



**CIRCUIT COURT FOR THE TENTH JUDICIAL CIRCUIT  
 CIVIL DIVISION**

**STATE OF ALABAMA,** )  
 )  
**PLAINTIFF,** )  
 )  
**v.** ) **CIVIL ACTION NO.:**  
**AMERICAN GAMING SYSTEMS, LLC,** ) **CV-08-1837**  
 )  
**DEFENDANT.** )

**FINAL JUDGMENT**

This action came before the Court for a bench trial on June 8-10, 2009, and the record remained open for the parties to file post-trial briefs and proposed orders. There are several cases working their way through the Alabama Courts, which arise out of the proliferation of electronic bingo games operations in many areas of Alabama. Some of the pending cases are in the Circuit Courts and in the Supreme Court of Alabama and they address some of the issues which are before the Court in this case. The Court has delayed issuing a ruling in the expectation that there would be a definitive appellate court decision which would resolve the issues in this case, but that has not yet happened. Therefore, the Court will proceed to enter a final judgment.

The State brought this case as a forfeiture proceeding under Alabama Code (1975) § 13A-12-30, relating to 183 machines the State seized from an operation run by American Gaming Systems, LLC (“AGS”) in Kimberly, Alabama, which is located in northern Jefferson County. The Court has considered the pleadings, has weighed the testimony and exhibits offered at trial, and makes the following findings of fact and conclusions of law:

On May 22, 2009, Sergeant Bill Isbell of the Kimberly Police Department, acting on a search warrant, searched AGS's plant and seized 183 machines that he believed to be illegal gambling devices. The building from which the machines were seized was an assembly plant where the machines were in the process of being assembled for use in Walker County bingo halls.

The Court previously heard evidence on the defendant's Motion to Quash the Search Warrant and denied the Motion on May 28, 2009.

It is undisputed that the machines would be used in such a fashion that players would insert money into the machines in hopes that the machine would eject a cash value prize based on chance. AGS claims that the machines were to be attached to a server which would be programmed to determine winners and losers based upon an "electronic bingo" program. The machines at issue had previously been used elsewhere in gaming operations and were being modified for use in Alabama.

The game called "electronic bingo" is a server-based gambling scheme, and many of the key facts about how the machines work are not in dispute. In the "electronic bingo" halls now operating in Walker County, the seized machines, which are called "play stations," were to be connected to central computer servers. The player would insert money into the machine, either directly or in the form of credits on printed tickets or cards. The player then places a bet, and presses the "play" button to begin the game.

The play stations have video screens, which display electronic representations of two types of images. First, the screens display large electronic, spinning reels like those traditionally found on slot machines. Second, the machines display a smaller electronic representation of a bingo card.

After the players press the “play” button, there is no more human interaction, either with the machines or other humans, until the game is over. Instead, players do nothing but watch the screens to determine whether they have won. The screen shows the slot-machine reels spinning and, after six seconds, the result of the game is displayed on both the reels and a smaller video representation of the bingo card. If a particular player has won, the reels on that machine will be in a particular pattern, and a pattern will appear on that player’s bingo card.

In light of the slot-machine display and the way the machines work, the game played on the machines is different in many respects from the commonly recognized game of “bingo” that has traditionally been played in certain Alabama counties. There is no bingo “caller” who calls out numbers while the players listen. Players do not have to utilize personal skill to spot numbers on that “bingo” card that the caller has called. Players do not have to “daub” the numbers by hand or by some electronic means after the numbers have been called. Instead, while the larger slot-machine reels spin, the smaller “bingo” card daubs itself, over the course of six seconds. If players are given a winning pattern by the computer server, they do not have to call “bingo,” and they cannot “sleep a bingo” by failing to call bingo or by failing to daub a square when its number is called. Instead, players simply press the button and wait six seconds while the machine decides if they have won and daubs the card accordingly. The entire alleged bingo game occurs on the server on a fully automated basis. If the computer decides to allocate to the player a prize-winning pattern, then he or she will win automatically.

