2018 IL App (1st) 160047-U

THIRD DIVISION
June 29, 2018

No. 1-16-0047

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 21181
	)	
DAVEED LAZARD,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Cobbs and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the Circuit Court of Cook County finding defendant guilty of attempted murder is affirmed; the state proved defendant had the requisite intent to kill when he fired his weapon at an occupied vehicle, and his unreasonable belief of the need to use deadly force in self-defense is not a mitigating factor for attempted murder; defendant's counsel was not ineffective for not requesting a jury instruction for acquittal under imperfect self-defense because that defense is not legally viable.

¶ 2 After a jury trial, defendant, Daveed Lazard, was convicted of attempt (first degree murder), aggravated battery with a firearm, and aggravated discharge of a firearm for shooting and injuring Tamika Readus and Adam Hollingsworth. Defendant was 17 years old at the time of the commission of the offense. Defendant was sentenced to 12 years' imprisonment for

attempt (first degree murder), with a 20 year mandatory enhancement for personal discharge of a firearm. Defendant appealed, claiming the state did not present sufficient evidence to show beyond a reasonable doubt defendant had the requisite intent to commit murder because his unreasonable belief in the need to use deadly force in self-defense acted as an affirmative defense to the crime of attempt (first degree murder). Defendant further argued he was deprived of his constitutional right to effective assistance of counsel because his trial counsel failed to request the court provide a jury instruction that if the jury found defendant had an unreasonable belief in the need to use deadly force then the jury should acquit defendant of attempt (first degree murder). For the reasons that follow, we affirm the judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 On June 16, 2013, defendant, his girlfriend, and other people were gathered outside their apartment building at a father's day barbeque. According to defendant, a car drove erratically and stopped right in front of defendant and crashed into another car. Defendant testified he pushed his girlfriend out of the way. Defendant then fired his gun multiple times at the car. The victim, Tamika Readus, was shot three times. The driver, Adam Hollingsworth who was Readus' husband, was shot once in the shoulder.

¶ 5 Two weeks after the shooting defendant approached Hollingsworth and Readus, and defendant told Readus he was sorry for shooting her. Readus then went to police with a name of the suspect. She later identified defendant from a photo array and a physical lineup as the person who told her he shot her. Defendant was arrested by police and given *Miranda* warnings. While he was being transported to the police station after his arrest, defendant told the transporting officers that he was sorry for shooting Readus and told them he had apologized to her. The state charged defendant with attempt (first degree murder), aggravated battery with a firearm, and

aggravated discharge of a firearm. Tamika Readus was the first witness to testify in the state's case in chief.

¶ 6 I. Testimony of Tamika Readus

¶ 7 In June 2013, Readus was married to Hollingsworth. On the afternoon of June 13, 2013, Hollingsworth and Readus were preparing to go to a father's day barbeque near Washington Park. They arrived at the barbeque around 9 p.m. They stayed for a short amount of time and then left with two of Hollingsworth's cousins. Hollingsworth was driving the car. They were traveling toward Stony Island when they stopped at a stop sign on Park Shore East and 62nd street. Readus testified Hollingsworth was driving normally, the car was operating normally, the headlights were operating normally, and she could tell by looking out the windshield the headlights were on. A person was crossing the street in front of them and they stayed stopped at the stop sign for some two or three minutes. Hollingsworth then abruptly accelerated to 25 or 30 miles per hour and made a left turn. He then braked hard and came to a stop behind another car parallel to the curb. Readus then saw smoke and a group of people started running. When she heard the noise, Readus thought she heard a firework going off from the group of people nearby. She looked down and saw that she was shot. Readus yelled to Hollingsworth that she had been shot. Hollingsworth was trying to get out of the car and when he heard Readus yell she had been shot, he drove her to the University of Chicago Hospital. While undergoing treatment at that hospital, Readus blacked out. When she awoke, she was in Mount Sinai Hospital. She had gunshot wounds in her chest, side, and lower back. Readus recalled speaking to Detective Vidas Nemickes while she was at the hospital, though she could not recall when. Readus was discharged from the hospital after one week.

