STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 6, 2013
v	No. 310228 Wayne Circuit Court
ANDRE DUVOR STRINGER, Defendant-Appellant.	LC No. 11-006767-FC

Before: FORT HOOD, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of second-degree murder, MCL 750.317, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. The trial court sentenced defendant to 50 to 75 years' imprisonment for second-degree murder, three to five years' imprisonment for felon in possession of a firearm, and two years' imprisonment for felony-firearm. Defendant appeals by right. We affirm.

I. BASIC FACTS

This case arises out of an unfortunate shooting between two friends, defendant and the victim, Joseph Johnson. On the night of the shooting, defendant and the victim, along with several other friends, were drinking, talking, and gambling on the front porch of Richard Jones's house located on the corner of Coyle and Glendale.

Undisputed eyewitness testimony indicated that, at some point during the evening, the victim "grabbed" or "snatched" $10 or $20 from defendant, left Jones's porch, and headed toward his van, which was parked on the side of the house on Glendale. Several eyewitnesses testified that defendant followed the victim off the porch, stopped at his pick-up truck, and grabbed a "long gun" or shotgun out of his truck, and then walked toward the victim's van with the gun. There was only one eyewitness to the actual shooting, the victim's brother, John Johnson. John testified that, after defendant retrieved the gun from his truck, defendant walked over to the victim's van, pointed the gun at the victim's chest or face, and fired multiple gunshots at the driver's side window of the van where the victim was sitting. All remaining eyewitnesses heard multiple gunshots shortly after the victim and defendant left the porch.

After the gunshots were fired, two witnesses, Kevin Johnson and John Johnson, observed the victim's van backing up into a field of grass. Then, Kevin Johnson observed the victim exit the van, and defendant and the victim fighting in the street. Kevin Johnson interceded in the fight and separated defendant and the victim from each other. Renard Bryant, who also observed defendant and the victim fighting from the porch, took the gun from defendant. Other eyewitnesses, however, including John Johnson, never saw defendant and the victim fighting. Kevin Johnson and John Johnson saw the victim collapse in the street, helped him into his van, and took him to the hospital. The testifying witnesses who remained on the porch during the incident testified that, after the shooting, Bryant walked back toward Jones's house with the gun and handed the gun to defendant, after which defendant left the scene in his truck.

The victim died from a shotgun wound to his chest. Police officers recovered two spent casings and shattered glass from the scene, observed tire tracks in the grass, and observed that the driver's side window of the victim's van had been "shot out."

Defendant was charged with first-degree premeditated murder, MCL 750.316, felony-firearm, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. At trial, defense counsel argued that the shooting was unintentional, occurring accidentally during the struggle for the gun between defendant and the victim. The trial court did not give a manslaughter instruction, concluding that the evidence did not support it. Following the trial, the jury found defendant guilty of the lesser included offense of second-degree murder, MCL 750.317, and the firearm offenses. This appeal ensued.

II. GREAT WEIGHT OF THE EVIDENCE

Defendant first claims that the jury's verdict of second-degree murder is against the great weight of the evidence considering "all of the inconsistencies, discrepancies, and impossibilities" in the eyewitness testimony. We disagree. Defendant's motion for a new trial was denied. "This Court reviews for an abuse of discretion the trial court's denial of a motion for a new trial on the ground that the verdict was against the great weight of the evidence." *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). A new trial is required if "the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Id.*; see also, *People v Lemmon*, 456 Mich 625, 627, 647; 576 NW2d 129 (1998). Circumstances that warrant a new trial include where testimony "contradicts indisputable physical facts or law," testimony is "patently incredible or is so inherently implausible that it could not be believed by a reasonable juror," or testimony "has been seriously impeached and the case marked by uncertainties and discrepancies." *Lemmon*, 456 Mich at 643-644, 647 (quotations and citations omitted). "Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial." *Id.* at 647; *People v Lacalamita*, 286 Mich App 467, 469-470; 780 NW2d 311 (2009).

We recognize, as defendant asserts, that the eyewitness testimony contained slight inconsistencies concerning the exact location of defendant's parked vehicle, the exact number of gunshots fired, whether defendant pointed the gun at the victim's face or his chest, where the victim actually suffered a gunshot wound, and whether a struggle ensued after the shooting. However, these inconsistencies did not substantially erode the credibility of the witness testimony indicating that defendant shot and killed the victim with malicious intent.

In fact, it is evident, after a careful review of the testimony, that the inconsistencies in the testimony can be largely explained by the differing perspectives of the eyewitnesses. See *People v Cooper*, 236 Mich App 643, 658; 601 NW2d 409 (1999). It is significant that, despite the inconsistencies in the testimony of the eyewitnesses concerning some matters, their accounts are generally consistent regarding critical issues surrounding the shooting. For instance, the eyewitnesses consistently testified that the victim took money from defendant, left the porch, and walked toward his van; that defendant followed the victim off the porch, retrieved a long gun or shotgun from his pick-up truck, and walked toward the victim's van; and that they heard multiple gunshots fired afterward. This testimony largely corroborates testimony by the victim's brother, who was the only eyewitness to the actual shooting. Although some witnesses observed a fight after the gunshots were fired and others did not, this testimony was not necessarily inconsistent, considering the differing locations of the witnesses in relation to the shooting and their resultant perceptions. The physical evidence, including the shell casings recovered from the scene, the "shot out" driver's side window of the victim's van, the shattered glass observed in the van and at the scene, and the tire tracks observed in a grassy area on Glendale also corroborated the eyewitness accounts. On this record, the evidence did not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *McCray*, 245 Mich App at 637. The trial court did not abuse its discretion in denying defendant's motion for a new trial. *Id.*

III. SUFFICIENCY OF THE EVIDENCE — SECOND-DEGREE MURDER

Defendant next claims that the record lacks sufficient evidence that he acted with the requisite malicious intent to sustain his conviction of second-degree murder. We disagree. "When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *Nowack*, 462 Mich at 400, quoting *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). "All conflicts with regard to the evidence are resolved in favor of the prosecution." *People v Ortiz*, 249 Mich App 297, 300; 642 NW2d 417 (2002). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *Nowack*, 462 Mich at 400.

"The elements of second-degree murder are: (1) a death, (2) caused by an act of the defendant, (3) with malice, and (4) without justification or excuse." *People v Goecke*, 457 Mich 442, 463-464; 579 NW2d 868 (1998). "Malice is defined as the intent to kill, the intent to cause great bodily harm, or the intent to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Id.* at 464. "The intent to do an act in obvious disregard of life-endangering consequences is a malicious intent." *Id.* at 466. "Malice can be inferred from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm." *People v Djordjevic*, 230 Mich App 459, 462; 584 NW2d 610 (1998).

Viewing the evidence in a light most favorable to the prosecution, we conclude that the jury could easily infer that defendant acted with malicious intent in shooting the victim. Defendant's conduct in retrieving a gun from his vehicle, pursuing the victim, pointing the gun at the victim's face or chest, and firing multiple gunshots through the driver's side window within close range of the victim clearly shows his intent to kill or to do great bodily harm to the victim. Alternatively, this evidence established the intent "to do an act in wanton and wilful disregard of the likelihood that the natural tendency of such behavior is to cause death or great bodily harm." *Goecke*, 457 Mich at 464. This is especially so given his use of a deadly weapon within close range of the victim and testimony indicating that defendant pointed the gun at the victim's face or chest. Malice can be inferred from the use of a deadly weapon. *People v McMullan*, 284 Mich App 149, 153; 771 NW2d 810 (2009), aff'd 488 Mich 922 (2010).

IV. JURY INSTRUCTIONS

Defendant next claims that the trial court erred in denying his request for a manslaughter instruction as a lesser included offense of murder in violation of his due process rights to a properly instructed jury and to present a defense. We disagree. "This Court reviews de novo questions of law arising from jury instructions." *McMullan*, 284 Mich App at 152. However, we review a trial court's decision whether an instruction applies to the facts of the case for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

Manslaughter is murder without malice and is a "necessarily included lesser offense of murder." *People v Mendoza*, 468 Mich 527, 533-534, 541; 664 NW2d 685 (2003). Consequently, "[w]hen a defendant is charged with murder, instructions for voluntary and involuntary manslaughter must be given if supported by a rational view of the evidence." *People v Tierney*, 266 Mich App 687, 714; 703 NW2d 204 (2005); see also, *Mendoza*, 468 Mich at 533-534, 541. A court's failure to give a requested instruction warrants reversal "only where the offense was clearly supported by the evidence; an offense is clearly supported where there is substantial evidence to support it." *People v McMullan*, 488 Mich 922; 789 NW2d 857 (2010).