If the player obtains a “game-ending pattern” or some “interim” winning sequence, prizes are awarded. According to AGS’s testimony, if two or more players

obtain the game-ending pattern at the same time, they all win the prize. In addition, purported “interim prizes” or “consolation prizes,” which are often bigger than the “game-ending” prize, are also available and awarded on a fully automated basis.

Once the player has seen the results of a game, he or she may withdraw any earnings from the machine immediately in the form of a printed credit ticket, or he or she may use any credits earned to make additional wagers on the machine.

“In this State, . . . the public policy is emphatically declared against lotteries, or any scheme in the nature of a lottery, both by Constitution and by statutes.” *Ex parte Ted’s Game Enters.*, 893 So. 2d 376, 380 (Ala. 2004). Because of that policy, “courts have shown a general disposition to bring within the term ‘lottery’ every species of gaming, involving a disposition of prizes by lot or chance.” *Id.* It is settled law that the game of bingo is a “scheme in the nature of a lottery” for those purposes. *City of Piedmont v. Evans*, 642 So. 2d 435, 436 (Ala. 1994).

AGS nevertheless maintains that its machines are legal under Amendment 549 and Amendment 550 of the Alabama Constitution, which create an exception to the prohibition of lotteries found in Article IV, § 65, of the Alabama Constitution of 1901. The Amendments allow the game of bingo to be played in Walker County, and in the City of Jasper, under certain circumstances.

Amendment 386 is similar to Amendments 549 and 550, except that Amendment 386 allows the game of bingo to be played in Jefferson County, under certain circumstances.

Amendment 386 states, in pertinent part:

The operation of bingo games for prizes or money by nonprofit organizations for charitable or educational purposes shall be legal in

Jefferson county, subject to the provisions of any resolution or ordinance adopted by the governing body or the governing bodies of the respective cities or towns, within their respective jurisdictions.

The State makes three arguments, each of which, it says, makes these machines illegal despite Amendment 386. First, the State argues, the game played on AGS's machines is not the game of "bingo" that Amendment 386 makes legal in Jefferson County. Second, the State contends, even if Amendment 386 authorized the "operation of" these sorts of gambling devices in Jefferson County, it does not authorize *the manufacturing* of such machines in the county. Finally, the State argues that even if this game were "bingo" for the purposes of Amendment 386, the machines are still illegal because they are slot machines, which are prohibited by Alabama Code (1975) § 13A-12-27(a)(1).

First, the Court agrees with the State that the machines do not play the game of "bingo" that is authorized by Amendment 386. On this point, the Alabama Supreme Court's decision in *City of Piedmont v. Evans* provides the governing legal standard. The *City of Piedmont* Court considered Amendment 508, which authorized the operation of certain "bingo games" in Calhoun County. *City of Piedmont*, 642 So. 2d at 436. Amendment 508 is substantially the same as Amendment 386. In *City of Piedmont*, a city in Calhoun County passed an ordinance that attempted to authorize a game called "instant bingo." *Id.* at 435. Instant bingo did not involve any of the elements of human skill or participation that are integral to the game commonly known as bingo. *See id.* at 436. But like the game at issue here, it purported to be a form of legal "bingo." *See id.* The Court found that the game was not the narrowly construed, traditional form of bingo authorized by Amendment 508. The Court emphasized that Amendment 508 "did not

repeal Article IV, § 65.” *Id.* “The only lottery legalized by the passage and ratification of Amendment No. 508,” the Court explained, “was and is the lottery of ‘bingo.’” *Id.* The Court then held that “[i]nstant bingo’ does not constitute ‘bingo’ as allowed by Amendment 508.” *Id.* Whatever similarities existed between the two, the fact remained that there were differences, and therefore “instant bingo” was “a separate and distinct type of lottery from the lottery of ‘bingo.’” *Id.*

