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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Vernon Barnett, in his official capacity as Commissioner of
the Alabama Department of Revenue

v.

Panama City Wholesale, Inc.

Appeal from Jefferson Circuit Court
(CV-19-134)

PARKER, Chief Justice.

Vernon Barnett, as Commissioner of the Alabama Department of Revenue ("the Department"), appeals from a summary judgment entered in favor of Panama City Wholesale, Inc. ("PCW"). We reverse.

I. Facts

The State of Alabama imposes a license or privilege tax on tobacco products stored or received for distribution within the State ("the tobacco tax"). See § 40-25-1 et seq., Ala. Code 1975. Under § 40-25-8 ("the confiscation statute"), the Department may confiscate certain tobacco products on which the tobacco tax has not been paid.

PCW was a wholesale tobacco-products distributor located in Panama City, Florida, and owned by Ehad Ahmed. One of PCW's customers, Yafa Wholesale, LLC ("Yafa"), was an Alabama tobacco distributor owned by Sayeneddin Thiab ("Thiab").

In March 2018, agents of the Department began conducting surveillance of Thiab's residence, Yafa's business location, and storage units at Extra Space Storage ("Extra Space") in Vestavia Hills. One of the units had been leased in 2010 by Sami Berriri, a driver for Yafa. The agents observed Thiab's son, Saed Sayeneddin Thiab ("Saed"), making multiple trips to PCW's warehouse in Florida, where he loaded tobacco products into delivery vehicles owned by Yafa. After Saed returned to Alabama, Thiab, Saed, and other individuals unloaded the products into the storage units. The agents also observed

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Thiab and Saed retrieving tobacco products from the units and delivering them to more than 80 convenience stores across Alabama.

On October 10, 2018, Hurricane Michael destroyed the roof on PCW's warehouse. Over the next few days, Thiab's daughter, Ghadir Sayeneddin Thiab ("Ghadir"), and Saed leased three additional units from Extra Space. On October 19, the agents observed two of Thiab's vehicles and a rented moving truck traveling to Pensacola, Florida. The vehicles were loaded with tobacco products at Southeastern Freight Company and were observed at Yafa's business location that night. The next day, agents observed one of Thiab's vehicles being unloaded at two of the recently rented storage units. The day after that, agents observed one of Thiab's delivery vehicles being loaded with tobacco products from the other recently rented unit.

On October 23, 2018, the Department confiscated 1,431,819 cigars from four storage units leased by persons connected to Yafa and Thiab. It is undisputed that the tobacco tax had not been paid on the cigars. Ahmed filed an action in the Montgomery Circuit Court against Barnett, as Commissioner of the Department, seeking a judgment declaring that the cigars

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were Ahmed's and that they were not subject to confiscation. The case was transferred to the Jefferson Circuit Court, PCW was substituted for Ahmed, and the parties were realigned to make the Commissioner of the Department the plaintiff and PCW the defendant in a civil forfeiture action. On PCW's motion, the circuit court entered a summary judgment in PCW's favor, ruling that the Commissioner failed to present substantial evidence that the cigars were in the possession of a retailer or semijobber, as the court believed was required by the confiscation statute. The Commissioner appeals.

II. Standard of Review

"This Court reviews a summary judgment de novo. Turner v. Westhampton Court, L.L.C., 903 So. 2d 82, 87 (Ala. 2004). ... [T]his Court reviews the evidence in the light most favorable to the nonmovant. Turner, supra." Muller v. Seeds, 919 So. 2d 1174, 1176 (Ala. 2005).

III. Analysis

This is the first time this Court has interpreted the confiscation statute in its current form. The confiscation statute permits the Department to confiscate certain untaxed tobacco products, as follows:

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"Any ... cigars ... or other products taxable under this article found at any point within the State of Alabama, which ... cigars ... shall have been within the State of Alabama for a period of two hours, or longer, in possession of any retailer or semijobber not having affixed to the package the stamps as provided in this article, or in the case of products not requiring a stamp to be affixed where purchase invoices do not itemize the applicable tobacco taxes, are declared to be contraband goods and may be seized by the Department Any of the goods, wares, or merchandise, when offered for sale, either at wholesale or retail without the stamps having been first affixed, or in the case of products not requiring a stamp to be affixed where purchase invoices do not itemize the applicable tobacco taxes, shall be subject to confiscation as hereinabove provided. Any untaxed ... cigars ... or other products taxable under this article found at any location within the State of Alabama, other than the primary location of the permitted wholesaler or jobber, registered semijobber, registered retailer or tobacco products manufacturer who stores tobacco products at a bonded warehouse in this state for resale, are declared to be contraband goods, and those goods may be seized by the Department"

§ 40-25-8, Ala. Code 1975.

