REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

LAWRENCE JOHN BURNE,
BRUCE A. JONES,
DAVE SMITH a.k.a. DAVID SMITH,
SILVESTRE LLENA GUANZON,
GARY SIDNEY SMITH,
MICHAEL T. ARCANGEL,
LEOPOLDO E. MACASAET,
RANDEE P. NAPIZA,
OSCAR AMADOR,
MARISSA P. CLAUDIO,
SORAIYA C. CABRITO,
SEVERINO D. CAMLAN,
ROWEL G. DOLAP,
REX C. DURAN, NESTER DEL ROSARIO a.k.a. NELSON DEL ROSARIO, ALIAS "JOHAN" a.k.a JOHN PAUL LERAUX,
and JOHN DOES.
Accused.

C.T.A. Crim. Case No. O-170
For: Violation of Section 3601
In relation to Section 101 of the
Tariff and Customs Code,
as amended

Members:
BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 03 2014
1:40 p.m.

x---x

DECISION

RINGPIS-LIBAN, J.

Before the Court is an Information charging accused Lawrence John Burne, Bruce A. Jone, Dave Smith a.k.a. David Smith, Silvestre Llena Guanzon, Gary Sidney Smith, Michael T. Archangel, Leopoldo E. Macasaet, randee P. Napiza, Oscar Amador, Marissa P. Claudio, Spraiya C. Cabrito, Severino D. Camlan, Rowel G. Dolap, Rex C. Duran, Nester Del Rosario a.k.a. Nelson Del Rosario, Alias "Johan", and John Does as having conspired to commit the crime of unlawful importation, or smuggling, under Section 3601 of the Tariff and Customs Code of the Philippines.

The present Decision, however, pertains only to accused Lawrence John Burne ("Burne"), given that the instant case had been dismissed by this Court as to accused Bruce A. Jones and Silvestre Llena Guanzon, while the rest of the accused are still at large or have not yet been arraigned.[1]

The Information filed on February 5, 2010 recites as follows:

> "That on August 20, 2009 or on dates prior or subsequent thereto, in Mariveles, Bataan, Philippines, within the Sub-port of Mariveles, Port of Limay, Bataan, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and fraudulently import or bring into the Philippines, or assist in so doing, 20 wooden crates/boxes that were painted black to conceal the nature and origin of the cargo and containing one hundred (100) units of SS1-V1 KAL 5.56 INDONESIA rifles, as declared in Commercial Invoice No. 13/INV/DM/P/BD/IV/ 2009, approximately valued at Php5,211,126.00 with total duties and taxes of Php1,303,732.00, and ten (10) units of pistol P2-V1 valued at Php391,919.21 with total duties and taxes amounting to Php97,699, on board the vessel M/V UFUK from Jakarta, Indonesia, consigned to Red White and Blue Arms, Incorporated, without the accompanying Foreign Inward Cargo Manifest and without first securing the required license or permit to purchase and import firearms and ammunitions from the Firearms and Explosives Office of the Philippine National Police and such other agencies mandated by law to regulate the importation of firearms and ammunitions, the said cargoes having been declared as strictly prohibited and their importation is highly restricted, thereby causing damage and prejudice to the Government.
>
> That accused Bruce Jones is the original skipper of M/V UFUK during the pertinent voyage to the Philippines from

[1] By Resolution dated July 4, 2011, the CTA Crim. Case No. O-170 was archived as to the following accused who had remained at-large: Gary Sidney Smith, Michael T. Arcangel, Leopoldo E. Macasaet, Randee P. Napiza, Oscar Amador, Marissa P. Claudio, Soraiya C. Cabrito, Severino D. Camlan, Rowel G. Dolap, Rex C. Duran, Nestor Del Rosario (a.k.a. Nelson del Rosario), and alias Johan (John Paul Leraux). The same Resolution dismissed the case as to Bruce Jones, who was shot dead on September 21, 2010. The case as to Silvestre L. Guanzon was dismissed by Resolution dated July 31, 2013 when the Court granted his Demurrer to Evidence dated May 22, 2013.

Jakarta, Indonesia where the subject cargoes of forearms and ammunitions were loaded under his watch; accused Lawrence John Burne, took over the command of the vessel from accused Bruce Jones off the shore of Subic Bay and sailed to Mariveles, Bataan where the unmanifested cargoes consisting of about 50 units SS1-V1 Kal 5.56 Indonesia rifles were unloaded by accused Dave Smith a.k.a. David Smith and Silvestre Llena Guanzon, with the help of accused Lawrence John Burne, without executing the required import entry forms; that the vessel M/V Ufuk of Panamanian registry is owned by La Plata Trading, Inc., whose responsible officers are accused Gary Sidney Smith, Michael T. Arcangel, Leopoldo E. Macasaet, Randee P. Napiza, and Oscar Amador; and that the subject unmanifested cargoes consisting of firearms and ammunitions are consigned to the Red White and Blue Arms, Inc. whose responsible officers are accused Marissa P. Claudio, Soraiya C. Cabrito, Severino D. Camlan, Roel G. Dolap, Rex C. Duran and Nelson Del Rosario a.k.a. Nestor del Rosario.

CONTRARY TO LAW."

On March 18, 2010, the Court issued a Warrant of Arrest against accused Burne.[2]

The Warrant of Arrest was served on accused Burne while he was still under the custody of the Bureau of Immigration Detention Center as per the letter sent to the Court by Atty. Basset M. Sarip, Investigation Agent III of the Anti-Organized Crime Division of the National Bureau of Investigation.[3]

Accused Burne thereafter filed a Motion for Reduction of Bail on March 26, 2010[4], which was denied by the Court via Resolution[5] dated April 28, 2010 considering the nature and circumstances of the offense charged against him and that, being a non-resident of the Philippines, the possibility of flight from justice cannot be discounted.