"To prove voluntary manslaughter, the prosecution must prove that: (1) the defendant killed in the heat of passion; (2) the passion was caused by adequate provocation; and (3) there was no lapse of time during which a reasonable person could have controlled his passions." *Tierney*, 266 Mich App at 714; *Mendoza*, 468 Mich at 535-536. "The provocation necessary to mitigate a homicide from murder to manslaughter is that which causes the defendant to act out of passion rather than reason." *People v Sullivan*, 231 Mich App 510, 518; 586 NW2d 578 (1998) (citation omitted), aff'd 461 Mich 992 (2000). "Case law has consistently held that the provocation must be adequate, namely, that which would cause a *reasonable person* to lose control." *Id.* (emphasis in original). "Not every hot-tempered individual who flies into a rage at the slightest insult can claim manslaughter." *People v Pouncey*, 437 Mich 382, 389; 471 NW2d 346 (1991). Rather, a "defendant properly convicted of voluntary manslaughter is a person who has acted out of a temporary excitement induced by adequate provocation[.]" *Mendoza*, 468 Mich at 535.

Under the circumstances of this case, we conclude that a rational view of the evidence does not support a voluntary manslaughter instruction. *Mendoza*, 468 Mich at 533-534, 541; *Tierney*, 266 Mich App at 714. There is no evidence to suggest that defendant actually lost

control or acted in the "heat of passion," rather than reason, when he shot the victim. *Mendoza*, 468 Mich at 535; *Sullivan*, 231 Mich App at 518. There is no evidence of an argument, an exchange of words, or any confrontation whatsoever between defendant and the victim after the victim took defendant's money; no evidence indicating that defendant was angry or his temper had escalated to the point that he lost control; and no evidence suggesting that defendant had an inflamed or excited emotional state or was acting out of the ordinary. *Mendoza*, 468 Mich at 535-536; *Tierney*, 266 Mich App at 714. In fact, nothing appeared out of the ordinary when the victim and defendant left the porch.

We also conclude that, under the circumstances of this case, a lapse of time existed, albeit short, during which a reasonable person could have controlled his passions before firing the gun. *Mendoza*, 468 Mich at 535-536; *Tierney*, 266 Mich App at 714. Defendant had an opportunity to cool down before shooting the gun when he went to his vehicle to retrieve the gun and while walking the approximately 30 feet to the victim's van. Finally, it is questionable, at best, whether the victim's conduct in taking $10 or $20 from defendant constituted adequate provocation for the shooting. *Mendoza*, 468 Mich at 535-536; *Tierney*, 266 Mich App at 714. While a reasonable person would likely be provoked to respond in some manner to an individual taking his money, we cannot conclude that such conduct, without further incident, "would cause a *reasonable person* to lose control" and "act out of passion rather than reason" and fatally shoot the victim. *Sullivan*, 231 Mich App at 518 (emphasis added). On this record, we hold that substantial evidence did not support voluntary manslaughter, and thus, the court's failure to give such instruction did not warrant reversal of defendant's conviction. *McMullan*, 488 Mich at 922.

The trial court's refusal to give an involuntary manslaughter instruction on this record did not constitute error. Involuntary manslaughter is murder without malice, which is a necessarily included lesser offense of murder. *McMullan*, 284 Mich App at 153, citing *Mendoza*, 468 Mich at 540-542. Accordingly, "[i]f a defendant is charged with murder, the trial court should instruct the jury on common-law involuntary manslaughter, but only if the instruction is supported by a rational view of the evidence." *McMullan*, 284 Mich App at 153, citing *Mendoza*, 468 Mich at 541.

Defendant claims that the shooting was unintentional and accidentally occurred during the struggle for the gun between defendant and the victim. The evidence, however, overwhelmingly indicated that the struggle over the gun occurred only *after* the fatal gunshots were fired. In fact, not one witness testified that he heard or observed defendant and the victim fighting or arguing immediately before the gunshots were fired to support defendant's theory that the gun accidentally discharged during the struggle between them. Therefore, we agree that a rational view of the evidence did not support an involuntary manslaughter instruction in light of the lack of any evidence that the shooting was accidental and the eyewitness testimony suggesting that defendant acted with malice, i.e., he pursued the victim with a gun, pointed it at the victim at close range, and fired multiple shots. *Mendoza*, 468 Mich at 533-534, 541; *Tierney*, 266 Mich App at 714. Defendant was not entitled to instruction on involuntary manslaughter. *Mendoza*, 468 Mich at 533-534, 541; *Tierney*, 266 Mich App at 714.

Defendant's claim, that the trial court's refusal to give a manslaughter instruction infringed on his due process right to present a defense, similarly lacks merit. "A defendant has a constitutionally guaranteed right to present a defense," and to confront the witnesses against him

through cross-examination of witnesses. *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008); *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998); US Const, Am VI; Const 1963, art 1, § 20.