In its summary judgment, the circuit court ruled that the Commissioner "failed to present substantial evidence that the tobacco products that [the Department] seized from [PCW] [were] in the possession of a retailer or semi-jobber as defined by [the confiscation statute]." The court apparently interpreted the statute as allowing the Department to

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confiscate only products that are in the possession of a retailer or semijobber.

"'When a court construes a statute, "[w]ords used in [the] statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says.'" Ex parte Rodgers, 141 So. 3d 1038, 1041 (Ala. 2013) (quoting Ex parte Berryhill, 801 So. 2d 7, 10 (Ala. 2001)). Further, "we must examine the statute as a whole and, if possible, give effect to each [provision]." Ex parte Exxon Mobil Corp., 926 So. 2d 303, 309 (Ala. 2005). ""There is a presumption that every word, sentence, or provision [of a statute] ... has some force and effect and ... that no superfluous words or provisions were used."" Richardson v. Stanford Props., LLC, 897 So. 2d 1052, 1058 (Ala. 2004) (quoting Sheffield v. State, 708 So. 2d 899, 909 (Ala. Crim. App. 1997)).

As an initial matter, the confiscation statute, by its own terms, applies only to "products taxable under this article." § 40-25-8. Taxable products under Article 1 of Chapter 25 of Title 40 are tobacco products that are in

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Alabama "for the purpose of distribution ... within the State." § 40-25-2(a).

Within the structure of the confiscation statute, our first analytical point of reference is the general language of the third sentence: "Any untaxed ... cigars ... or other products taxable under this article found at any location within the State of Alabama ... are declared to be contraband goods, and those goods may be seized by the Department" This language generally allows the Department to confiscate any untaxed tobacco product found at any location within the State. The third sentence also contains a "primary-location" exception to this general authorization: the Department may not confiscate tobacco products that are found at "the primary location of the permitted wholesaler or jobber, registered semijobber, registered retailer or tobacco products manufacturer who stores tobacco products at a bonded warehouse in this state for resale." (Emphasis added.)¹

¹"Wholesale dealer and jobber" is defined as "[p]ersons, firms, or corporations who buy tobacco products direct from the manufacturer or an affiliate of the manufacturer and sell at wholesale only ... to licensed wholesale dealers, jobbers, semijobbers, and retail dealers for the purpose of resale only." § 40-25-1(1). "Semijobber" is defined as "[p]ersons, firms, or corporations who buy tobacco products from permitted

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To give effect to each provision of the statute, its first and second sentences must then be read as exceptions to the primary-location exception. The first sentence provides:

"Any ... cigars ... or other products taxable under this article found at any point within the State of Alabama, which ... cigars ... shall have been within the State of Alabama for a period of two hours, or longer, in possession of any retailer or semijobber not having [paid the tobacco tax on them] are declared to be contraband goods and may be seized by the Department"

(Emphasis added.) This two-hour "exception to the exception" allows the Department to confiscate any untaxed tobacco products that have been in Alabama, in the possession of a retailer or semijobber, for two hours or longer. Under this provision, retailers and semijobbers who store tobacco products at their primary locations must still pay the tobacco tax within two hours of their possession of the products in Alabama.

wholesalers or obtain tobacco from any other source and sell at wholesale ... to licensed retail dealers for the purpose of resale only." § 40-25-1(3). "Retailer dealer" is defined as "[e]very person, firm, or corporation, other than a wholesale dealer or jobber, who shall sell or offer for sale any one or more of the [tobacco products] taxed herein ...; and all persons operating under a retail dealer's license." § 40-25-1(2).

