REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PEOPLE OF THE PHILIPPINES Plaintiff,	**CTA CRIM. CASE NO. O-157** For: *Violation of Section 3602 of TCCP in relation to Article 172 of the Revised Penal Code*
- versus -	Members: **CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
MARIVIC BRIONES, DAVID BANGA & JESURITO PAREJA, Accused.	**Promulgated:** JAN 0 2 2012 3:35 p.m.

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RESOLUTION

For resolution is the **"Demurer to Evidence"** filed by accused Marivic J. Briones on November 8, 2011.

In the said Demurrer to Evidence, accused Briones alleged that the prosecution failed to present sufficient evidence to convict her for the crime charged in the information.

Under Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended, the court may dismiss the action on the ground of insufficiency of evidence upon a demurrer to evidence filed by the accused with or without leave of court. [1] Demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his

[1] People of the Philippines vs. The Sandiganbayan and Geronimo Z. Velasco, G.R. No. 140633. February 4, 2002

adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict.[2] Thus, in resolving the accused's demurrer to evidence, the court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt.[3] Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances.[4]

Bearing this in mind, the Court shall now proceed to determine whether there is competent or sufficient evidence against accused Marivic Briones to sustain the indictment or support a verdict of guilt.

In the Information filed against Marivic J. Briones on November 20, 2009, accused Briones was charged for violation of Section 3602 of the Tariff and Customs Code of the Philippines[5] in relation to Article 172 of the Revised Penal Code.[6] The said Information is hereunder quoted:

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[2] Arcangel Gutib vs. Court of Appeals and People, G.R. No. 131209, August 13, 1999, 312 SCRA 365
[3] Note 1, *supra*
[4] Note 2, *supra*
[5] Sec. 3602. Various fraudulent practices Against Customs Revenue. — Any person who makes or attempts to make any entry of imported or exported article by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by any means of any false statement, written or verbal, or by any means of any false or fraudulent practice whatsoever, or knowingly effects any entry of goods, wares or merchandise, at less than true weight or measures thereof or upon a false classification as to quality or value, or by the payment of less than the amount legally due, or knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback or refund of duties upon the exportation of merchandise, or makes or files any affidavit, abstract, record, certificate or other document, with a view to securing the payment to himself or others of any drawback, allowance, or refund of duties on the exportation of merchandise, greater than that legally due thereon, or who shall be guilty of any willful act or omission, shall, for each offense, be punished in accordance with the penalties prescribed in the preceding section.
[6]Art. 172. Falsification by private individual and use of falsified documents. — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon: 1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of

"The undersigned State Prosecutor of the Department of Justice, hereby accuses Marivic Briones and David Banga, general manager and customs representatives, respectively of Skyrider (Skyrider), and Jesurito Pareja of Pareja Customs Brokerage, of violation of Section 3602 of the Tariff and Customs Code of the Philippines, as amended, in relation to Article 172 of the Revised Penal Code, committed as follows:

"That on or about February 11, 2002, at the Port of San Fernando, La Union, and within the jurisdiction of this Honorable Court, the above-named accused Marivic Briones and David Banga, being the general manager and customs representatives, respectively of Skyrider, in conspiracy with Jesurito Pareja of Pareja Customs and Brokerage, did then and there, willfully, unlawfully and feloniously filed before the Bureau of Customs of the aforesaid port, Import Entry No. 08-2002 covering 9,899.40 MT prilled urea in bulk with the equivalent duty in the amount of P2,038,762.00 by means of fraudulent statement or declaration making it appear that the subject shipment is exempt from payment of duties and taxes on the basis of fraudulent certificate of eligibility purportedly issued by the Philippine Carabao Center in favor of Norsk Hydro Philippines, to avoid payment of rightful duties and taxes.

CONTRARY TO LAW"

During the trial of this case, the prosecution presented three witnesses namely, Atty. Rey Roland Bergado, Mr. Manuel Rico and Ms. Cecille Abo.

The prosecution's first witness, Atty. Bergado, testified that he was the one tasked to investigate the case involving Norsk Hydro which allegedly filed several entries at the port of La Union using fake certificates of exemption coming from the Philippine Cargo Center that resulted to non-payment of the

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commercial document; and 2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

government duties and taxes for that particular shipment.[7] He reaffirmed the contents of his Affidavit executed on July 27, 2004, which was marked as Exhibit **"A".**[8] Atty. Bergado also testified that the name of accused Marivic Briones came up during the investigation since one of the employees of Norsk Hydro implicated her because she was the president of the Skyrider Broker which allegedly was the firm hired by Northern Shipping to facilitate the release of the subject shipments.[9] Nevertheless, during cross-examination, Atty. Bergado affirmed that he executed a Memorandum dated September 24, 2003, including his recommendation stated therein that accused Marivic Briones be absolved from any criminal liability in connection with the filing of the spurious certificate of eligibility in the port of San Fernando La Union and Cagayan De Oro City.[10]