Two decisions from the Court of Criminal Appeals applied *City of Piedmont*’s holding and clarified its meaning. In *Barrett v. State*, the Court of Criminal Appeals observed that Amendment 508’s provision for bingo games in Calhoun County “allows only a narrow exception to the state’s clear public policy against lotteries and the Alabama constitution’s prohibition of lotteries.” 705 So. 2d 529, 531 (Ala. Crim. App. 1996). It noted that “the City of Piedmont could not pass an ordinance that broadens the scope of the narrow exception to the prohibition of lotteries in the Alabama Constitution.” *Id.* at 532. The Court reasoned that “[a]nything other than *the ordinary game of bingo*” could not have been the subject of a local ordinance authorizing “bingo.” *Id.* (emphasis added). Accordingly, it invalidated, as contrary to the ordinance, a purported “instant bingo” game called “U-Pick Em.” *Id.* In a later case, the Court of Criminal Appeals, in an opinion by current Chief Justice Cobb, applied that reasoning and held that a game called “U-Pick-Em, or U-Quick-Pick-Em is an illegal lottery.” *Foster v. State*, 705 So. 2d 534, 538 (Ala. Crim. App. 1997).

“Electronic bingo,” as purportedly played on AGS’s machines, is undoubtedly different in some respects from “instant bingo,” “U-Pick-Em” and “U-Quick-Pick-Em.” But that is not the test. *City of Piedmont*, *Barrett*, and *Foster* establish the principle that

governs in any case in which a defendant argues that its game is “bingo” exempted by a local constitutional Amendment. To be exempted, a game must be “the ordinary game of bingo” or “the game commonly known as bingo.”

Although *City of Piedmont, Barrett, and Foster* establish the governing standard, neither the Supreme Court nor the Court of Criminal Appeals has explicitly defined all of the necessary elements of the “ordinary game of bingo.” Moreover, although the Attorney General has issued a press release setting some parameters for determining whether electronic “bingo” is illegal, that press release is not law and does not purport to set an exhaustive or exclusive list of the game’s elements. Rather, the press release states that any bingo game must incorporate “the typical features of traditional bingo,” that “includ[e], but [are] not limited to,” the features listed in the press release. Nonetheless, the Court is persuaded by overwhelming authority from other states, as well as common sense and the expert testimony of the State’s expert Bob Sertell, that the game played on AGS’s machines is not the ordinary game of bingo. Most critically, the game is not “bingo” because it eliminates the requirement that players manually daub their own cards or call out “bingo!” when they have won. *See, e.g., Citation Bingo Ltd. v. Otten*, 910 P.2d 281, 283 (N.M. 1995) (holding that a machine-based game was not traditional bingo because players “cannot see the cards they have purchased, need not locate and mark numbers on their cards, and need not visually identify any winning pattern”); *Fraternal Order of Eagles Sheridan Aerie No. 186 v. State ex rel. Forwood*, 126 P.3d 847, 861 (Wyo. 2006) (holding a form of electronic bingo illegal because, among other things, “a person can miss a number playing session bingo, but not playing electronic bingo”); FLA. STAT. ANN. § 849.0931(1)(a) (requiring that “players cover or mark those numbers on

[their bingo cards] until a player receives a given order of numbers in sequence that has been preannounced for that particular game”); KAN. STAT. ANN. § 79-4701(f)(4) (requiring that the player “call[] out ‘bingo’”); DEL. CODE ANN. tit. 28, § 1102(1) (defining the game of bingo as one where “the holder cover[s] numbers as objects similarly numbered are drawn from a receptacle and the game [is] won by the person who first covers a previously designated arrangement of numbers on [the holder’s] card”).

The Court notes that the Alabama Supreme Court has emphasized that the prohibition on gambling must be construed broadly. *Ex parte Ted’s Game Enters.*, 893 So. 2d 376, 380 (Ala. 2004). On the other hand, *City of Piedmont, Barrett, and Foster* require the Court to construe the “bingo” exception to that general prohibition narrowly. *See Barrett*, 705 So. 2d at 531 (holding that Amendment 508 “allows only a narrow exception to the state’s clear public policy against lotteries and the Alabama constitution’s prohibition of lotteries”).

