

**THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 17-1017

UNITED STATES OF AMERICA

Appellee

vs.

ANTONIO MINNIS

PETITION FOR PANEL REHEARING

Appellant Antonio Minnis requests rehearing by the panel pursuant to Fed. R. App. P. 40. Mr. Minnis directs the Court's attention to the following points of law and fact, which he believes the Court has overlooked or misapprehended:

In concluding that *State v. Lammers*, 479 S.W.3d 624 (Mo. 2016), did not alter the intent element of attempted first degree assault under Missouri law, the present opinion appears to have overlooked particulars of the Missouri Supreme Court's recitation of the facts supporting affirmance of the judgment of conviction and misapprehended the authority of the *Lammers* opinion conviction of attempted first degree assault in the absence of proof that the defendant (a) first formed an intent to kill or injure another and then (b) took a substantial step toward the completion of that crime.

Argument

Mr. Minnis has contended that after *Lammers* it is possible to be convicted of attempted first degree assault in Missouri without proof that the defendant had first formed an intent to kill or seriously injure another and then taken a substantial step toward the commission of that crime. In particular, has maintained that the evidence of Mr. Lammers’ “intent” prior to his purchase of assault rifles consisted of statements that he had envisioned himself committing a mass shooting.¹

The panel’s opinion concludes that *Lammers* “did not lower the threshold for proving attempt,” noting that the Missouri Supreme Court’s affirmance was based on evidence that Mr. Lammers “purchased two assault rifles, took target practice, and admitted planning ‘to carry out a mass shooting, with Walmart in mind as a specific target.’” Slip op. at 3 (citing *Lammers*, 479 SW.3d at 632-33). The *Lammers* opinion surely does contain the quoted passage. But neither the opinion’s recitation of the trial court record nor the trial transcript supports the notion that Mr. Lammers formed an intent or plan to harm anyone and then acted on that intent—and the transcript fairly declares the contrary to be true.² Mr.

¹ Mr. Minnis has not suggested that Mr. Lammers’ purchase of assault rifles would not have constituted proof of a substantial step if prior or contemporaneous intent also was proved.

² An excerpt from the interrogating police officer’s testimony is appended to this petition. The transcript is available at https://www.courts.mo.gov/fv/c/33256+Transcript.PDF?l=SMPDB0001_SAP&di=51018.

Minnis submits that the Lammers case will serve as authority for the sufficiency of evidence that a mentally ill individual purchased assault rifles after having imagined the details of himself committing a mass shooting to prove the two elements of attempted first degree assault in Missouri.

The Missouri Supreme Court summarized the police interrogation of Mr. Lammers as follows:

During the interview, [Mr. Lammers] admitted that, prior to purchasing the weapons, he had envisioned committing a mass shooting, specifically at the Bolivar Walmart, but that he changed his mind after taking target practice.

Officer: So tell me about your thoughts you had.

Defendant: Well I was watching ... there's this movie called April Showers. It's about Columbine.

Officer: Ok.

Defendant: Well, my sister was in it. And I was like oh it's just ... I want to see what it was about. It was a high school shooting and I was like ... I don't want, I was ... these thoughts were going through my head, like, what would happen if I ever did that. So I went out and bought [the assault rifles] and then I realized I don't want to spend the rest of my life in prison. I don't want to do that.

Officer: But here, but here's the thing. You're not in school.

Defendant: No I'm out of school.

Officer: So you wouldn't shoot up ... where did you, where did you think about shooting up?

Defendant: Walmart.

Officer: Walmart?

Defendant: Yes sir. It was when I gought that. But then I realized when I went shooting ... I was like this, this isn't me. I don't know why I did this.

Later in the interview, Defendant described being in the Walmart on an occasion prior to when he bought the assault rifles. He was looking through the magazines and thinking about concealed weapons:

Defendant: ... I was like oh that looks pretty cool.

Officer: And then it just came to you I'm going to shoot up Walmart?

Defendant: Yeah.

When asked about his plan specifically from start to finish, Defendant stated that he would just walk into Walmart, start shooting people at random, and wait until police arrived. The detective then questioned why, if his target was Walmart, he did not act the same day he bought the guns. The detective asked Defendant if his actual target was a movie theater due to the similarities between these circumstances and the recent movie theater shooting in Aurora, Colorado, and the fact that the popular film "The Twilight Sage: Breaking Dawn—Part 2" was scheduled to premiere the same week Defendant bought the assault rifles. Defendant admitted he had considered this, but reaffirmed that his real target would have been the Walmart because there was sure to be many people there and, if he ran our of ammunition, he could easily reload.

Lammers, 479 S.W.3d at 630-31. In the excerpt of trial testimony attached to this petition, the officer acknowledged his uncertainty about when Mr. Lammers had his "bad thoughts" about shooting people at a movie theater or a store:

Q. But he didn't tell you when he had the thoughts, did he?

A. That's correct.

Q. Okay. He may have had the thoughts after he got the gun.

A. He very well could have.

Q. All right. As a matter of fact, what he did tell you was ... that when he had those thoughts, that is why he gave those guns to somebody else, isn't it?

A. He said that he – he was afraid of what he would do with them, so absolutely.

Conclusion

This appeal should be reconsidered by the panel. If another mentally ill person is charged with attempted first degree assault in Missouri after purchasing assault rifles and confessing that he first imagined emulating the Columbine shooting at a school and envisioned himself shooting people in a movie theater or a store—and went so far as to think about the advantages of one or the other—Lammers will serve as authority for his conviction upon that proof. That postulate does not include an intent to commit the crime of first degree assault.

Respectfully submitted,

/s/ Michael Gross
Michael Gross Law Office
Attorney for Appellant Antonio Minnis
231 South Bemiston Avenue, Suite 250
St. Louis, Missouri 63105
(314) 863-5887
mgross@grossbriefs.com

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume requirements of Fed. R. App. P. 27(d)(2). The document contains 1,237 words according to the word counting utility incorporated into Microsoft Word for Mac version 15.39. The motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). The document was prepared in a proportionally-spaced typeface using Microsoft Word for Mac version 15.32 and 14 point Times New Roman font.

/s/ Michael Gross

CERTIFICATE OF FILING AND SERVICE

This document was filed by submission to the Court's electronic filing system on October 26, 2017, to be served by that system upon all counsel in the case.

/s/ Michael Gross