On August 17, 2011, accused Burne executed an Undertaking stating that he shall appear before the Court whenever so required by it or by the Rules of Court; that his failure to appear at the trial without justification despite due notice shall be deemed an express waiver of his right to be present on the dates specified in the notice, in which case the trial may proceed *in absentia*; and that he shall surrender himself for the execution of the final judgment.[6]

---

[2] Docket, volume (vol.) I, p. 256
[3] Docket, vol. II, p. 356
[4] Docket, vol. I, pp. 297-298
[5] Docket, vol. II, p. 374
[6] Docket, vol. III. p. 1181

Upon arraignment, accused Burne, assisted by his counsel, pleaded "Not Guilty" of the crime charged.[7] After arraignment, accused Burne posted the recommended bail in the amount of P120,000.00 for his provisional liberty under CTA Official Receipt No. 8697910 dated August 17, 2011, and paid the bond's fee in the total amount of P500.00.

On August 17, 2011, the Court issued a Resolution which approved the cash bail bond of P120,000.00 posted by accused Burne and directed the Clerk of Court to issue an order for his release unless he is detained for other lawful causes.[8] Accordingly, a Release Order was issued on the same day by the Clerk of Court directing the Acting Warden of the Bureau of Immigration Detention Center, Angelito S. Geronimo, to discharge from his custody accused Burne but only as it affects this case unless he is being held or detained for some other lawful causes.[9]

Preliminary conferences were held on September 7, 2011[10], September 28, 2011[11], October 12, 2011[12] and October 19, 2011[13]. Thereafter, the pre-trial conference was set on November 16, 2011. The Prosecution's Pre-Trial Brief and the Pre-Trial Brief of the Accused (Lawrence John Burne) were filed on November 14, 2011[14] and November 15, 2011[15], respectively.

However, during the hearing held on November 16, 2011, the Court, among others, allowed the resetting of the pre-trial conference to December 14, 2011.[16] Accordingly, the Prosecution's Pre-Trial Brief[17] was filed on December 5, 2011; while the Amended Pre-Trial Brief[18] of Accused Burne was filed on December 13, 2011.

The pre-trial conference was later reset to February 8, 2012.[19] The Court subsequently issued a Pre-Trial Order on May 23, 2012 and considered the pre-trial of the case terminated.[20] In the Pre-Trial Order, it was also stated that the prosecution and accused Burne stipulated on the following facts:

> "1. That accused Lawrence John Burne, who was arraigned by this Court, is the same person charged in the Information docketed as CTA Crim. Case No. O-170.

---

[7] Minutes of the Hearing held on August 17, 2011, docket, vol. III, pp. 1198-1199
[8] Docket, vol. III, pp. 1221-1222
[9] Docket, vol. III, p. 1223
[10] Minutes of the Preliminary Conference, docket, vol. III, pp. 1233-1235
[11] Minutes of the Preliminary Conference, docket, vol. III, pp. 1295-1302
[12] Minutes of the Preliminary Conference, docket, vol. III, pp. 1305-1308
[13] Minutes of the Preliminary Conference, docket, vol. III, pp. 1402-1403
[14] Docket, vol. III, pp. 1475-1490
[15] Docket, vol. III, pp. 1493-1495
[16] Minutes of the hearing held on November 16, 2011, docket, vol. III, p. 1503
[17] Docket, vol. III, pp. 1556-1571
[18] Docket, vol. III, pp. 1579-1581
[19] Minutes of the hearing held on December 14, 2011, docket, vol. III, pp. 1582-1583
[20] Docket, vol. III, pp. 1642-1657

2. That accused Burne went to the Philippines on August 18, 2009 to act as a replacement captain for M/V UFUK and substituted its previous captain Bruce Jones.

3. That on August 19, 2009, the vessel M/V UFUK arrived in Mariveles, Bataan, with accused Capt. Lawrence John Burne as the master of the ship with thirteen (13) crew members who are all Georgian nationals.

4. That on August 20, 2009, accused Burne was apprehended by a team from the Bureau of Customs, Philippine National Police, and the Philippine Coast Guard for alleged Violation of the Tariff and Customs Code for failure to produce necessary documents to support the cargo in the vessel.

5. On September 23, 2009, a complaint for violation of Section 3601 of the Tariff and Customs Code of the Philippines was filed before the Department of Justice. The same however was subsequently amended on September 23, 2009."

The prosecution presented the following witnesses to establish accused Burne's culpability: Atty. Elvira Cruz, Collector in the Port of Mariveles, Sub-port of Limay, Bataan[21]; Mr. Anacleto V. Baltazar, Jr., Acting Chief Port Operation, Port Inspection Unit at the Port of Mariveles, Sub-port of Limay, Bataan[22]; Mr. Rodolfo Gonda, Jr., Special Agent II and Assistant Chief of the Firearms and Explosives Unit of the Enforcement and Security Service at the Bureau of Customs (BOC)[23]; Mr. Ferdinand Galicia, Administrative Aid VI of the Port Inspection Unit at Sub-port of Mariveles, Bataan[24]; Atty. Juan Tan, Collector of Customs V in the Office of the Commissioner of Customs but was previously assigned as District Collector of Batangas[25]; Atty. Christopher Francisco C. Bolastig, Officer-In-Charge for the Office of the District Collector for the Port of Zamboanga and previously assigned to the Legal Service of the Bureau of Custom starting June 2009[26]; and Mr. Ferdinand A. Balina, previously employed as Customs Operation Officer III assigned at the Office of the Commissioner at the Bureau of Customs[27].