¶ 8 After she had been discharged from the hospital, Readus and Hollingsworth went

together to a barbeque near Jackson Park for the July 4 holiday. This was the same area where Readus had been shot. Hollingsworth sent someone to get defendant from a house, and defendant came out with a few other people. Defendant then began to apologize to Readus, telling her it was a mistake and "that they were at war with some people," though Readus could not recall his exact words. Readus began crying and defendant attempted to hug her. He then walked off and Hollingsworth told the group of people that defendant needed to be "violated." A member of the group then punched defendant in the face. Readus and Hollingsworth left the barbeque after.

¶ 9 When Readus returned to her parents' house, she called Detective Nemickes. She told him she knew who shot her: a person known as "Dallo" (Dallo was defendant's nickname). Readus required further medical treatment to remove another bullet from her back, which was removed at Mount Sinai Hospital in early July of 2013. She testified she still had the bullet stuck in her chest. After the surgery, defendant met with Detective Nemickes in July. She signed paperwork and was asked to look at a photographic array. She identified defendant's picture as a picture of the person who shot her.

¶ 10 Under cross-examination, Readus testified Hollingsworth was not driving responsibly on June 13, 2013. She also testified that prior to going to the barbeque at 9 p.m., they were "lay[ing] around the house," though neither of them were smoking or drinking. Readus testified Hollingsworth does not drink or smoke.

¶ 11 II. Testimony of Officer Brian Ford

¶ 12 Officer Ford testified he was on patrol on the night of June 16, 2013. At about 9:50 p.m. Officer Ford received a call reporting a person shot and then received a dispatch instructing him to relocate to the University of Chicago hospital. Once at the hospital, Officer Ford was unable

to speak to Readus because she was in surgery. He attempted to ask Hollingsworth questions, but Hollingsworth remained silent and refused to respond in any way. Officer Ford then went to the lobby to try and obtain information about the victims, and then outside to the entrance of the hospital to inspect the vehicle Hollingsworth arrived in. The car had three bullet holes in the windshield and blood on the seat.

¶ 13 III. Testimony of Detective Majdi Shalabi

¶ 14 Detective Shalabi received an assignment from Detective Nemickes to apprehend defendant on suspicion of shooting Readus. On July 17, 2013, detective Shalabi and his partner, Officer Joseph Tracy, went to defendant's home and placed him in custody. Detective Shalabi testified he then read defendant his *Miranda* warnings. Defendant was then placed in the back seat of the detective's car. While Detective Shalabi and his partner were driving defendant to the police station, defendant began speaking to them. Detective Shalabi testified he did not initiate the conversation with defendant. Defendant told Detective Shalabi that he did not mean to shoot the lady and that he gave her a hug and said he was sorry. At that point detective Shalabi again read defendant his *Miranda* warnings and told defendant to stay quiet until his mother or another parent or guardian was present. Detective Shalabi then called defendant's mother. Once they transported defendant to the area central detective division, they handed defendant over to Detective Nemickes. Detective Shalabi did not have further contact with this case until October 9, 2013, when he went to arrest defendant at Hyde Park High School. Detective Shalabi testified he did not have any further involvement in this case.

¶ 15 IV. Testimony of Detective Vidas Nemickes

¶ 16 Detective Nemickes testified he received an assignment on June 16, 2013 to report to the University of Chicago hospital because two people had been shot. When he arrived at the

hospital, Detective Nemickes first spoke with Officer Ford. Officer Ford directed Detective Nemickes to the car Hollingsworth drove to the hospital. Detective Nemickes observed three bullet holes in the windshield of the car. There was also a bullet strike on the front hood of the vehicle. The front passenger seat was covered in blood, and a white t-shirt stained with blood was in the car.

¶ 17 Detective Nemickes next spoke with Hollingsworth. Hollingsworth was not forthcoming with any information. The detective did not have an opportunity to speak with Readus because she had been transported to Mount Sinai Hospital. After concluding his interviews, Detective Nemickes spoke with hospital personnel about the nature of Readus' injuries.