The Court further observes in a case which was appealed from this Court, that the Alabama Supreme Court has emphasized that the general prohibition on gambling applies to gambling practices “in all their protean shapes.” *Barber v. Jefferson County Racing Ass’n*, 960 S0. 2d 599, 614 (Ala. 2006).

Moreover, the Court agrees with the State that even if Amendment 386 legalized “the operation of” the game played on AGS’s machines, it does not legalize the *manufacturing or assembly* of such machines. Because the Amendment creates a narrow exception to the general prohibition on gambling, it must be narrowly construed. Nothing in the Amendment makes it legal to *manufacture or assemble* gambling

machines of any sort, and if the Amendment had been intended to legalize manufacturing or assembly of such machines, it could have said so.

Finally, the Court agrees with the State that even if the machines were playing an otherwise legal form of bingo, the machines themselves are nevertheless independently illegal because they are slot machines. Alabama Code (1975) § 13A-12-27(a)(1) makes it a crime to “possess” a “slot machine.” The Code defines “slot machine” as a “gambling device that, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value.” ALA. CODE § 13A-12-20(10). “A device so constructed or readily adaptable or convertible to such use is no less a slot machine . . . because some mechanical act of manipulation or repair is required to accomplish its adaptation, conversion or workability.” *Id.*

AGS’s activities and machines fall within this prohibition. AGS “manufactures,” and thereby “possesses,” these machines. The machines have all the statutory elements, all of the playing features, and all of the traditional lure of slot machines. Some contain bill acceptors that enable them to accept cash directly, while others accept voucher cards that are purchased with and redeemable for money. When operational, the machines display the flashing lights and traditional spinning reels that are the hallmark of slot machines. The player inserts money or credits, places a bet and hits a button to set the reels spinning but otherwise does not exert any human interaction in order to play the game. When the player decides to quit gambling, the machine dispenses a voucher with the player’s balance on it. This voucher can either be used to play another machine or be redeemed for cash. In other words, the terminal and server system being assembled in

Kimberly is one which, “as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of some physical act by the player, in such a manner that, depending upon elements of chance, it may eject something of value.” ALA. CODE § 13A-12-20(10).

The Alabama Supreme Court addressed a similar system in *Barber*. There the machines at the Birmingham Race Course were similar “dumb terminals” linked by a server that, instead of purporting to play “bingo,” purported to run a legal “sweepstakes.” The Supreme Court nonetheless held that the scheme was illegal because it was still a “slot machine.” *See Barber*, 960 So. 2d at 614-15. The Court said that it looked to “the substance and not the semblance of things, so as to prevent evasions of the law.” *Id.* at 611. The Court held the system illegal because it consisted of machines “which look like, sound like, and attract the same class of customers as conventional slot machines, and, when integrated with the servers, serve essentially the same function as did the slot machines.” *Id.* at 616.

The scheme, terminals, and servers here are, as a functional matter, just like those the Supreme Court addressed in *Barber*. The question here, as in *Barber*, is whether the machines “are slot machines as to those who pay to play them.” *Id.* at 615. Just as in *Barber*, the machines are slot machines in every way that matters. As in *Barber*, the terminals and servers are made by slot-machine manufacturers. In an attempt to attract the same people as those attracted to conventional slot machines, AGS has designed these machines to look and play just like slot machines. The terminals have names like “Liberty 7’s,” “Royal Reels” and “Cool Catz.” The machines are explicitly designed to present themselves as slot machines to the average customer and thereby appeal to slot

machine players. As in *Barber*, the machines are specifically and intentionally designed to play just like typical slot machines with whirling numbers and symbols at the press of a button, dispensing cash prizes based purely on chance and requiring no human interaction or skill.