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Similarly, the second sentence of the statute provides: "Any of the [tobacco products], when offered for sale, either at wholesale or retail without the [tobacco tax having been paid on them] shall be subject to confiscation" (Emphasis added.) This sale "exception to the exception" allows the Department to confiscate any untaxed tobacco products that are offered for sale, at either wholesale or retail. Under this provision, dealers who store tobacco products at their primary locations must still pay the tobacco tax before the products are offered for sale. Our interpretation of how each of these provisions in the statute relates to the others is summarized in the diagram attached as an appendix.

PCW argues that the circuit court's interpretation of the confiscation statute -- as applying only to products in the possession of a retailer or semijobber -- was correct. But the problem with that interpretation is that it fails to give effect to each provision of the statute. By limiting the Department's confiscation power to tobacco products in the possession of retailers and semijobbers, that interpretation would render superfluous the third sentence's primary-location

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exception as to permitted wholesalers, jobbers, and manufacturers, because products in the possession of those types of dealers would not be subject to confiscation in the first place. Rather, as explained above, the first sentence's reference to a retailer or semijobber functions as an exception to the primary-location exception, not as a limit on the third sentence's general rule of confiscation. The circuit court's interpretation would turn the first sentence's reference on its head, incorrectly reading an exception to an exception as a restriction on the general rule. In contrast, the interpretation of the confiscation statute set forth above is the only reasonable way to ascribe meaning to each provision without rendering any provision logically superfluous. See Exxon, 926 So. 2d at 309 (holding that we give effect to each provision of a statute); Deutsche Bank Nat'l Tr. Co. v. Walker Cty., [Ms. 1160926, June 28, 2019] ___ So. 3d at ___ (Ala. 2019) (stating that we presume that every provision of a statute has some effect and that no provision is superfluous).

We now apply this interpretation of the confiscation statute to the facts here. In response to PCW's motion for a

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summary judgment, the Commissioner presented substantial evidence that the cigars were subject to confiscation. It is undisputed that the tobacco tax had not been paid on the confiscated cigars. Moreover, the Commissioner presented substantial evidence that the cigars were in Alabama for the purpose of distribution. As noted above, on multiple occasions, Department agents observed Thiab, Saed, and other individuals loading boxes of tobacco products from the storage units, including units leased after Hurricane Michael, into Yafa's delivery vehicles. Thiab or Saed then transported the products first to Yafa's business location, then to more than 80 convenience stores across Alabama. From this evidence, a reasonable finder of fact could conclude that the cigars confiscated from the storage units were in Alabama for the purpose of distribution and thus subject to the tobacco tax. Thus, there was a genuine issue of material fact as to whether the cigars fell within the general scope of the confiscation statute.

PCW argues that the cigars were not in Alabama for the purpose of distribution, pointing to evidence that Saed brought the cigars to Alabama to store them as a personal

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favor to Ahmed after PCW's warehouse was damaged by Hurricane Michael. However, this evidence merely conflicted with the contrary evidence summarized above, creating a genuine issue of material fact.

Further, the statute's primary-location exception did not apply. It is undisputed that the storage units from which the cigars were confiscated were leased by Saed, Ghadir, and Berriri, none of whom were permitted wholesalers or jobbers, registered semijobbers, registered retailers, or manufacturers. The only registered tobacco dealer that arguably could have had possession of the storage units was Yafa, but Extra Space was not Yafa's primary location. Because the primary-location exception did not apply, we need not address whether the two-hour and sale "exceptions to the exception" applied.

IV. Conclusion

Because the circuit court erred in interpreting the confiscation statute to apply only to untaxed tobacco products in the possession of retailers and semijobbers, and because the Commissioner presented substantial evidence that the cigars were subject to confiscation under a correct

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interpretation of the statute, we reverse the summary judgment and remand the cause for further proceedings.

REVERSED AND REMANDED.

Bolin, Shaw, Wise, Bryan, Stewart, and Mitchell, JJ.,
concur.

Mendheim, J., concurs in the result.

Sellers, J., dissents.

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SELLERS, Justice (dissenting).

I do not believe the Alabama Department of Revenue ("the Department") has presented sufficient evidence indicating that the tobacco products at issue in this case are contraband that can be confiscated. Therefore, I respectfully dissent from the Court's decision to reverse the trial court's summary judgment against the Department.

