

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-11398

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HERNAN ENRIQUE BURGOS,

Defendant-Appellant,

and

OLGA BURGOS,

Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4:96-CR-55-1-A)

May 11, 1999

Before REAVLEY, JOLLY and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Because the Burgos' attorney, Arch McColl, testified adversely to Judge McBryde in the proceedings of the investigatory committee of the Fifth Circuit, the motion for recusal should have been granted. United States v. Anderson, 160 F.3d 231 (5th Cir. 1998); United States v. Avilez-Reyes, 160 F.3d 258 (5th Cir. 1998).

*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The court's order determining ownership of the bond money and granting the Government's request to apply it against the fine imposed on Hernan Burgos, is vacated. The case is remanded for reassignment to a different judge.

VACATED and REMANDED.