Moreover, even if the machines were not designed to be slot machines, they are “readily adaptable or convertible to such use.” ALA. CODE § 13A-12-20(10). AGS’s expert, Richard LaBrocca, explained that these machines could be converted from what he claimed were server-based “bingo” machines to what even he would admit were server-based slot machines simply by changing their software program. The fact that these machines can be switched to full-blown slot machines so easily makes them illegal in Alabama. *See Barber*, 960 So. 2d at 610 (finding that similar sweepstakes machines were “readily adaptable” to use as slot machines).

In the Bessemer Division of this Court, Judge Eugene Verin has issued a ruling in *VFW v. Green* which confirms this point. *See VFW v. Green*, Nos. 07 1240, 07 1665 (Jeff. County Cir. Ct. Bessemer Div. March 10, 2008). In that case, the issue was “whether the game of bingo can legally be played on the electronic machines in question.” *Id.* at 3. The machines there were very similar to the machines here, including the elements of cabinets, currency acceptors, and ticket printers. *Id.* at 5. Just like the AGS machines, the individual VFW machines were connected to servers. *Id.* at 8. Moreover, the machines “could be converted or adapted for use as a ‘slot machine’ or ‘gambling device’ on the gaming floor of an acknowledged Las Vegas Casino by the replacement of the bingo software with a software program designed to operate a ‘slot machine’ and by hardware additions and upgrades.” *Id.* at 14. On these facts, Judge

Verin held that “the machines in question ‘are readily adaptable or convertible’ to be used as slots machines.” *Id.* at 19. As a result, “[t]he machines in question are thus illegal slot machines and *cannot be used to play the game of bingo* within the Bessemer Division of Jefferson County.” (*Id.* (emphasis added)). The same rationale applies here.

AGS mistakenly argues that the machines are not illegal “slot machines” because they are “items used in the playing phase of a lottery.” To be a “slot machine” under Alabama law, a machine must be “a gambling device.” ALA. CODE § 13A-12-20(10). The Code excludes, from the definition of “gambling device,” “lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes.” ALA. CODE § 13A-12-20(5). AGS argues that because its machines are “used in the playing phase of” bingo, and because bingo is a “lottery,” the machines cannot be slot machines.

The Court declines to adopt this interpretation of this statutory exception. AGS’s interpretation, if it were the law, would nullify the Code’s prohibition on slot machines. Under AGS’s interpretation, no slot machine would be a gambling device, because every slot machine is used in the playing phases of a lottery. The far more plausible interpretation of this exception is that in the phrase “lottery tickets, policy slips, and other items used in the playing phases of lottery or policy schemes,” ALA. CODE § 13A-12-20(5), “other items” means items that are similar to “lottery tickets” and “policy slips” – items, in other words, that someone playing a traditional paper-ticket lottery uses to show that he or she has paid in to the lottery. This exception makes it legal for someone to possess a Georgia Lottery ticket in Alabama. It does not make it legal for a person to possess a slot machine.

The Court has also read with interest the Memorandum Opinion rendered by United States District Judge Lynwood Smith on September 28, 2009. In a case styled *Department of Texas Veterans of Foreign Wars of the United States v. Dorning*, Civil Action NO. 07-S-2144-NE ( N.D.Ala. 2009), Judge Smith addressed many of the issues which are before this Court in this action. While the decision is not binding upon an Alabama Circuit Court, it is certainly persuasive. The conclusions stated in that case are substantially in accord with the conclusions this Court has reached.

For all of these reasons, the Court finds that the machines before this Court are illegal gambling devices and slot machines, and that the State's forfeiture petition is due to be **GRANTED**.

It is **ORDERED, ADJUDGED AND DECREED** that the machines described in the petition are illegal and are forfeited to the State of Alabama. In accordance with Alabama Code (1975) § 13A-12-30(a), the State shall destroy or otherwise dispose of the machines within 60 days of this Order, unless this Order is stayed.

**DONE and ORDERED this the 26<sup>th</sup> day of October, 2009.**

  
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**J. SCOTT VOWELL, PRESIDING JUDGE**