¶ 18 Detective Nemickes spoke with Readus on June 19, 2013. On July 3, 2013, Detective Nemickes spoke with Readus a second time because Readus called him and informed him she knew the identity of her shooter. Detective Nemickes then reached out to Hollingsworth, but Hollingsworth was not cooperative. On July 11, 2013, Detective Nemickes met with Readus at his office to show her a photographic array. She identified defendant in one of the photos and told the detective that was the person who apologized for shooting her. Detective Nemickes next met with Readus at the police station on the night of July 17, 2013, in order to view a physical lineup. Readus viewed the lineup at around 1 a.m. on July 18, and immediately identified defendant as the person who apologized to her for shooting her.

¶ 19 Although Detective Nemickes was unable to locate the weapon used to shoot Readus, he was able to recover a fired bullet that was recovered from Readus' body. He did not recover any shell casings from the crime scene. After admitting exhibits into the record, the state rested.

¶ 20 Defendant's trial counsel made a motion for directed finding after the close of the state's case. The trial court denied this motion. The state filed a motion *in limine* concerning

impeachment of Hollingsworth with any prior convictions or pending cases.

¶ 21 V. Testimony of Adam Hollingsworth

¶ 22 Hollingsworth was the first witness to testify for the defense. Hollingsworth testified he was at his home with Readus, along with their uncle and his wife, on the afternoon of June 16, 2013. They were playing cards and drinking hard liquor. Hollingsworth testified he began drinking at 11 a.m. that day. Prior to leaving his house, Hollingsworth consumed two or three cups of liquor. At around 3 p.m. Hollingsworth and Readus drove to a barbeque in Washington Park. They were at the barbeque in the park for a couple of hours. Hollingsworth was with family and drinking more liquor. When it began to turn dark outside, Hollingsworth left with Readus and two of his cousins to go to another barbeque close to Hyde Park, near Stony Island and 61st.

¶ 23 Hollingsworth testified he was driving a green Suzuki, and was driving in a reckless manner. He stated he "was driving wild." Hollingsworth "was driving reckless, and I had hit the corner without hitting the brakes. Well, I thought I hit the brakes. But the next thing you know, I had -- I don't know. I had passed out. * * * I remember hitting the sidewalk." He was speeding, going about 45 miles per hour in a 25 mile per hour speed zone. He did not recall whether he had his headlights on that night. Hollingsworth had consumed some five or six cups of hard liquor by that point. He remembered turning onto a street before hitting the sidewalk, but could not remember whether he stopped at the stop sign. He recalled hitting the gas and turning when he got to the stop sign. Hollingsworth passed out from intoxication after hitting the curb. The pain from being shot brought Hollingsworth to, and he realized he had stopped his car on the sidewalk next to a driveway. After he and Readus were shot, Hollingsworth drove them to the University of Chicago hospital. Hollingsworth had been shot in the shoulder and the bullet was

not taken out. He released himself from the hospital after he was patched up.

¶ 24 Two days after Hollingsworth left the hospital he received a facebook message from defendant. A few days later, defendant met with Hollingsworth and gave him some money for the broken windshield in Hollingsworth's car. Defendant also apologized for shooting Hollingsworth and Readus. Hollingsworth testified defendant was a friend of his.

¶ 25 Shortly after the July 4 holiday, Hollingsworth met with Detective Nemickes at the police station. Detective Nemickes showed Hollingsworth a photo of defendant and Hollingsworth told the detective that this was not the person who shot him. On redirect examination, Hollingsworth was shown a photo of his car taken by police the night of the shooting while Hollingsworth was in the hospital. Hollingsworth identified a cup in the center front console as the cup he was drinking out of that night and said that there was alcohol in it.

¶ 26 VI. Testimony of Behname Pierce

¶ 27 Pierce testified he was at Park Shore East and 62nd, at the Park Shore East Apartments, on June 16, 2013. He was standing outside with a few of his friends at around 9:45 or 10 p.m. and saw defendant across the street. Defendant was with a group of people outside at a father's day picnic. Pierce then "saw a dark colored car speeding from around the corner from behind" Hyde Park High School. The car had its headlights off, failed to stop at the stop sign, sped around the corner, hit the brake, and made a loud screeching noise. Pierce thought the car was traveling over the speed limit, moving about 40 or 50 miles per hour. The car ran into the back of a parked car defendant was standing next to. Pierce testified that when the dark colored car ran into the back of a parked car, he and his friends "all ducked and ran inside Park Shore East Apartments." Pierce heard "about two, three gunshots," though he did not see who did the shooting. Pierce began to run before the gunshots "because normally when a car comes around

the corner, headlights off, that fast, it normally – it's a drive-by. That's the first thing that come to mind. So my first intention was to run." After the car drove off, Pierce returned outside. His friends and other people were back outside, making sure nobody had been shot.

