video format", it was not a video game.

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

Respectfully Submitted,

s/ Adam L. Whitsett
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ATTORNEY FOR APPELLANT

September 18, 2023

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

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

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ATTORNEY FOR SLED

Columbia, South Carolina
September 18, 2023