The prosecution's other witness is Mr. Manuel A. Rico who is a former employee of the Bureau of Customs Port of San Fernando La Union. Mr. Rico testified on the execution of his Affidavit dated February 13, 2003, which was marked before this Court as Exhibit **"L"**. Mr. Rico further testified that he conducted the actual examination of the content of the subject shipment which arrived at the Port of La Union and that the said shipment was exempt under Executive Order No. 133.[11]

Lastly, the prosecution presented the testimony of its third witness, Ms. Cecille Abo. She was the Human Resources Management Officer of Philippine Carabao Center in 2001. During direct examination, Ms. Abo was

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[7] TSN dated August 24, 2011, p. 11-12
[8] TSN dated August 24, 2011, p. 35
[9] TSN dated August 24, 2011, p. 49
[10] TSN dated August 24, 2011, p. 56-60
[11] TSN dated August 24, 2011, p. 67-70

shown of a photocopy of a Certification purportedly from Philippine Carabao Center issued by one Bienvenido N. Torralba, as OIC Director. Ms. Abo testified that the said Certification is a falsified document since their Executive Director at the time of the issuance of the said Certification is Dr. Libertado C. Cruz and not Mr. Torralba. Moreover, Ms. Abo also identified her Certification including the signature therein, which were marked as Exhibit **"F"** and **"F-1"**, stating that they have no employee in the person of Mr. Bienvenido N. Torralba.[12]

The prosecution also formally offered its documentary evidence to support the charges contained in the Information, which consists of the following:

Exhibit	**Description**
A	The Affidavit of Atty. Rey Roland F. Bergado dated July 27, 2004
E	Certificate of Eligibility dated August 22, 2001
E and **E-1** *which should be read as Exhibits "F" and "F-1"*	Certification dated September 22, 2011 and signature of Ms. Cecille C. Abo
L	Affidavit of Manuel A. Rico dated February 13, 2003

In the Resolution dated November 18, 2011, this Court admitted the foregoing exhibits except Exhibit E (Certificate of Eligibility dated August 22, 2001) for failure to submit the original document.

[12] TSN dated October 19, 2011

After careful study and consideration of all the foregoing pieces of evidence presented by the prosecution against accused Briones, the Court finds the same grossly insufficient to support a finding of guilt.

First and foremost, it must be pointed out that the witness for the prosecution himself, in the person of Atty. Bergado, admitted that accused Briones has no criminal liability and responsibility as per his testimony that he already recommended to absolve accused Marivic Briones from criminal liability.[13]

Moreover, a perusal of the foregoing evidence presented would show that the prosecution failed to present evidence to prove that the accused Briones acted in conspiracy with the other accused in the commission of the offense charged.

There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts.[14]

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[13] TSN dated August 24, 2011, pp. 59-60
[14] Violeta Bahilidad vs. People of the Philippines, G.R. No. 185195, March 17, 2010, 615 SCRA 597 *citing Magsuci v. Sandiganbayan, G.R. No. 101545, January 3, 1995, 240 SCRA 13, 18*

In this case, the prosecution, other than its bare allegations that accused Briones conspired with her co-accused in the commission of the offense charged, failed to establish that there was indeed a conscious criminal design existing between and among the accused to commit the offense.

Also, there was nothing in the evidence presented by the prosecution which would establish the direct or indirect participation of the accused Briones in the commission of the offense charged in the Information. This is also in consideration of the fact that there was no evidence presented by the prosecution to prove that Skyrider, the company where accused Briones is allegedly the president, is the firm hired by Northern Shipping to facilitate the release of the subject shipments.

Notably, as correctly pointed out by accused Briones, the prosecution also failed to prove the existence of the Import Entry No. 08-2002 that was allegedly filed at the Bureau of Customs, Port San Fernando, La Union on February 11, 2002 as no import entry or copy thereof was offered in evidence. Absent the said import entry, necessarily, the prosecution also failed to prove that there was an item or article imported in the amount stated in the Information.

Thus, all of the foregoing observations only lead this Court to the conclusion that the prosecution's evidence against the accused Briones is grossly insufficient to sustain a verdict of guilt.

WHEREFORE, premises considered, the "**Demurrer to Evidence**" is hereby **GRANTED.** Accordingly, the instant case is hereby **DISMISSED**, but only as to the accused Marivic Briones. Consequently, Marivic J. Briones is hereby **ACQUITTED** of the crime charged.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice