# COURT OF APPEALS
**SECOND DISTRICT OF TEXAS**
**FORT WORTH**

**NO. 02-15-00471-CR**

JEWEL WAYNE FLETCHER — APPELLANT

V.

THE STATE OF TEXAS — STATE

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FROM THE 78TH DISTRICT COURT OF WICHITA COUNTY
TRIAL COURT NO. 55,456-B

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## MEMORANDUM OPINION[1]

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In a single issue, Appellant Jewel Wayne Fletcher appeals his conviction for unlawful possession of a firearm. *See* Tex. Penal Code Ann. § 46.04(a) (West 2011). We affirm.

[1]*See* Tex. R. App. P. 47.4.

## Background

On the evening of November 19, 2014, the gang task force of the Wichita Falls Police Department (WFPD)[2] was searching for Appellant because there was an active felony warrant for aggravated assault out for his arrest. The WFPD had received information that Appellant would be in a black Ford F-150 pickup truck and could be in possession of a firearm. At approximately 11:15 p.m., task force officers Saenz and Brett Keith, who were in a marked patrol car, spotted a black Ford F-150 pickup truck. After observing the driver, Mike Sanchez, commit a traffic violation,[3] the officers conducted a felony stop.[4] Appellant stepped out of the passenger seat of the pickup.

Officer Saenz took Appellant into custody, patted him down, and began to place him into the patrol car. Officer Saenz testified that as he was placing Appellant in the patrol car, Appellant voluntarily, without prompting, told Officer Saenz that the backpack in the passenger side of the pickup was his. When

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[2]Officer Henry Saenz testified that the gang task force's purpose is to "suppress gang activity" and to make sure that the gangs are following the law.

[3]The driver failed to use his turn signal before turning. *See* Tex. Transp. Code § 545.104(a) (West 2011).

[4]Officer Saenz explained that, in a felony stop, the officers remove the occupants from the vehicle prior to approaching the occupants or the vehicle in order to have a clear view of the occupants' body and any possible weapons before they approach. During such a stop, the officers have their guns drawn and pointed at the occupants of the vehicle. A video recording of this stop taken by a dashboard camera inside the patrol car was admitted into evidence and played for the jury.

Officer Jeff Li, another gang task force officer, later searched the truck for weapons, he discovered a loaded 9 millimeter handgun inside a black backpack located on the floor in front of the passenger seat. Appellant was arrested and charged with unlawful possession of a firearm based on his prior conviction for unlawful possession of a weapon.

Appellant testified in his defense that he was carrying the gun for self-defense. He claimed that Cecil Hindman, a man to whom he owed money for a drug purchase, had threatened his life. According to Appellant, he was in fear of his life because Hindman had avowed "over and over again" to "slice [Appellant] up like a turkey." Appellant testified that he did not report Hindman's threats to the police because he did not trust them.

Appellant claimed that a week or so earlier, while riding with Sanchez in his pickup, Hindman pulled up to a stop sign beside their vehicle and afterwards began to follow them. While he was being followed, Appellant phoned Hindman and attempted to settle their conflict, but when Hindman refused to resolve their differences, both vehicles pulled into a parking lot. According to Appellant, Hindman then got out of his pickup and pulled out a knife. In response, Appellant pulled out his gun, pointed it at Hindman, and asked him to "let it go." Instead, according to Appellant, Hindman lunged forward toward him. Appellant fired his weapon "around eight or nine times," hitting Hindman five times, until he saw Hindman fall to the ground. Appellant then left the scene. Appellant testified at trial that he avoided capture by the police for approximately seven days.

During the charge conference, Appellant's counsel requested an instruction on the defense of necessity, but his request was denied. The jury found Appellant guilty, and he was sentenced to seventy years' confinement.

**Discussion**

Appellant argues that the trial court erred by denying his request for a jury instruction on the defense of necessity. In our review, we must first determine whether error occurred; if error did not occur, our analysis ends. *Kirsch v. State*, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012).

Appellant's counsel requested the following instruction during the charge conference:

> You are instructed that a person's conduct is justified and not subject to criminal prosecution when a person reasonably believes the conduct is imminently necessary to avoid imminent harm, and the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law prohibiting a particular act.
>
> The term "reasonable belief" means the type of belief that would be held by an ordinary and prudent person in the same circumstances as those faced with the defendant.
>
> The phrase "ordinary standards of reasonableness" means those standards that an ordinary and prudent person would apply to the same facts and circumstances faced by the defendant at the time in question.
>
> Now, therefore, if you find from the evidence that beyond a reasonable doubt that on or about November 19, 2014, in Wichita County, Texas, that the defendant, Jewel Wayne Fletcher, did then and there intentionally or knowingly possess a firearm; to-wit, a handgun, and prior to the commission of said act the defendant was duly and legally convicted of a felony offense on August the 14th, 2009, in Cause Number 010253 in the 259th District Court of Jones

> County, Texas, in a—in the case entitled the State of Texas versus Jewel Wayne Fletcher, and further said possession of a firearm occurred at a location of 2400 Iowa Park Road, Wichita Falls, Texas, other than a premise where the defendant lived as alleged in the indictment, but you further find that the evidence at the time of this action—the evidence—the defendant reasonably believed that this conduct was immediately necessary to avoid imminent harm of being stabbed with a knife or attacked by Cecil Hindman, and that the desirability and urgency of avoiding such harm clearly outweighed applying ordinary standards of reasonableness, the harm sought to be prevented by law prohibiting the defendant's conduct of possessing a firearm, or if the prosecution has failed to persuade you beyond a reasonable doubt that these facts are untrue, you will acquit the defendant and say by your verdict not guilty.