During hearing, Atty. Elvira Cruz testified that she is the Collector of the Bureau of Customs at the Port of Mariveles, Sub-port of Bataan since 2008. Atty. Cruz stated that on August 20, 2009, Mr. Anacleto Baltazar, her boarding officer, reported that there is a vessel anchored at the coastline of Mariveles Bataan, without any notice of arrival. There was likewise no flag so as to

[21] TSN taken on April 11, 2012
[22] TSN taken on May 23, 2012 and July 11, 2012
[23] TSN taken on August 1, 2012
[24] TSN taken on September 19, 2012
[25] TSN taken on September 19, 2012
[26] TSN taken on November 7, 2012
[27] TSN taken on November 7, 2012

identify the nationality of the vessel, so she ordered two of her boarding officers, Mr. Julian Gabriel and Mr. Anacleto Baltazar, Jr., to board the said vessel in order to check what cargoes are inside and the people inside. Atty. Cruz said that upon boarding, Mr. Baltazar informed her through cellphone that the vessel is positive for carrying guns. According to Atty. Cruz, she instructed the boarding officers to return to the office and to secure the said vessel. She also testified that she informed then BOC Commissioner Napoleon Morales of the report and then Commissioner Morales sought the help of the coastguard. Atty. Cruz further mentioned that the coastguard went and secured the vessel, after which, Atty. Cruz followed and she personally boarded the vessel together with Mr. Baltazar, Mr. Gabriel, the coastguard people, and other boarding officers of the port.

Atty. Cruz added that when she and the boarding officers boarded the vessel, they opened the hatch and saw several boxes there, so they went down the hatch to personally check on the boxes. Atty. Cruz described the boxes as made of wood (wooden crates) which have prints that say "Government of Thailand," but were painted black, although they were able to identify it upon close inspection. They were nailed, but there were around two (2) boxes that were already open. All in all, there were fifteen (15) boxes. Atty. Cruz mentioned that they opened the boxes and found five (5) boxes containing guns and other accessories, while the other ten (10) boxes were already empty. Atty. Cruz further testified that they questioned some crew members of the ship, which are all Georgian nationals, but they cannot speak English. According to Atty. Cruz, Captain Lawrence John Burne introduced himself as the ship captain and when Atty. Cruz asked him for documents in relation to the importation of those guns, he said that there is none because he is already the second captain of the vessel and that he exchanged position with another captain somewhere in Subic. Atty. Cruz also mentioned that accused Burne denied having known the contents of the vessel and that he did not know that the vessel was carrying guns. In view thereof, Atty. Cruz issued a Warrant of Seizure and Detention. Atty. Cruz stated that they made an informal inventory of the guns at the time that they boarded the vessel, while the formal inventory was done the following day.

On cross-examination, Atty. Cruz mentioned that accused Burne did not resist when the two personnel from the BOC boarded the vessel. Atty. Cruz likewise stated that when she went up the vessel, the guns that were supposed to be unloaded were already returned inside the boxes. She mentioned that accused Burne was not asked pertinent questions upon opening of the hatch of the vessel because he does not have a lawyer. Atty. Cruz said that they conducted an informal inventory where they counted the guns and took pictures. She also mentioned that they counted the first box and then they saw the contents of the other boxes, so they presumed that they contained the same because they did not open all of it until the proper representative from the Office of the BOC Commissioner arrived. Atty. Cruz added that at the time of the inventory, there is no necessity to coordinate with the Embassy of accused

Burne; that there is no necessity for counsel; and that she did not secure a search warrant because they considered it *in pari delicto.*

Prosecution's second witness, Mr. Anacleto V. Baltazar, Jr., testified that he is the Acting Chief Port Operation of the Port Inspection Unit at Mariveles, Bataan since October 2008. According to Mr. Baltazar, he reported for work on August 20, 2009 and during his duty, he received an anonymous call from a concerned citizen in Mariveles that there was a ship anchored at the Mariveles anchorage area in Bonifacio area in Mariveles, Bataan. He, together with Assistant Customs Inspector Julian Gabriel, one plant quarantine named Mr. Oscar Oliva and one fishery quarantine named George Mogo checked and eventually found out that there is a ship anchored at the Mariveles anchorage. Mr. Baltazar testified that they identified the vessel as foreign since it has a "Panama" embedded on its back portion and that its name is "M/V Captain Yufuk." He also said that upon reaching the top of the vessel, he noticed some crates on the deck itself. Mr. Baltazar identified accused Burne in open court as the captain of the vessel whom he met when he boarded the vessel. He also stated that he asked accused Burne for the last port clearance, the inward manifest, the bill of lading and the crew list. According to Mr. Baltazar, accused Burne presented the last port clearance, which indicated that the next port should be the Port of Batangas and not the Port of Mariveles. However, accused Burne did not present any inward foreign manifest or bill of lading of the cargoes on board the vessel. According to Mr. Baltazar, there was likewise no shipping agent to assist the witness during the boarding formality. He added that they saw some crates upon going out of the office of accused Burne, and so he asked his assistant, Mr. Julian Gabriel, to photograph those crates because they are unmarked and he asked accused Burne to just keep the crates down the hull for safekeeping. Mr. Baltazar also testified that he called his immediate boss, Atty. Cruz, to inform her of the incident and the latter instructed them to go back to the office and prepare an incident report. As instructed, Mr. Baltazar submitted the incident report to Atty. Cruz and they then re-boarded the vessel with Atty. Cruz, Mr. Gabriel, some police officers from PNP-Mariveles, some police officers from Philippine Coastguard and Maritime police. Mr. Baltazar mentioned that Atty. Cruz asked accused Burne for the crew list, the inward foreign manifest, the bill of lading and any document in his possession. Accused Burne produced the copy of the last port clearance and a copy of the crew list, but did not give the inward foreign manifest.[28] Mr. Baltazar also corroborated the testimony of Atty. Cruz that there was an informal inventory of the contents of the wooden crates in the hatch of the ship. After which, he said that they disembarked and left the crates down the hull and asked the crew members to just keep it there and they will be back for the seizure of the items. Mr. Baltazar added that the crates were subsequently transferred to a tugboat and they were brought to the office of Atty. Cruz where the actual inventory of the items took place. Mr. Baltazar stated that he was present when the formal inventory of the seized items took place. And after the formal inventory, the items were turned over by Atty.