¶ 28 VII. Testimony of Raven Gilliam

¶ 29 Gilliam, seventeen years old at the time of the trial, testified she had been in a relationship with defendant for the past three years. They had a child together, who was one year old at the time. On June 16, 2013, Gilliam was with defendant outside on 62nd and Park Shore East before 10 p.m. They were standing close to the parking lot entrance to the apartment complex with one of Gilliam's friends. About 30 people were around outside.

¶ 30 Gilliam saw a car coming down Park Shore East towards her. The car did not have its headlights on, failed to stop at the stop sign, and was going about 35-40 miles per hour. The stop sign was about 25 feet from where Gilliam, her friend, and defendant were standing. The car drove onto the curb close to where they were standing. When the car got to within inches of Gilliam, defendant pushed her out of the way. She was face down in the grass when she heard gunshots, though she could not remember how many shots were fired. After she heard the gunshots, everyone in the area ran in different directions.

¶ 31 VIII. Defendant's Testimony

¶ 32 On June 16, 2013, at about 9:45 p.m., defendant was outside near 62nd and Park Shore East. He was standing with his girlfriend, Gilliam, and one of her friends. They were about 15 feet from the parking lot entrance. While they were talking, defendant heard someone say "watch out," and he turned to see a car coming towards them. The car failed to stop at a stop sign, turned left off of Park Shore East, had no headlights on, and drove recklessly - traveling about 40-50 miles per hour. Defendant saw the car when it was about 28 feet away. Seconds

later, the car was driving onto the curb within 5 feet of defendant. He pulled out his gun and pushed Gilliam out of the way. Once he pushed Gilliam out of the way, defendant started shooting at the car. He believed someone in the car was about to pull a drive-by shooting, or hit them with the car. After he finished firing his weapon, defendant ran away.

¶ 33 On cross-examination, defendant testified he could have run from the car when it was approaching him. He fired at the car when it was about 20 feet from him and coming towards him. When the car came onto the curb he started running away from the car and shooting at it. Defendant also testified he did not think the car was in danger of hitting him. He did not see anyone with a weapon in the vehicle and nobody in the car lowered their windows. That same night, defendant threw his gun in Lake Michigan. The gun was not recovered.

¶ 34 Defendant had known Hollingsworth prior to the shooting. Two days after the shooting, defendant contacted Hollingsworth. He met with Hollingsworth and a woman who was with Hollingsworth in late June. Defendant then rested his case-in-chief.

¶ 35 IX. Rebuttal Testimony of Officer Ford

¶ 36 Officer Ford testified when he responded to the shooting at 62nd and Park Shore East, he did not observe the grass near the curb to be disturbed as if some car had driven on it. When Officer Ford was at the University of Chicago hospital and had an opportunity to see the car Hollingsworth had been driving the night of the shooting, he did not see any damage to the front side of the car. Officer Ford also testified he did not smell alcohol coming from Hollingsworth when he asked Hollingsworth questions at the hospital. Hollingsworth was not acting inebriated, though he did appear to be injured.

¶ 37 X. Rebuttal Testimony of Detective Nemickes

¶ 38 Detective Nemickes also did not observe any damage, other than the gunshots to the

window and hood, to the vehicle Hollingsworth was driving. Detective Nemickes went to the scene of the crime after leaving the hospital. He did not observe any signs of grass being disturbed and did not see any skid marks or turned-up grass. Detective Nemickes did not observe any evidence of a crash.