In determining whether evidence raises a defense, the credibility of the evidence is not an issue. *Id.* If a defendant produces evidence raising each element of a requested defensive instruction, he is entitled to the instruction regardless of the source and strength of the evidence. *See Hamel v. State*, 916 S.W.2d 491, 493 (Tex. Crim. App. 1996) (stating that accused has right to defensive instruction raised by the evidence, "whether that evidence is weak or strong, unimpeached or contradicted, and regardless of what the trial court may or may not think about the credibility of the defense"). An element of the defense is "raised" if there is evidence that a rational jury could accept as sufficient to prove that element. *See Wilson v. State*, 777 S.W.2d 823, 825 (Tex. App.—Austin 1989), ***aff'd***, 853 S.W.2d 547 (1993). We therefore review the evidence offered in support of a defensive issue in the light most favorable to the defense. *Brazelton v. State*, 947 S.W.2d 644, 646 (Tex. App.—Fort Worth 1997, no pet.).

Under a necessity defense, conduct is justified if (1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm; (2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law proscribing the conduct; and (3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear. Tex. Penal Code Ann. § 9.22 (West 2011).

Appellant argues that his fear of retribution by Hindman justified his carrying of a firearm despite his status as a felon. However, evidence of a generalized fear of harm is not sufficient to raise the issue of imminent harm. *Brazelton*, 947 S.W.2d at 648 (holding that no evidence presented at trial "remotely" suggested that loss of custody of appellant's child was imminent such as to justify her fear). "Imminent" means something is immediate, and harm is imminent when there is an emergency situation and it is "immediately necessary" to avoid that harm. *Murkledove v. State*, 437 S.W.3d 17, 25 (Tex. App.—Fort Worth 2014, pet. ref'd, untimely filed). In other words, fear of imminent harm occurs when a "split-second decision" is required without time to consider the law. *Id*.

Appellant's testimony did not establish an imminent threat of harm requiring such a split-second decision. He testified that he obtained the gun soon after he became aware that Hindman was threatening his life and carried the gun for days while avoiding Hindman. Then, in a confrontation with Hindman

that occurred at least seven days prior to his apprehension by the police, Appellant shot him five times.[5] For at least a week after shooting Hindman, Appellant continued to possess the firearm. At no point did Appellant report either Hindman's threats or Appellant's action in response to them to the police.

Viewing the evidence in the light most favorable to Appellant, he did not establish a threat of imminent harm. *See Conn v. State*, No. 02-12-00616-CR, 2014 WL 2809062, at *2 (Tex. App.—Fort Worth June 19, 2014, no pet.) (mem. op., not designated for publication) (holding that appellant was not under threat of imminent harm when he answered door holding a shotgun when police knocked on the door to serve an unrelated protective order and evidence showed appellant owned the gun for at least five months before incident); *Murkledove*, 437 S.W.3d at 25 (holding that, even if evidence supported inference that appellant "feared the possibility of or potential for harm to himself or his family," there was no evidence that the harm was imminent when he participated in robbery and murder). Appellant admitted to possessing the firearm before his confrontation with Hindman, and he admitted that he continued to possess the firearm after the shooting until he was apprehended by police at least seven days later. Appellant presented no affirmative evidence that during the seven days prior to his apprehension he experienced any threat of imminent harm. Nor did

[5]It is unclear from his testimony when the shooting occurred in relation to his being detained by the police, but Appellant claimed to have run from the police for approximately seven days before being apprehended.

he present any evidence that he feared imminent harm at or near the time of his arrest. We therefore overrule his only point.[6]

## Conclusion

Having overruled Appellant's only point on appeal, we affirm the trial court's judgment.

/s/ Bonnie Sudderth
BONNIE SUDDERTH
JUSTICE

PANEL: MEIER, GABRIEL, and SUDDERTH, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: January 26, 2017

[6]Appellant has filed a pro se letter in this court, which we construe as a motion requesting we order the trial court to rule on certain motions purportedly pending before it. We note that, because he has appointed counsel, Appellant is not entitled to hybrid representation. *See, e.g.*, *Ex parte Bohannan*, 350 S.W.3d 116, 116 n.1 (Tex. Crim. App. 2011) (citing direct appeals for the proposition that when an applicant is represented by counsel, the court may disregard his pro se submissions and take no action on them). Therefore, we do not consider his motion.