[28] TSN taken on May 23, 2012

Cruz to the Office of General Nestorio Gualberto, the then head of the Enforcement and Security Service (ESS) of the BOC.[29]

During cross-examination, Mr. Baltazar confirmed that accused Burne was just a second ship captain and that he has no proof as to the contents of the empty crates found in the vessel.[30]

The third witness for the prosecution, Mr. Rodolfo D. Gonda, Jr., manifested that he is a Special Agent II and Assistant Chief of the Firearms and Explosive Unit of the Enforcement and Security Service of the Bureau of Customs. Mr. Gonda testified that on August 24, 2009, they have received and inventoried all of the Pindad rifles, accessories, attachments and manuals of the firearms that were recovered from the vessel M/V Captain Ufuk by the joint team of BOC personnel, PNP personnel and coastguard. According to Mr. Gonda, Mr. Ferdinand Galicia, also a BOC personnel assigned at the Port of Mariveles, Bataan, brought the subject rifles and other accessories to his office at the ESS-BOC and was escorted by BOC and PNP personnel. He likewise narrated that they conducted the inventory of the Pindad rifles and other firearms accessories by listing them on a yellow sheet/yellow paper one-by-one together with the accessories, other paraphernalia and manuals. He said that on September 28, 2011, they escorted and provided security for the Pindad rifles, which were pre-marked and photographed by Court of Tax Appeals' personnel.[31]

During cross-examination, Mr. Gonda admitted that he does not personally know whether or not the articles seized from the vessel were the same firearms that were taken to his office.[32]

Mr. Ferdinand Galicia, the prosecution's fourth witness, stated that he was employed in the Bureau of Customs as an Administrative Aid VI in the Port Inspection Unit at Sub-port of Mariveles, Bataan. He testified as to the formal inventory of the boxes containing firearms and accessories at the Office of the District Collector wherein personnel of PNP-Mariveles stenciled the serial numbers on the firearms that were inside the crates and took some photographs of the said firearms and accessories on August 21, 2009. According to Mr. Galicia, after the formal inventory of the firearms and accessories, they turned it over to the Firearms and Explosives Unit of the Bureau of Customs on August 24, 2009 for proper safekeeping. Thereafter, he and Mr. Rodolfo Gonda made a handwritten inventory of all the firearms and accessories.[33]

[29] TSN taken on July 11, 2012
[30] TSN taken on July 11, 2012
[31] TSN taken on August 1, 2012
[32] TSN taken on August 1, 2012
[33] TSN taken on September 19, 2012

On cross-examination, Mr. Galicia stated that the actual inventory was done inside their office at the Sub-port of Mariveles, Bataan after the unloading of all the crates from the vessel. He also confirmed that there was no one-by-one inventory of the firearms inside the vessel.

During redirect examination, Mr. Galicia explained that the crates were locked when the PNP took the crates from the vessel. According to Mr. Galicia, they nailed the crates after the inventory.[34]

During the re-cross examination, Mr. Galicia testified that there were two padlocks on each crate and that the crates were locked when they took it out of the vessel.[35]

Mr. Juan Tan is the prosecution's fifth witness, who testified that he was previously the District Collector of Batangas. According to Mr. Tan, he was the one who issued the Warrant of Seizure and Detention against M/V Mou Man Tai together with two (2) units of Yamaha jetski and one (1) motorized rubber boat by virtue of the request of the Philippine Coastguard and the personnel of Bureau of Customs at the Port of Batangas.[36]

The fifth witness of the prosecution, Atty. Christopher Francisco C. Bolastig, testified that he was assigned at the Legal Service of the Bureau of Customs starting June 2009 and was a member of the fact-finding investigation committee created by then BOC Commissioner Napoleon L. Morales to investigate the circumstances surrounding the alleged smuggling of firearms onboard M/V Captain Ufuk. During the hearing, Atty. Bolastig identified accused Burne as the one who was manning the vessel when it was intercepted by a composite team consisting of elements from the BOC, the coastguard and the PNP-Mariveles.[37]

On cross-examination, Atty. Bolastig confirmed that accused Burne was only present at the time the vessel entered the Philippines and that he was just a replacement captain.[38]

The prosecution's last witness, Mr. Ferdinand A. Balina testified that he was previously employed at the BOC as Customs Operation Officer III. He stated that he was the one who prepared the computation sheets for the various rifles offloaded from M/V Captain Ufuk based on machine copies of commercial invoice and billing statement.[39]

---

[34] TSN taken on September 19, 2012
[35] TSN taken on September 19, 2012
[36] TSN taken on September 19, 2012
[37] TSN taken on November 7, 2012
[38] TSN taken on November 7, 2012
[39] TSN taken on November 7, 2012

On cross-examination, Mr. Balina testified that he did not see any original document that could be used as the basis of his computation.[40]

The prosecution also presented documentary evidence marked as Exhibits "A" to "FFFF-229", which were admitted by this Court as evidence for the prosecution with the exception of Exhibits "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "RR", "BBB", "EEE", "EEE-1", "OOO" to "OOO-2", "SSS", "TTT", "AAAA" and "BBBB", which were denied admission for the prosecution's failure to present and compare with the originals; and Exhibits "WWW-1", "WWW-2", "YYY-1", "YYY-2", "YYY-3", and "YYY-4", which were also denied admission for the prosecution's failure to mark the said exhibits.[41] With the admission of the offered exhibits, the prosecution rested its case.