In support of his argument, defendant cites *People v Richardson*, 409 Mich 126, 140-141; 293 NW2d 332 (1980), where our Supreme Court held that the trial court's refusal to give an involuntary manslaughter instruction was reversible error because it foreclosed "the jury's option to convict the defendant in accordance with his own testimony, evidence, and theory." *Richardson*, however, is clearly distinguishable because the defendant testified that the gun discharged accidentally during a struggle between defendant and the victim, supporting the defendant's theory that he did not intend to shoot the victim. *Richardson*, 409 Mich at 136 n 10, 140-141. In the instant case, however, defendant did not testify, and there was no testimony to suggest that the gun discharged during the struggle between defendant and the victim. Therefore, unlike in *Richardson*, the evidence did not support a charge of involuntary manslaughter, and thus the jury was not "deprived of any option to convict consistently with the defendant's testimony, evidence and theory." Further, defense counsel argued in his closing argument that the shooting was accidental and that defendant lacked the intent to commit murder, and thus defendant was not deprived of his right to present his defense. See *People v Hawthorne*, 265 Mich App 47, 53 n 3; 692 NW2d 879 (2005), reversed on other grounds 474 Mich 174; 713 NW2d 724 (2006).

V. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant next claims that his trial counsel provided ineffective assistance in violation of his right to effective counsel. US Const Am VI; Const 1963, art 1 § 20; *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 674 (1984). We disagree. A defendant's claim of ineffective assistance of counsel warrants reversal of a conviction only "where counsel's performance falls below an objective standard of reasonableness, and the representation so prejudices the defendant as to deprive him of a fair trial." *People v Cline*, 276 Mich App 634, 637; 741 NW2d 563 (2007). "To demonstrate prejudice, the defendant must show the existence of a reasonable probability that, but for counsel's error, the result of the proceeding would have been different." *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001); *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). "Effective assistance of counsel is presumed, and defendant bears a heavy burden to prove otherwise." *People v Dixon*, 263 Mich App 393, 396; 688 NW2d 308 (2004). Although defendant filed a motion for a new trial or *Ginther* hearing before the trial court, he alleges additional claims of ineffective assistance on appeal. To the extent defendant failed to raise his allegations of ineffective assistance in his motion for a new trial, our review is limited to the existing record. *Snider*, 239 Mich App at 423.

First, defendant claims that his counsel was ineffective because he failed to call witnesses who allegedly would have provided testimony supporting his theory that the killing was accidental and unintentional. "[D]efendant has the burden of establishing the factual predicate for his claim of ineffective assistance of counsel." *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999). Here, defendant's allegations are wholly dependent on facts not in the existing record and rests entirely on defendant's representations of how the proposed witnesses would have testified. Therefore, there is simply no factual basis in the record to conclude that the proposed

witnesses would have provided testimony favorable to defendant, and thus, defendant's claim of ineffective assistance based on defense counsel's failure to call witnesses must fail.

We also reject defendant's claim that defense counsel was ineffective in failing to object to the presence of a police officer in the courtroom throughout the trial. "The purposes of sequestering a witness are to prevent him from coloring his testimony to conform with the testimony of another, and to aid in detecting testimony that is less than candid." *People v Meconi*, 277 Mich App 651, 654; 746 NW2d 881 (2008) (citations and quotations omitted). Defendant does not allege that any specific testimony by the officer was "colored" to conform to the testimony of another witness, nor did he articulate how the failure to sequester the police officer prejudiced him. *People v Solak*, 146 Mich App 659, 669; 382 NW2d 495 (1985). From our review of the existing record we also find no evidence indicating that the officer changed his testimony at all in response to testimony by other witnesses. Accordingly, defendant failed to demonstrate that he was prejudiced by defense counsel's failure to request that the officer be sequestered from the trial, i.e., that a reasonable probability exists that, but for defense counsel's failure to seek sequestration, the result of the proceeding would have been different. *Carbin*, 463 Mich at 600; *Snider*, 239 Mich App at 423-424.