Panama City Wholesale, Inc. ("PCW"), is a tobacco-products supplier located in Panama City, Florida. Chapter 25 of Title 40 of the Alabama Code of 1975 imposes a "license or privilege tax" on tobacco products sold in Alabama or held for sale in Alabama, which the main opinion refers to as "the tobacco tax." See § 40-25-2(a), Ala. Code 1975. It is undisputed that the State of Florida does not impose a similar tax on tobacco products.²

In October 2018, the Department executed search warrants at a storage facility in Jefferson County. Pursuant to those warrants, the Department seized approximately 1.4 million small cigars from four individual units in the storage

²I note that Alabama also has a statutory scheme that imposes a tax on the storage, use, or consumption of tobacco products, purchased at retail, if those products are not subject to the tobacco tax. See § 40-25-41, Ala. Code 1975.

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facility. PCW claims that the seizure was unlawful and that it owns those cigars. According to the Department, however, the cigars are contraband because the tobacco tax has not been paid on them.

With respect to some tobacco products, the payment of the tobacco tax is evidenced by the presence of stamps affixed to the packaging of the products. See § 40-25-4 and § 40-25-4.1, Ala. Code 1975. Apparently, however, cigars like the ones at issue here are sold individually in packaging that varies so much that it is impractical to use mechanical stampers to affix stamps to the individual packages. According to the Department, the payment of the tobacco tax on this type of cigar, rather than evidenced by stamps, is self-reported and evidenced by documents submitted to the Department along with payment of the tax. See § 40-25-2(e), Ala. Code 1975 (authorizing the Commissioner of Revenue to "require a monthly report without use of a stamp to report the amount of taxes due"). The Department asserts that Alabama has a "tobacco smuggling problem" with respect to this type of cigar. According to the Department, unscrupulous tobacco-product sellers "are buying the product in states like Florida that do

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not tax little cigars and smuggling them back to Alabama for resale."³

The Department has alleged that a business run by an individual named Sayeneddin Thiab ("Thiab"), which sells tobacco products to retailers in Alabama, is a customer of PCW. According to an affidavit submitted by the Department, computer records seized from PCW show that, from October 2013 through May 2017, Thiab's business purchased more than \$5 million worth of tobacco products from PCW in Florida. The Department asserts that representatives of Thiab's business transported those cigars into Alabama for sale to retailers in Alabama without paying the tobacco tax. The affidavit submitted by the Department states additionally that, from March 2018 until October 2018 when the particular cigars at issue were confiscated, agents of the Department observed representatives of Thiab's business make multiple trips to PCW's location in Florida and back to Thiab's office and to the storage facility in Jefferson County.

³The Department suggests that the boxes in which cigars like the ones at issue here are distributed to retailers in Alabama are stamped when the tobacco tax is paid, but that tobacco retailers often simply refill those boxes with untaxed individual cigars after selling the taxed cigars.

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The Department's affidavit suggests that Thiab's business has used some of the units in the storage facility in Jefferson County to temporarily store tobacco products before they are sold to Alabama retailers. It appears undisputed, however, that the particular storage units from which the cigars at issue in this case were confiscated were not rented in the name of Thiab or his business. Rather, they were rented by three other individuals -- Saed Sayeneddin Thiab, Ghadir Sayeneddin Thiab, and Sami Berriri. The record indicates that Saed is Thiab's son and that he has been involved in Thiab's tobacco-sales business. Although the Department avers that Ghadir is Thiab's daughter and that Sami was a vehicle driver for Thiab's business, the portions of the record the Department cites do not support those averments.

It is undisputed that the storage units were rented and the cigars in question were moved from PCW's warehouse in Florida shortly after that warehouse was severely damaged by Hurricane Michael in October 2018. It also appears that some of the cigars confiscated by the Department had been damaged. PCW alleges that the cigars were moved to Alabama for temporary storage until permanent storage in Florida could be

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secured. PCW also claims that the individuals who rented the storage units in Jefferson County are friends of PCW's owner, Ehad Ahmed. As noted, there is evidence indicating that Thiab's business has purchased cigars from PCW in the past, but we have not been directed to any evidence indicating that PCW was paid for the particular cigars confiscated here. Nothing before us suggests that title to or ownership of the cigars was transferred from PCW to any other individual or entity.