On February 20, 2013, accused Burne filed, through registered mail, a Motion with Leave of Court to Allow Accused to File Demurrer to Evidence, attaching thereto his Demurrer to Evidence[42], praying for the dismissal of the criminal case against him. However, the Court denied said Demurrer to Evidence for lack of merit as per Resolution[43] dated July 31, 2013.

On September 11, 2013, the Court issued a Resolution[44] which, among others, ordered the Bureau of Immigration to include in its Hold Departure List accused Lawrence John Burne.

When the case was called for presentation of evidence for accused Burne only, Atty. Zennia C. Barrion manifested that the handling counsel, Atty. Jake C. Luna, was indisposed and that their only witness was the accused Burne who was also not present in Court. Thus, as prayed for, the Court ordered the issuance of a bench warrant of arrest against accused Lawrence John Burne and the bail bond posted was also forfeited and his presentation of evidence was deemed waived. Consequently, the parties were directed to file their respective memoranda, after which, the case against accused Lawrence John Burne shall be submitted for decision.[45]

Subsequently, the Memorandum (for accused Lawrence John Burne) was filed through registered mail on January 10, 2014[46]; while the prosecution failed to file its Memorandum as per Records Verification[47] dated February 19, 2014.

---

[40] TSN taken on November 7, 2012
[41] Resolution dated January 31, 2013, docket, vol. IV, pp. 1967-1968
[42] Docket, vol. IV, pp. 1989-1998
[43] Docket, vol. V, pp. 2128-2144
[44] Docket, vol. V, pp. 2178-2182
[45] Minutes of the Hearing held on December 11, 2013, docket, vol. VI, p. 2238
[46] Docket, vol. VI, pp. 2258-2269
[47] Docket, vol. VI, p. 2297

On February 10, 2014, Police Officer 1 Jeremiah Dela Cruz Baniasia of Warrant PNCO, Imus City Police Station, Imus, Cavite returned the bench warrant issued by the Court, stating that accused Lawrence John Burne has moved or transferred to an unknown address around two (2) years ago, as certified by Barangay Captain Reynaldo P. Borromeo of Barangay Bayan Luma III, Imus, Cavite.[48]

Likewise, Police Chief Inspector Ricky Patron Neron of 4-A Regional Criminal Investigation and Detection Unit of the Philippine National Police returned on February 13, 2014 the bench warrant issued by this Court, stating that accused Burne cannot be contacted/located or his whereabouts unknown as certified by the Barangay Secretary of Barangay Bayan Luma III, Imus, Cavite, Mr. Luisito Antonio B. Abad.[49]

In view of the foregoing, the Court on February 26, 2014 ordered the issuance of an Alias Warrant of Arrest against accused Lawrence John Burne, and deemed the case submitted for decision.[50] However, the submission for decision pertains to accused Burne alone, given that the case had earlier been dismissed by this Court as to accused Bruce Jones and Silvestre Llena Guanzon, and archived as to the rest of the accused who are still at large or have not yet been arraigned.

On March 7, 2014, the Court issued an Alias Warrant of Arrest against accused Lawrence John Burne.

The Issues

As stated in the Pre-Trial Order dated May 23, 2012, the issues[51] for resolution are as follows:

> "1. Whether or not the accused Lawrence John Burne is guilty as charged; and
>
> 2. Whether accused Lawrence John Burne has already served the maximum of the imposable penalty under Section 3601 of the Tariff and Customs Code of the Philippines, as amended."

The Applicable Laws

The Information charges Burne with wilfully, unlawfully and fraudulently importing or bringing into the Philippines, or assisting in so doing,

---

[48] Docket, vol. VI, pp. 2288-2289
[49] Docket, vol. VI, pp. 2293-2296
[50] Resolution dated February 26, 2014, docket, vol. VI, pp. 2300-2301.
[51] Docket, vol. III, p. 1644

one hundred (100) rifles and ten pistols, with a combined value of PHP5,603,045.21, on which the taxes and duties totalled PHP1,401,431, without the accompanying Foreign Inward Cargo Manifest and without first securing the required license or permit to purchase and import firearms and ammunitions from the Firearms and Explosives Office of the Philippine National Police and such other agencies mandated by law to regulate the importation of firearms and ammunitions, the said cargoes having been declared as strictly prohibited and their importation is highly restricted.

The foregoing comprises unlawful importation, under Section 3601 of the Tariff and Customs Code of the Philippines, as amended, which provides as follows:

> **Sec. 3601.** ***Unlawful Importation.*** — Any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, knowing the same to have been imported contrary to law, shall be guilty of smuggling and shall be punished with:
>
> xxx
>
> 4. A fine of not less than eight thousand pesos nor more than ten thousand pesos and imprisonment of not less than eight years and one day nor more than twelve years, if the appraised value, to be determined in the manner prescribed under this Code, including duties and taxes, of the article unlawfully imported exceeds one hundred fifty thousand pesos. xxxx
>
> In applying the above scale of penalties, if the offender is an alien and the prescribed penalty is not death, he shall be deported after serving the sentence without further proceedings for deportation; if the offender is a government official or employee, the penalty shall be the maximum as hereinabove prescribed and the offender shall suffer an additional penalty of perpetual disqualification from public office, to vote and to participate in any public election.
>
> When, upon trial for violation of this section the defendant is shown to have had possession of the article in question, possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court: Provided, however, That payment of the tax due after apprehension shall not constitute a valid defense in any prosecution under this section.

Also relevant to the resolution of the case is Section 101(a) of the TCCP, as amended by P.D. No. 1464:

> **"SEC. 101. *Prohibited Importations.***
>
> "The importation into the Philippines of the following articles is prohibited:
> "(a) Dynamite, gunpowder, ammunitions and other explosives, firearms and weapons of war, and parts thereof, except when authorized by law."

Under a related law, R.A. No. 6975,[52] the importation of firearms and ammunition into the Philippines is prohibited unless an authority therefor has been previously obtained from the Philippine National Police.

