

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1143**

State of Minnesota,
Respondent,

vs.

Pierre Lamont Flowers,
Appellant

**Filed June 19, 2017
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-14-17643

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Caroline Durham, Durham Law Office, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his conviction of possessing a firearm when ineligible, arguing that the district court abused its discretion when it denied his request to give a necessity-

defense jury instruction at trial. Because the evidence did not warrant the instruction, we affirm.

FACTS

On June 18, 2014, appellant Pierre Lamont Flowers went searching for his teenage niece. The teenager was not at home when Flowers's sister returned from school; she left no information on her whereabouts and was not answering her cell phone, which caused concern. After contacting the police, Flowers, his sister, and others drove to various homes searching for the girl. They arrived at the home of one of the girl's friends. Numerous people were gathered outside.

According to Flowers, his sister got out of the vehicle and spoke with a woman outside the house, and then Flowers exited the vehicle to observe the discussion because "they were talking for too long." Flowers's sister grew suspicious because the woman with whom she was speaking "seemed nonchalant . . . like she knew more than what she was talking about." Flowers and his sister "just walked into the [residence]" to look for the girl. Inside, Flowers's sister was crying and questioning the occupants about the whereabouts of her daughter, which caused the occupants to become upset. Heated conversations ensued, and the occupants denied taking the girl.

Flowers searched the basement, but did not find his niece. He walked upstairs and into the kitchen, where he observed that the situation had escalated and people were screaming. Flowers walked up behind his sister, who was crying, and saw her pull out a gun, which she held "off to her side." She did not point the gun at anyone. There were three or four men "circling" Flowers's sister; one "was in her face," and another was

“talking kind of aggressive.” Flowers did not know what would occur next, and he “did something [he] just thought was safe”; he grabbed the gun from his sister, “told everybody to back up,” and left the residence with his sister, handing her back the gun before exiting. He did not point the gun at anyone. Flowers did not want anyone “to accidentally get shot.”

Flowers’s sister largely echoed Flowers’s version of events, stating that she owned the gun and brandished it that day, but did not point it at anyone. She also testified that nobody in the house threatened to do her harm, though people were “bum rushing” her prior to her brandishing the gun. However, individuals at the house provided a different account of what occurred. One occupant testified that Flowers entered the residence with the gun and pointed it at everyone in the house. Another testified that she was awoken by the commotion, exited her bedroom, and saw Flowers coming out of the kitchen with the gun, which he pointed in her face.¹

After Flowers and his sister exited the house, an officer on routine patrol spotted them crossing the street and observed several people yelling that Flowers had a gun. Flowers and his sister got into their vehicle and started driving away. The officer stopped their vehicle, and a loaded revolver was discovered under the dashboard. Flowers’s sister indicated that the gun was hers.

Flowers was charged with unlawful possession of a firearm. The matter proceeded to trial. Flowers stipulated that he was ineligible to possess a firearm. Prior to trial,

¹ DNA testing was performed on the gun; Flowers could not be excluded as a possible contributor to the DNA recovered; roughly 90% of the general population could be excluded; Flowers’s sister was excluded as a contributor to the DNA.

Flowers moved for a necessity-defense jury instruction, and at the close of trial, that request was denied. The district court concluded that the evidence did not support a necessity defense. Flowers was convicted and received a 60-month sentence. This appeal followed.

DECISION

This court reviews a district court's refusal to give a requested jury instruction for an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996). An abuse of discretion occurs if the evidence warrants a requested jury instruction that was not given. *Turnage v. State*, 708 N.W.2d 535, 546 (Minn. 2006). A defendant seeking a necessity defense instruction has the burden of making a prima facie showing of necessity. *State v. Brodie*, 532 N.W.2d 557, 557 (Minn. 1995). In reviewing whether a necessity instruction should have been given, we view the evidence in a light most favorable to the party that sought the instruction. *Turnage*, 708 N.W.2d at 545-46; *State v. Shane*, 883 N.W.2d 606, 612 (Minn. App. 2016).

A criminal charge is defeated by a necessity defense “if the harm that would have resulted from compliance with the law would have significantly exceeded the harm actually resulting from the defendant’s breach of the law.” *State v. Rein*, 477 N.W.2d 716, 717 (Minn. App. 1991) (quotation omitted), *review denied* (Minn. Jan. 30, 1992). For a necessity defense to apply, a defendant must show that: (1) he had no legal alternative to violating the law, (2) the harm to be prevented was imminent, and (3) there was a direct, causal connection between violating the law and preventing the harm. *Id.*

Here, the district court did not abuse its discretion by refusing to give a necessity-defense instruction because the evidence did not warrant the instruction. First, there were

legal alternatives to Flowers's act of taking the gun from his sister. He could have told his sister to put the gun away or leave the residence. Or, Flowers and his sister could have contacted the police for assistance rather than barging into the home. *See State v. Johnson*, 289 Minn. 196, 199, 183 N.W.2d 541, 543 (1971) (stating that the defense of necessity is unavailable "if the choice of action is necessitated by recklessness or negligence").

Second, there was no imminent threat of harm. *See Rein*, 477 N.W.2d at 717. Flowers's sister never pointed the gun at anyone. She also testified that nobody in the house threatened to do her harm. Flowers testified that, after his sister pulled out the gun, he did not "know what could have possibly went down," which implies that no particular act or threat was perceived as imminent.

Lastly, because there was no particular imminent harm to be prevented, it follows that Flowers's act of taking the gun cannot be directly connected to preventing harm. In sum, even when the evidence is viewed in a light most favorable to Flowers, it does not constitute a prima facie showing of necessity. *See Turnage*, 708 N.W.2d at 545-46 (stating that evidence is viewed in a light most favorable to the party that sought the instruction); *Brodie*, 532 N.W.2d at 557 (stating that defendant seeking a necessity instruction has the burden of making a prima facie showing). As such, the district court did not abuse its discretion when it denied Flowers's request for a necessity-defense jury instruction.

Affirmed.