

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-30729
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERIC K. GREEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 01-CR-123-ALL-D

March 11, 2003

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Eric Green appeals his conviction for possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1); he does not appeal his conviction and concurrent sentence for forcibly resisting a federal officer in violation of 18 U.S.C. § 111(a). See Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993) (issues not raised on appeal are abandoned). Green contends that the district court erred by refusing to instruct the jury concerning the affirmative defense of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

justification. He argues that he was justified in possessing a gun in an attempt to prevent the gun's unlawful owner from shooting an unidentified third person over an illegal drug debt.

Green failed to show a present, imminent, and impending threat of death or serious bodily injury or that there was no reasonable lawful alternative to his possession of the gun. See United States v. Panter, 688 F.2d 268, 269 (5th Cir. 1982); United States v. Gant, 691 F.2d 1159, 1163-64 (5th Cir. 1982). He therefore did not meet his burden of establishing an evidentiary foundation that would have entitled him to the jury instruction. See United States v. Branch, 91 F.3d 699, 712 (5th Cir. 1996). The district court did not abuse its discretion by refusing to give the requested jury instruction. See United States v. Posada-Rios, 158 F.3d 832, 873-74 (5th Cir. 1998). The judgment of the district court is AFFIRMED.

AFFIRMED.