However, it is not necessary for the Court to further consider the law on the illegal possession and disposition of firearms and ammunition (P.D. No. 1866), or the law prohibiting their importation (P.D. No. 1464, Section 101[a]). It is not under this law that accused Burne stands charged, which explains why the Pre-Trial Order did not include this as an issue.[53]

Throughout the trial of the case, accused Burne never raised as an issue the legality of the search and seizure *sans* a warrant. Thereby, his right to assail the legality of the search and seizure is deemed waived. Failure to timely object to the admissibility of the evidence against him amounts to a waiver of the objection on the legality of the search and the admissibility of the evidence obtained by the police.[54]

Moreover, under the Tariff and Customs Code, a search, seizure and arrest may be made even without a warrant for purposes of enforcing customs and tariff laws. Without mention of the need to priorly obtain a judicial warrant, the Code specifically allows police authorities to enter, pass through or search any land, enclosure, warehouse, store or building that is not a dwelling house; and also to inspect, search and examine any vessel or aircraft and any trunk, package, box or envelope or any person on board; or to stop and search and examine any vehicle, beast or person suspected of holding or conveying any dutiable or prohibited article introduced into the Philippines contrary to law.[55]

---

[52] And earlier, under P.D. 1866.

[53] Burne was separately charged before the Regional Trial of Mariveles, Bataan, Branch 4, in Criminal Case No. ML-3692, for illegal possession of firearms. (Records, pp. 1016, 1026).

[54] Vide *People vs Bernardo Tuazon*, G.R. No. 175783, September 3, 2007, citing *People vs Bagista*, G.R. No. 86218, September 18, 1992, 214 SCRA 63, 69.

[55] *Felicisimo Rieta vs People, G.R. No. 147817*, August 12, 2004, citing People vs CFI of Rizal, Br. IX, 101 SCRA 86, November 17, 1980.

DISCUSSION

Knowledge of Illegal Importation

Section 3601 of the Tariff and Customs Code of the Philippines (TCCP) states that "any person who shall fraudulently import or bring into the Philippines, or assist in so doing, any article, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such article after importation, *knowing the same to have been imported contrary to law*, shall be guilty of smuggling."

Accused Burne tried to make much out of the phrase "*knowing the same to have been imported contrary to law.*" In his Memorandum, Burne argued that the Prosecution failed to establish that he had knowledge of, or participation in, the unlawful importation of the firearms and ammunition. He pointed out that the Information states that the goods were already in the country when he boarded the vessel as substitute captain. Thus, he should be presumed to have no knowledge of what transpired before he took over the vessel.

The defense of lack of knowledge is so easy to adopt, that in one case involving three sacks of marijuana that the accused "believed" contained only used clothing and delivered to a bus station at a friend's behest, the Supreme Court dismissed it as "too absurd to inspire belief."[56]

In another case, the accused claimed that they did not know that the sacks they were transporting in 2001 to Manila on board an ambulance and a van contained more than 500 kilograms of methamphetamine hydrochloride, the dangerous drug more widely known as "shabu"; one of them declared that he thought that the sacks contained wooden tiles and electronic spare parts. The trial court and the Court of Appeals gave this defense no credence, as did the Supreme Court. The Court of Appeals found "implausible" the claim that the sacks were loaded with wooden tiles, due to the obvious disparity of texture and volume.[57]

In other analogous cases, those accused tried to extricate by disowning knowledge that the importation was contrary to law. But Sec. 3601 of the TCCP conveniently provides a means for overcoming this defense, by providing that "*possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the court.*" Thus, in one such case, in affirming the conviction of an accused, the Supreme Court observed with satisfaction:

---

[56] *People vs Martina Macario*, G.R. No. 109616, January 25, 1995.
[57] See *People vs Javier Morilla*, G.R. No. 189833, February 5, 2014.

> The prosecution competently established that (1) the 305 cases of untaxed blue seal cigarettes discovered inside the cargo truck were fraudulently imported; and (2) petitioner was in control of the truck when it transported the cargo on October 15, 1979. Petitioner was unable to satisfactorily explain his possession of the untaxed cigarettes, which the MISG agents seized from him and his co-accused. Rather, he feigns ignorance of the true nature of the cargo, a claim which the RTC and the CA found incredible.[58]

In the instant case, the prosecution has amply and conclusively proven that fifty (50) assault rifles, among other contraband, were brought into the Philippines from Indonesia by the *M/V Ufuk*, and that at the time of the discovery of the smuggling, this vessel and its cargo were under the control of accused Burne as captain. Accused Burne was not able to satisfactorily explain the fact that numerous firearms, ammunitions and their accessories comprised the cargo of the vessel.

Accordingly, Burne's denial of knowledge of the unlawful nature of the importation and/or the cargo deserves scant consideration, if any. To overcome the presumption of knowledge under Section 3601 of the TCCP, he must explain to the satisfaction of this Court why he was found in possession of the contraband. Otherwise, as ordained by Section 3601 of the TCCP, "possession shall be deemed sufficient evidence to authorize conviction."

Lack of participation

Burne's theory that he was not a participant in the importation is apparently based on the notion that by the time he took over as the boat's captain, the importation had ended because the vessel with the goods had already entered Philippine territory.

To the contrary, however, that stage is just the start of the importation process, which does not end until the payment of the duties, taxes and other charges due on the articles and the grant of the permit for their withdrawal from Customs jurisdiction.[59]

> Importation commences when the carrying vessel or aircraft enters the jurisdiction of the Philippines with intention to unload and is deemed terminated upon payment of the duties, taxes and other charges due upon the articles and the legal permit

---

[58] *Arturo G. Rimorin Sr. vs People*, G.R. No. 146481, April 30, 2003.
[59] Section 1202 of the Tariff and Customs Code of the Philippines.