¶ 39 After the state rested its case, defense counsel requested the jury be instructed as to self-defense. The court found there was "sufficient evidence to instruct the jury as to that offense. So over the state's objection, the jury will be instructed." Defense counsel argued in closing arguments that defendant acted in self-defense. Counsel argued that when a "car is driving like that in that neighborhood, you're afraid of a possible drive-by shooting." The state objected and the trial court overruled the state's objection.

¶ 40 The jury found defendant guilty of attempt (first degree murder), aggravated battery with a firearm, and aggravated discharge of a firearm. The court ordered a presentence investigation report. At the sentencing hearing the state argued defendant's prior gang involvement was an aggravating factor. Defense counsel argued for mitigating factors, stating defendant had not been arrested before and pointing to defendant's academic achievements while in custody. Counsel requested the minimum sentence. The court sentenced defendant to 12 years' imprisonment for attempt (first degree murder) with an additional 20 year enhancement for personally discharging a firearm. The court merged defendant's convictions for aggravated battery with a firearm with his conviction for attempt (first degree murder). For aggravated discharge of a firearm, the court sentenced defendant to 12 years' imprisonment, to run concurrently with his sentence for attempt (first degree murder). Defense counsel made an oral motion to reconsider the sentence because of defendant's lack of criminal history, requesting the minimum sentence. The court denied the motion to reconsider and granted defendant's leave to

file notice of appeal. This appeal timely followed.

¶ 41 ANALYSIS

¶ 42 Defendant argues his conviction for attempt (first degree murder) should be vacated because the evidence at trial showed he had an unreasonable belief in the need to use deadly force in self-defense, and that this unreasonable belief negates the necessary intent for attempt (first degree murder). Defendant further claims he was deprived of his constitutional right to the effective assistance of counsel because his trial counsel did not request the jury be instructed to acquit if it found defendant had an unreasonable belief in the need to use deadly force in self-defense.

¶ 43 Initially we note defendant argued in his opening brief that he was entitled to a new sentencing hearing based on the retroactive application of the statutory change from mandatory firearm sentencing enhancements for juveniles under 730 ILCS 5/5-4.5-105 (b) (West 2016). The state replied that after defendant filed his appellant brief, our supreme court issued its ruling in *People v. Hunter*, 2017 IL 121306, resolving the issue in favor of the state. The *Hunter* court found the change from mandatory to discretionary firearm sentencing enhancements for juveniles did not apply retroactively. *Hunter*, 2017 IL 121306, ¶ 56. In his reply brief defendant concedes that based on *Hunter*, his argument for retroactive application of the sentencing statute was no longer viable. We agree and find the statute is not retroactive, and defendant is not entitled to a new sentencing hearing on that basis.

¶ 44 Sufficiency of the State's Evidence

¶ 45 Defendant argues the state's evidence was insufficient to support his conviction for attempt (first degree murder) because he had an unreasonable belief in the need to use deadly force in self-defense when he fired at Hollingsworth's car, and that this unreasonable belief

negates the intent necessary for attempt (first degree murder). Defendant claims his defense of imperfect self-defense is an affirmative defense to attempt (first degree murder). We disagree.

¶ 46 In our review of a challenge to the sufficiency of the evidence we consider whether, when viewing the evidence in the light most favorable to the state, "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Our review must "determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Id.* at 318; see also *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007).

¶ 47 The mental state of an individual who commits murder is the same as an individual who commits attempted murder. "A person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4 (West 2016). We also look to the elements of the underlying offense of first degree murder.

> "A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:
>
> (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or
>
> (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another." 720 ILCS 5/9-1 (West 2016).

The legislature has also provided that a reasonable belief in self-defense is a defense to the charge of first degree murder:

> "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or

> another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony." 720 ILCS 5/7-1 (West 2016).

¶ 48 We find that any rational trier of fact could have found beyond a reasonable doubt that the evidence adduced at trial showed defendant took a substantial step toward killing or causing great bodily harm to another when he fired at Hollingsworth's vehicle, which was occupied, hitting Hollingsworth and Readus, and a reasonable jury could find defendant did not have a reasonable belief that shooting at the occupied vehicle was necessary for self-defense.