VI. PROSECUTORIAL MISCONDUCT

Defendant next claims that he was denied a fair trial when the prosecutor argued facts not in evidence and her argument improperly appealed to the jury's sympathy for the victim and his family. We disagree. Defendant did not object to the challenged remarks at trial, and thus our review is limited to plain error affecting his substantial rights. *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

Claims of prosecutorial misconduct present a constitutional issue subject to de novo review. *People v Abraham*, 256 Mich App 265, 272; 662 NW2d 836 (2003). "The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial (i.e., whether prejudice resulted)." *Id.* "Prosecutorial-misconduct issues are decided case by case, and the reviewing court must examine the pertinent portion of the record and evaluate a prosecutor's remarks in context." *Id.* at 272-273. "[A] prosecutor's comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial." *Callon*, 256 Mich App at 330. "No error requiring reversal will be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction." *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001) (further citation and quotation omitted).

We disagree with defendant's claim that he was denied a fair trial when the prosecutor argued facts not in evidence — that defendant owed the victim money. "Although a prosecutor may not argue a fact to the jury that is not supported by evidence, a prosecutor is free to argue the evidence and any reasonable inferences that may arise from the evidence." *Callon*, 256 Mich App at 330. In light of eyewitness testimony that observed the victim take, grab, or snatch money from defendant and walk off the porch, it was reasonable to infer that defendant owed the victim money as argued by the prosecutor. *Id.* The challenged argument, therefore, was supported by the evidence, *id.*, and thus, defendant was not prejudiced by such argument or denied a fair trial. *Abraham*, 256 Mich App at 272.

Although we agree that the prosecutor's closing argument improperly appealed to the jury's sympathy for the victim and his family, *People v Meissner*, 294 Mich App 438, 456; 812 NW2d 37 (2011); *Abraham*, 256 Mich App at 273; *Watson*, 245 Mich App at 591, the argument was isolated, and the trial court instructed the jurors that they must not let sympathy or prejudice influence their decision and that the lawyers' statements and arguments are not evidence. Therefore, we cannot conclude that the improper argument compromised defendant's right to a fair trial. *Watson*, 245 Mich App at 591-592. Jurors are presumed to follow the trial court's instructions. *Meissner*, 294 Mich App at 457. The court's instruction cured any potential prejudicial effect of the prosecutor's improper remarks and sufficiently protected defendant's substantial rights. *Id.*; *Abraham*, 256 Mich App at 276. Reversal is not warranted if the alleged prejudicial effect of the prosecutor's improper argument, as here, was cured by a timely instruction. *Watson*, 245 Mich App at 586.

VII. SUFFICIENCY OF THE EVIDENCE — FIRST-DEGREE MURDER

Defendant's final claim on appeal is that the trial court erred in denying his motion for a directed verdict on the charge of first-degree murder because the prosecutor failed to present sufficient evidence of premeditation and deliberation. We disagree. We review de novo the trial court's denial of a directed verdict in a criminal jury trial. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). "If the evidence presented by the prosecution in the light most favorable to the prosecution, up to the time the motion is made, is insufficient to justify a reasonable trier of fact to find guilt beyond a reasonable doubt, a directed verdict or judgment of acquittal must be entered." *Lemmon*, 456 Mich at 634.

"In order to convict defendant of first-degree, premeditated murder, the prosecution was required to prove that defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *Ortiz*, 249 Mich App at 301; MCL 750.316(1)(a). "Premeditation and deliberation require sufficient time to allow the defendant to take a second look," *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992), and "may be inferred from all the facts and circumstances surrounding the incident . . . including the parties' prior relationship, the actions of the accused both before and after the crime, and the circumstances of the killing itself[.]" *People v Haywood*, 209 Mich App 217, 229; 530 NW2d 497 (1995) (citations omitted).

Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could reasonably conclude that the prosecutor proved, beyond a reasonable doubt, that "defendant intentionally killed the victim and that the act of killing was premeditated and deliberate." *Ortiz*, 249 Mich App at 301. From the life-threatening nature and location of the fatal wound, i.e., a gunshot wound to the chest, as well as defendant's conduct in pursuing the victim with a deadly weapon and pointing the gun at defendant's chest or face, a rational juror could reasonably infer that the killing was intentional. *People v Berry*, 198 Mich App 123, 128; 497 NW2d 202 (1993). Although there was no direct evidence of a plan or motive on the part of defendant to kill the victim, a rational juror could reasonably conclude that defendant premeditated and deliberated the homicide given the evidence that defendant pursued the victim when he walked off the porch, entered his car to retrieve a gun, and walked approximately 30 feet to the victim's car. A rational juror could reasonably conclude that sufficient time elapsed for defendant to take a "second look" before he shot and killed the victim. *Schollaert*, 194 Mich

App at 170. On this record, we find no error in the trial court's denial of defendant's motion for a directed verdict and submission of the first-degree premeditated murder charge to the jury.

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause