

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 13-50513

United States Court of Appeals
Fifth Circuit

FILED

October 10, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALBERT ADAM NAVARRO, also known as Alberto Navarro, also known as Albert A. Navarro,

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 5:12-CR-188-1

Before JOLLY, HIGGINBOTHAM and OWEN, Circuit Judges.

PER CURIAM:*

Albert Adam Navarro appeals his conviction following a jury trial of possession of a firearm by a convicted felon. We review for an abuse of discretion the district court's refusal to instruct the jury on the affirmative defense of justification. *See United States v. Branch*, 91 F.3d 699, 711 (5th Cir. 1996). In the light of the evidence adduced at trial that Navarro possessed the rifle at issue when there was no imminent or impending threat, that he had

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 13-50513

recklessly or negligently placed himself in the situation which he claimed necessitated possession of the rifle, and that he could have continued relying on police protection as a reasonable legal alternative to violating the law, the district court did not abuse its discretion by denying the instruction. *Id.*; see *United States v. Posada-Rios*, 158 F.3d 832, 873 (5th Cir. 1998).

With regard to Navarro's arguments that two comments made by the prosecutor during closing arguments warranted a mistrial, we apply a two-step test on review. *United States v. McCann*, 613 F.3d 486, 494 (5th Cir. 2010). First, we review *de novo* whether the remarks were improper. *See id.* If either of the comments was improper, we review under the abuse of discretion standard whether the impropriety affected Navarro's substantial rights such that his motion for a mistrial should have been granted. *See id.* Even if both comments were improper, Navarro has failed to show that the district court abused its discretion in the light of both the cautionary instruction given to the jury and the evidence of Navarro's guilt adduced at trial. *See id.* at 496-97.

AFFIRMED.