¶ 49 Defendant had the intent to kill or cause great bodily harm to another when he fired at Hollingsworth's car because the natural tendency of shooting at occupied vehicles is causing the death of the occupants. *People v. Garcia*, 407 Ill. App. 3d 195, 201-02 (2011); see also *People v. Barnes*, 364 Ill. App. 3d 888, 896 (2006). In *Garcia*, the defendant fired a gun at an occupied vehicle on a crowded street and hit someone that was not his intended victim. We found the defendant's act of firing at the occupied vehicle on a crowded street was sufficient to support the inference that the defendant intended to kill or cause great bodily harm to another. *Garcia*, 407 Ill. App. 3d at 201-02.

¶ 50 In the present case, multiple witnesses testified many people were congregated outside defendant's apartment complex for father's day festivities when defendant shot at Hollingsworth's car, hitting Readus and Hollingsworth. Defendant had the intent to kill or cause great bodily harm to another. Therefore, the evidence showed defendant committed attempt (first degree murder) because he took a substantial step to committing the underlying offense of

first degree murder by firing at an occupied vehicle in an area crowded with people and had the intent to kill or cause great bodily harm in doing so.

¶ 51 Defendant argues that while he did shoot at an occupied vehicle hitting the occupants, he did not have the intent to *unlawfully* kill or cause great bodily harm to the occupants because he had an unreasonable belief in the need to use deadly force in self-defense. Defendant argues the legislature has allowed for a defendant charged with first degree murder to mitigate the offense to second degree murder if he presents evidence of an unreasonable belief in the need to use deadly force in self-defense. 720 ILCS 5/9-2(c) (West 2016). Defendant contends he is not guilty of attempt (first degree murder) because his unreasonable belief in the need to use deadly force in self-defense should mitigate his offense to attempt (second degree murder), and since there is no crime of attempt (second degree murder) in Illinois his conviction should be vacated, citing *People v. Reagan*, 99 Ill. 2d 238 (1983) and *People v. Lopez*, 166 Ill. 2d 441 (1995). We disagree.

¶ 52 This court addressed this issue recently in *People v. Guyton*, 2014 IL App (1st) 110450. We explained in *Guyton* that imperfect self-defense is not a defense to attempt (first degree murder). *Guyton*, 2014 IL App (1st) 110450, ¶ 46. In *Guyton*, the defendant was charged with first degree murder for killing one victim and attempt (first degree murder) for shooting another victim, and argued he acted in self-defense at trial. *Id.* ¶¶ 39-40. The defendant argued at trial that if the jury found he acted with an unreasonable belief in the need to use deadly force in self-defense, that it should convict him of second degree murder instead. "The jury agreed. Second degree murder is a 'lesser mitigated offense' of first degree murder and is distinguished from self-defense only in terms of the nature of the defendant's belief at the time of the killing." *Id.* ¶ 39. On appeal, the defendant claimed that because he fired simultaneously at the two victims,

and the jury found he had an unreasonable belief in the need to use deadly force in self-defense for the victim he killed, that it was unreasonable to find he did not have an unreasonable belief in the need to use deadly force in self-defense against the victim he did not kill. However, we found that imperfect self-defense is not a defense to the crime of attempt (first degree murder) because no crime of attempt (second degree murder) exists, and the jury has no such mitigating factor to consider for attempt (first degree murder). *Id.* ¶ 46. Once the jury determined the evidence showed beyond a reasonable doubt the defendant committed attempt (first degree murder), the jury necessarily found the defendant intended to commit first degree murder. *Id.*

¶ 53 Defendant argues we should not follow *Guyton* because it is inconsistent with our supreme court's decisions in *People v. Reagan*, 99 Ill. 2d 238 (1983) and *People v. Lopez*, 166 Ill. 2d 441 (1995). We disagree. We explained in *Guyton* that the legislature had decades since *Lopez* and *Reagan* to amend the attempt statute to create the crime of attempt (second degree murder), but the legislature has not done so. *Guyton*, 2014 IL App (1st) 110450, ¶ 61. In *Lopez*, our supreme court found that because the attempt statute requires the state to prove defendant intended to commit the specific underlying offense, a defendant arguing imperfect self-defense would need to have intended to commit the underlying offense of second degree murder.