The Department relies on § 40-25-8, Ala. Code 1975, which allows for the seizure of tobacco products when the tobacco tax has not been paid. That statute provides:

"Any cigarettes, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article found at any point within the State of Alabama, which the cigarettes, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article shall have been within the State of Alabama for a period of two hours, or longer, in possession of any retailer or semijobber not having affixed to the package the stamps as provided in this article, or in the case of products not requiring a stamp to be affixed where purchase invoices do not itemize the applicable tobacco taxes, are declared to be contraband goods and may be seized by the Department of Revenue, or its agents or by any peace officer of the State of Alabama, without a warrant and the goods shall be delivered to the Department of Revenue for

destruction. Any of the goods, wares, or merchandise when offered for sale, either at wholesale or retail without the stamps having been first affixed, or in the case of products not requiring a stamp to be affixed where purchase invoices do not itemize the applicable tobacco taxes, shall be subject to confiscation as hereinabove provided. Any untaxed cigarettes, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article found at any location within the State of Alabama, other than the primary location of the permitted wholesaler or jobber, registered semijobber, registered retailer or tobacco products manufacturer who stores tobacco products at a bonded warehouse in this state for resale, are declared to be contraband goods, and those goods may be seized by the Department of Revenue, or its agents or by any peace officer of the State of Alabama, without a warrant and the goods shall be delivered to the Department of Revenue for destruction. Any vehicle, not a common carrier, used for the transportation for the purpose of sale of unstamped articles as hereinabove enumerated shall likewise be subject to confiscation and sale at public auction to the highest bidder after due advertisement and notice to the title owner of the vehicle. The proceeds of sale for any vehicle sold hereunder shall be deposited into the State Treasury by the Department of Revenue to be credited in the same manner as the tax otherwise due on the tobacco products being transported. The cost of confiscation and sale shall be paid out of the proceeds derived from the sale before making remittance to the Treasurer. Should any unstamped tobaccos be found in any vehicle which is engaged in the sale, distribution, or delivery of taxable tobaccos, the same shall be prima facie evidence that it was there for sale."

(Emphasis added.)

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PCW argued in its summary-judgment motion that the Department's confiscation power under § 40-25-8 is limited to tobacco products in the possession of retailers or semijobbers and that the cigars confiscated here were not in the possession of a retailer or semijobber. In response to PCW's motion, the Department pointed to the provision in the latter part of § 40-25-8 stating that

"[a]ny untaxed ... cigars ... or other products taxable under this article found at any location within the State of Alabama, other than the primary location of the permitted wholesaler or jobber, registered semijobber, registered retailer or tobacco products manufacturer who stores tobacco products at a bonded warehouse in this state for resale, are declared to be contraband goods."

The Department appears to suggest to this Court that, pursuant to the above-quoted portion of § 40-25-8, nearly all untaxed tobacco products in Alabama are contraband unless they are kept in a bonded warehouse, regardless of who possesses the products.⁴ According to the Department, the clause is "designed to allow the storage of the product in a bonded warehouse by people that might need to use a bonded warehouse

⁴The Department does appear to acknowledge the two-hour "window" afforded retailers and semijobbers under the initial portion of § 40-25-8 but argues that it does not apply in this case.

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without paying the tobacco tax until they are pulled from the bonded warehouse for sale in Alabama." It is not clear, however, why the clause uses the term "the primary location" if it is simply aimed at allowing untaxed tobacco products to be stored in bonded warehouses. It also is not clear that the reference to "a bonded warehouse" applies to tobacco products stored by someone other than a tobacco-products manufacturer. Indeed, in its response to PCW's summary-judgment motion, the Department argued to the trial court that, "if the product is stored in Alabama in a bonded warehouse of a manufacturer then it is not contraband." (Emphasis added.)

I cannot escape the conclusion that, when considered with the rest of § 40-25-8, the meaning of the portion upon which the Department relies is simply not clear. If statutory language is ambiguous, this Court must endeavor to determine legislative intent. Deutsche Bank Nat'l Tr. Co. v. Walker Cty., [Ms. 1160926, June 28, 2019] ___ So. 3d ___, ___ (Ala. 2019). In doing so, it is helpful to consider other statutes set out in Chapter 25 of Title 40. See Long v. Bryant, 992 So. 2d 673, 684 (Ala. 2008) ("Courts do not interpret statutory provisions in isolation, but consider them in the

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context of the entire statutory scheme."); James v. McKinney, 729 So. 2d 264, 267 (Ala. 1998) ("In determining legislative intent, a court should examine related statutes."). I also note that "taxing statutes should be strictly construed against the taxing power." Alabama Farm Bureau Mut. Cas. Ins. Co. v. City of Hartselle, 460 So. 2d 1219, 1223 (Ala. 1984). Because the provision here is not clear, we must strictly construe it against the Department.