> for withdrawal has been issued, or where the articles are duty-free, once the articles have left the jurisdiction of the customs.[60]

Thus, the importation process was not yet terminated at the time of the discovery and seizure of the contraband, because the duties, taxes and other charges thereon had not yet been paid, and no permit had been issued for their withdrawal.

Non-payment of Customs duties and taxes

As to the fact of non-payment of taxes and customs duties, that fact is not for the prosecution to prove, but for the accused to disprove. This was explained in 2004 in *Felicisimo Rieta vs People*:[61]

> There is no merit, either, in the claim of petitioner that the prosecution failed to prove the nonpayment of the taxes and duties on the confiscated cigarettes. There is an exception to the general rule requiring the prosecution to prove a criminal charge predicated on a negative allegation, or a negative averment constituting an essential element of a crime. In *People v. Julian-Fernandez*, we held:
>
> > "Where the negative of an issue does not permit of direct proof, or where the facts are more immediately within the knowledge of the accused, the *onus probandi* rests upon him. Stated otherwise, ***it is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control.*** For example, where a charge is made that a defendant carried on a certain business without a license x x x the fact that he has a license is a matter which is peculiar[ly] within his knowledge and he must establish that fact or suffer conviction."[62] (Emphasis supplied)
> >
> > The truth of the negative averment that the duties and specific taxes on the cigarettes were not paid to the proper authorities is fairly indicated by the following circumstances that have been established: (1) the cargo truck, which carried the contraband cigarettes and some

---

[60] *Tomas Salvador vs People*, G.R. No. 146706, July 15, 2005, citing *Llamado vs Commissioner of Customs*, G.R. No. 28809, May 16, 1983, 122 SCRA 118.
[61] G.R. No. 147817, August 12, 2004.
[62] Citing *People vs Julian-Fernandez*, 372 SCRA 608, 625, December 18, 2001.

> passengers including petitioner, immediately came from the 2nd COSAC Detachment; (2) the truck was intercepted at the unholy hour of 4:00 a.m.; (3) it fitted the undisclosed informer's earlier description of it as one that was carrying contraband; and (4) the driver ran away. Hence, it was up to petitioner to disprove these damning circumstances, simply by presenting the receipts showing payment of the taxes. But he did not do so; all that he could offer was his bare and self-serving denial. (underscoring added, for emphasis)

Thus, it was incumbent upon accused Burne, and on the other co-accused, to present positive evidence of payment of the requisite Customs duties and taxes. They may not, by extrapolation, extend the presumption of innocence to the payment of these liabilities.

Captain is responsible for vessel's cargo

Accused Burne, in addition to disowning knowledge of the contents of the vessel's cargo, denied possession of documents pertaining to the cargo. This evasiveness cannot save him, for a search of the vessel disclosed documents such as the Terminal Report of PT Atho Tama dated August 8, 2009 for the loading of cargoes onto *M/V Ufuk* at the Jakarta Port.[63]

Burne's having been merely a substitute captain at the time of the discovery of the crime *in flagrante delicto* did not relieve him of responsibility for the cargo still on board the vessel. This responsibility is well recognized in admiralty law and across maritime jurisdictions.

In 1914, the captain and another officer of the steamship *Islas Filipinas* were convicted for importing from Hong Kong into the Philippines 210 kilograms of opium not included in the cargo manifest, in violation of the Customs Administrative Act.[64]

The responsibility of the vessel captain for cargo was emphasized in the 1922 case of *Luzon Stevedoring Company vs Wenceslao Trinidad*,[65] where the question of whether the stevedoring company was a contractor or not, for taxation purposes, was settled in the company's favor. It was pointed out that the company's laborers worked under the direct supervision of the ship's officers, and that "the captain answers for all the cargo placed on board and for the manner in which said cargo is loaded."

---

[63] Amended Complaint-Affidavit, Exhibit "MMM," docket, vol. III, pp. 1372-1373.
[64] See *United States of America and Insular Collector of Customs vs The Steamship "Islas Filipinas," represented by her owners Fernandez Hermanos*, No. L-8746, October 30, 1914, en banc.
[65] G.R. No. L-18316, September 23, 1922, 43 Phil. 803, en banc.

A more definitive pronouncement was made in 1926:

> Article 619 of the Code of Commerce provides that the captain shall be answerable for the cargo from the moment that it is delivered to him at the wharf or alongside the ship in the harbor of embarkation until delivered ... [I]t is the delivery of the cargo at the port of discharge that terminates the captain's responsibility as to the cargo.[66]

The pronouncement made in 1926 remains prevailing jurisprudence, as reiterated by the Supreme Court in *Westwind Shipping Corporation vs UCPB General Insurance Co., Inc. and Asian Terminals, Inc.*:

> For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading, until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise.[67]

Thus, Burne cannot disown responsibility for the cargo that was onboard the vessel at the time that he was in command as its master. He may have been merely a substitute or replacement captain, but at the time of the discovery of the smuggling, he was the only captain in command.

In sum, as to the first issue -- *Whether or not the accused Lawrence John Burne is guilty as charged* -- the Court finds and concludes that his guilt has been established beyond reasonable doubt. He is guilty of committing unlawful importation as defined under Section 3601 of the Tariff and Customs Code of the Philippines.

Maximum penalty far from served

Has Burne already served the maximum of the imposable penalty under Section 3601 of the Tariff and Customs Code of the Philippines, as amended? To answer this, it must first be determined what penalty is imposable under the established facts of the case.

When he filed his Pre-Trial Brief dated November 11, 2011, Burne was under the impression that he could only be detained for two (2) years from August 20, 2009, under Sec. 3601 of the TCCP.[68] If so, his period of detention had already exceeded the maximum prescribed for the offense. However, he failed to further explain the basis of this impression.