> "we note that the crime of attempted second degree murder would require the intent to commit the specific offense of second degree murder. Thus, the intent required for attempted second degree murder, if it existed, would be the intent to kill without lawful justification, plus the intent to have a mitigating circumstance present. However, one cannot intend either a sudden and intense passion due to serious provocation or an unreasonable belief in the need to use deadly force. Moreover, concerning the mitigating factor of an imperfect self-defense, one

> cannot intend to unlawfully kill while at the same time intending to justifiably use deadly force. Thus, the offense of attempted second degree murder does not exist in this State." *Lopez*, 166 Ill. 2d at 448-49.

This reaffirmed the finding of the *Reagan* court that this state does not recognize the crime attempt (second degree murder). *Reagan*, 99 Ill. 3d at 240. In the time since *Reagan* and *Lopez*, the legislature has not created a crime of attempt (second degree murder) and has not amended the attempt (first degree murder) statute to allow a jury to consider imperfect self-defense to mitigate the offense. *Guyton*, 2014 IL App (1st) 110450, ¶ 61. The legislature is presumed to have knowledge of judicial decisions. *Kozak v. Retirement Board of Firemen's Annuity & Benefit Fund of Chicago*, 95 Ill. 2d 211, 218 (1983). Therefore, defendant fails to show *Guyton* is inconsistent with *Lopez* or *Reagan*.

¶ 54 Although defendant argues no rational trier of fact could have found he had the intent to kill Readus, defendant has not shown an unreasonable belief in the need to use deadly force in self-defense mitigates or negates the crime of attempt (first degree murder). Defendant's claim the state had insufficient evidence to support his conviction for attempt (first degree murder) fails. We find that based on the record before us a rational trier of fact could have found beyond a reasonable doubt that defendant committed attempt (first degree murder).

¶ 55 Ineffective Assistance of Trial Counsel Claim

¶ 56 Defendant next argues his trial counsel unreasonably failed to ask the court to instruct the jury that it must acquit defendant of attempt (first degree murder) if it believed defendant had an unreasonable belief in the need to use deadly force in self-defense. Defendant contends that if trial counsel had requested such an instruction then there is a reasonable probability the jury would have acquitted defendant of attempt (first degree murder). Defendant claims trial

counsel's failure to request a jury instruction was deficient performance, depriving defendant of his constitutional right to the effective assistance of counsel.

¶ 57 Both the Illinois and United States constitutions guarantee the right to effective assistance of counsel. U.S. CONST., amends. VI, XIV; ILL. CONST. 1970, art I, § 8; *Strickland v. Washington*, 466 U.S. 668 (1984). Under the two-prong *Strickland* test, for defendant to prevail on his claim of ineffective assistance of counsel he must show both "that counsel's performance fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. Manning*, 241 Ill. 2d 319, 326 (2011).

¶ 58 We find defendant has not shown his trial counsel's performance fell below an objective standard of reasonableness, or that the result of his trial would have been different if trial counsel requested a jury instruction on unreasonable self-defense negating attempt (first degree murder). As noted above, if defendant had an unreasonable belief in the need to use deadly force in self-defense that would not negate the crime of attempt (first degree murder). See *supra* ¶ 52. It was not error for defendant's counsel to not request a jury instruction on imperfect self-defense negating attempt (first degree murder) because there is no basis in law to request such an instruction. Therefore, counsel's performance was not deficient for not requesting a jury instruction which has no basis in the law. *People v. Rodriguez*, 2014 IL App (2d) 130148, ¶ 88.

¶ 59 Defendant has not shown his conviction for attempt (first degree murder) should be vacated due to defendant having an unreasonable belief in the need to use deadly force in self-defense. Defendant failed to show no rational trier of fact could have found he committed attempt (first degree murder) based on the evidence adduced at trial. Imperfect self-defense does not negate the intent element of attempt (first degree murder). For this same reason, defendant's

claim of ineffective assistance of counsel due to counsel's failure to request a jury instruction on unreasonable belief in self-defense also fails.

¶ 60 CONCLUSION

¶ 61 For the foregoing reasons the judgment of the Circuit Court of Cook County is affirmed.

¶ 62 Affirmed.