Chapter 25 of Title 40 is not aimed at taxing all tobacco products that are located within Alabama. Rather, the tobacco tax is levied on tobacco products that are going to be sold in Alabama. See § 40-25-2(a) ("[E]very person, firm, corporation, club, or association, within the State of Alabama, who sells or stores or receives for the purpose of distribution to any person, firm, corporation, club, or association within the State of Alabama, [tobacco products] shall pay ... a license or privilege tax which shall be measured by and graduated in accordance with the volume of sales of such person, firm, corporation, club, or association in Alabama." (emphasis added)); Snow v. State, 259 Ala. 579, 582, 67 So. 2d 822, 824 (1953) (considering a prior version of

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§ 40-25-2 and concluding that, "when that statute imposes a license or privilege tax on a person who 'sells or stores or receives for the purpose of distribution,' it means as to the storage as well as to the receipt of the cigarettes, that it must be for distribution, such as a sale" (emphasis added)).

In light of that purpose, I read the confiscation power acknowledged in the latter portion of § 40-25-8, upon which the Department relies, as limited to untaxed tobacco products possessed by the persons or entities referenced in the statute who sell tobacco products in Alabama, i.e., wholesalers, jobbers, semijobbers, retailers, and manufacturers. The existence of an alternative statutory scheme imposing a tax on the storage, use, or consumption of tobacco products, as opposed to their sale, buttresses that conclusion. See § 40-25-41, Ala. Code 1975 (imposing a tax on "the storage, use or other consumption in this state of tobacco products purchased at retail" unless the tax imposed by § 40-25-2 has been paid). The Court in Snow held that a person possessing a large amount of cigarettes he intended to sell in Alabama was subject to the tobacco tax, that the cigarettes in his possession were contraband because that tax had not been paid, and that the

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cigarettes would have been subject to the tax currently imposed by § 40-25-41 and not the tobacco tax if they had been held for personal use. 259 Ala. at 582, 67 So. 2d at 824-25.⁵

The latter portion of § 40-25-8 uses the term "the primary location." Although the statute is not a model of clarity, I believe that, in using that term, the legislature was concerned with the Department's ability to inspect stored tobacco products and to ensure that the tobacco tax has been paid. After all, because the Department is charged with enforcing the tobacco-tax statutes, it must have knowledge of, and ready access to, locations where tobacco products are kept. See, e.g., § 40-25-12, Ala. Code 1975 (acknowledging the Department's authority to conduct inspections to enforce the taxing statutes and making it a crime to improperly interfere with inspections); § 40-25-26, Ala. Code 1975 (stating that the Department has the duty to enforce the tobacco-tax statutes and has "the power to enter upon the premises of any taxpayer and to examine, or cause to be examined, ... any books, papers, records, or memoranda, etc., bearing upon the amount of taxes payable, and to secure other

⁵The Department does not argue that the cigars confiscated in this case were subject to a tax other than the tobacco tax.

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information directly or indirectly concerned in the enforcement of this article"). Thus, I would interpret the clause at issue to mean that, if a wholesaler, jobber, semijobber, or retailer stores untaxed tobacco products somewhere other than their "primary location," the products immediately become contraband.⁶

Accordingly, I cannot agree with the Department's apparent assertion that the latter portion of § 40-25-8 is aimed at declaring nearly all untaxed tobacco products in Alabama, regardless of who possesses them, to be contraband. As an alternative to that argument, the Department suggests

⁶It is not necessary to decide in this case whether untaxed tobacco products stored by a tobacco-products manufacturer somewhere other than the manufacturer's "primary location" are contraband, because it is undisputed that the cigars confiscated here were not in the possession of a manufacturer. I also note that § 40-25-8 appears to exempt from the Department's confiscation power some untaxed tobacco products that are stored in a bonded warehouse, at least by tobacco-products manufacturers. Black's Law Dictionary defines "bonded warehouse" as "[a] special type of private warehouse used to store products subject to customs duties." Black's Law Dictionary 1898 (11th ed. 2019). See also Webster's Third New International Dictionary 250 (1961) (defining "bonded warehouse" as "a warehouse under bond to the government for payment of customs duties and taxes on goods stored or processed there"). It is not necessary, however, to construe that portion of the statute, because it is undisputed that the cigars at issue in this case were not stored in a bonded warehouse.

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that it submitted substantial evidence that the cigars at issue were indeed possessed by one of the entities referenced in § 40-25-8. Specifically, the Department asserts that it presented sufficient evidence indicating that the cigars were in the possession of Thiab's business, which the Department suggests is a semijobber under the definition of that term in § 40-25-1, Ala. Code 1975. It appears the main opinion agrees with that assertion.⁷

As noted, the storage units from which the cigars were confiscated were not rented in the name of Thiab or his business; they were rented by Saed, Ghadir, and Sami. The Department does not argue that those individuals are themselves tobacco-products sellers who intended to sell the cigars. Rather, the Department asserts that they were acting as agents of Thiab's business and that they were holding the cigars "in furtherance of the tobacco wholesale business of the Thiab family." According to the Department, Thiab's business was "in constructive or apparent physical control of

⁷For purposes of this opinion, I assume that Thiab's business fits within the definition of a "semijobber" under § 40-25-1, Ala. Code 1975, and that the storage units where the cigars were stored do not constitute "the primary location" of Thiab's business.

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the cigars." Respectfully, I do not believe the Department has met its burden on appeal.

First, I note that the Department does not point to any evidence indicating exactly what Ghadir's or Sami's relationship is to Thiab or his business. The assertions in the Department's brief to this Court that Ghadir is Thiab's daughter and that Sami was a driver for Thiab's business are simply not supported by the portions of the record referenced in the Department's brief. Likewise, the Department's assertions that Ghadir and Sami "had been observed performing the critical functions of the business under investigation at this storage facility for several months before the confiscation" and that Ghadir "was known to be utilizing the storage units to further the tax evasion of the Thiab tobacco wholesale business" are not supported by the portions of the record the Department cites.

As for Saed, the record does contain evidence indicating that he is Thiab's son and that he has been involved in trips to PCW's location in Florida and in deliveries of untaxed tobacco products by Thiab's business to various sellers in Alabama. However, we have not been directed to any evidence

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indicating that Thiab's business or anyone else actually purchased from PCW the particular cigars at issue here. For all that appears, PCW still owns them. As noted, it is undisputed that the cigars were moved from PCW's warehouse in Florida shortly after it was damaged by Hurricane Michael. Finally, the Department's conclusory assertion that, simply because Saed assisted with aspects of Thiab's business, that business was in "constructive or apparent physical control" of the particular cigars at issue in this case is not supported by legal authority. See Dykes v. Lane Trucking, Inc., 652 So. 2d 248, 251 (Ala. 1994) (indicating that this Court will disregard arguments that are based on undelineated general propositions not supported by sufficient authority).

The Department bears the burden on appeal. Johnson v. Life Ins. Co. of Alabama, 581 So. 2d 438, 444 (Ala. 1991). It has failed to point to evidence indicating that Ghadir, Sami, or Saed were acting on behalf of Thiab's business in renting the storage units and storing the cigars at issue. Thus, the Department has not demonstrated that evidence exists indicating that the cigars were in the possession of Thiab's business for purposes of § 40-25-8. The Department's

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purported justification for exercising its confiscation power is based on speculation. I would affirm the trial court's judgment.⁸

⁸The Department does not argue that the cigars were in the possession of PCW for purposes of § 40-25-8 and were, for that reason, subject to seizure under the statute.

Appendix

Subject to confiscation:



Not subject to confiscation:



Untaxed taxable tobacco products found in Alabama

found at primary location
of permitted wholesaler or jobber,
registered semijobber or retailer, or
manufacturer that stores products at
a bonded warehouse

in Alabama,
in possession
of retailer or
semijobber for
2 hours or
longer

offered for
sale at either
wholesale
or retail