---

[66] *Ohta Development Company vs Steamship "Pompey," et al.*, G.R. No. L-24658, March 31, 1926, en banc.
[67] G.R. No. 200289, November 25, 2013.
[68] Records, C, vol. III, p. 1493.

The penalties under Section 3601 of the TCCP are graduated according to the appraised value of the goods unlawfully imported, such value "to be determined in the manner prescribed under this Code" and to include duties and taxes. If the value exceeds PHP150,000, the accused shall be subject to the penalties of a fine of not less than PHP8,000.00 nor more than PHP10,000.00 *and* imprisonment of not less than eight (8) years and one (1) day nor more than twelve (12) years.[69]

It is therefore important to determine whether the appraised value of the goods, "as determined in the manner prescribed" under the TCCP, exceeds PHP150,000.00.

Prosecution witness Ferdinand Balina testified that it was he who prepared the computation sheets for the various rifles offloaded from *M/V Captain Ufuk* based on machine copies of the commercial invoice and billing statement.[70] Balina's duties as Customs Operation Officer III included the assessment of the taxable value of imported articles, for the computation of duties and taxes. Absent a showing that Balina committed error or irregularity in his computations, the presumption of regularity in the performance of official functions[71] applies.

In the Computation Sheet, the FOB Value of the SS1-V1 rifles was appraised at US$810.00 per unit.[72] The exchange rate indicated in the computation was PHP48.906 per dollar. Thus, the appraised value of the fifty (50) units of SS1-V1 assault rifles actually seized was pegged at PHP1,980,693.00.

The fifty (50) other rifles that remain unaccounted for will, if subsequently discovered, increase the appraised value of the hoard, as well as the corresponding Customs duties and taxes. But for the purpose of assessing the imposable penalties, they would no longer be of consequence, inasmuch as the values added will already be surplusage in relation to the threshold set by Section 3601(4).

The appraised value of the fifty (50) rifles inventoried -- excluding the ammunition and other paraphernalia seized from the *M/V Ufuk* -- already exceeds the PHP150,000.00 threshold set by Section 3601(4) of the TCCP. Accordingly, accused Burne can be sentenced to the maximum period of imprisonment prescribed under Section 3601, which is twelve (12) years.

---

[69] As amended by R.A. No. 4712, which expressly took effect upon its approval on June 18, 1966.
[70] TSN, November 7, 2012.
[71] Section 3(m), Rule 131, Rules of Court.
[72] Exhibit "TT", docket, vol. III, p. 1335.

Burne was apprehended on August 20, 2009. He was committed to the Bureau of Immigration Detention Center on August 21, 2009 for violation of the Philippine Immigration Act.[73] Thus, at the time the warrant for his arrest was issued by this Court on March 18, 2010,[74] he was already detained at the Bureau of Immigration Detention Center.[75] On August 17, 2011, following his arraignment and the approval of his posting of a cash bail bond of PHP120,000.00, a Release Order was issued directing his discharge from the custody of the said Detention Center. From that point, until he jumped bail, Burne has not been detained in connection with the instant case.

Therefore, Burne was actually under detention for less than two years, from August 21, 2009 to August 17, 2011. Ergo, the second of the two (2) issues in this case – whether or not Burne had already served the maximum of the imposable penalty under Section 3601 – must be answered in the negative, inasmuch as more than ten (10) years remain of the maximum imposable penalty of twelve (12) years.

Then there is the matter of accused having jumped bail. During the hearing on December 11, 2013, for the initial presentation of the evidence for the defense, accused Burne failed to appear. Hence, in the Resolution dated December 23, 2013,[76] the Court ordered that a bench warrant for the arrest of Burne be issued and the bail bond for his provisional liberty be cancelled and forfeited in favor of the government.

Once an accused jumps bail, escapes from prison or confinement, or flees to a foreign country, he loses his standing in court, and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief therefrom.[77]

> Now the prisoner cannot by simply escaping thwart his continued prosecution and possibly eventual conviction provided only that: a) he has been arraigned; b) he has been duly notified of the trial; and c) his failure to appear is unjustified.
>
> xxx
>
> The defendant's escape will be considered a waiver of this right and the inability of the court to notify him of the subsequent hearings will not prevent it from continuing with his trial. He will be deemed to have received due notice. The same fact of his escape will make his failure to appear unjustified because he has,

---

[73] Certificate of Detention dated July 22, 2011 issued by Acting Warden Angeli to S. Geronimo. Records, C, vol. III, p. 1197.
[74] Docket, vol. I, p. 256.
[75] Docket, vol. II, p. 356.
[76] Docket pp. 2249-2250.
[77] *People vs Val de los Reyes*, G.R. Nos. 130714 and 139634, October 16, 2012, en banc resolution, citing *Villena vs People*, G.R. No. 184091, January 31, 2011, 641 SCRA 127, 136.

> by escaping, placed himself beyond the pale, and protection, of the law.[78]

Accordingly, as to accused Burne, who continues to be a fugitive from the law, the decision in the instant case shall now be promulgated *in absentia.*

WHEREFORE, in view of the foregoing, the Court finds the accused Lawrence John Burne **GUILTY** beyond reasonable doubt for violation of Section 3601 of the Tariff and Customs Code of the Philippines.

Applying the Indeterminate Sentence Law, the Court sentences the accused to an indeterminate term of eight (8) years and one (1) day of *prision mayor*, as minimum, to ten years of *prision mayor*, as maximum, and to pay a fine of Eight Thousand Pesos (PHP8,000.00), without subsidiary imprisonment in case of insolvency, and to pay the costs. The Court likewise orders the forfeiture in favor of the Government of the articles confiscated in this case.

Let therefore an Alias Warrant of Arrest be issued against accused Lawrence John Burne.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[78] *Republic vs Joselito Agbulos*, G.R. No. 73875, May 18, 1993.

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it hereby certified that the conclusion in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice