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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ISAAC J. CAMPBELL,

Defendant and Appellant.

B243700

(Los Angeles County
Super. Ct. No. GA070740)

APPEAL from a judgment of the Superior Court of Los Angeles County. Stanley Blumenfeld, Jr., Judge. Affirmed.

Peter Gold, under appointment by the Court of Appeal, for Defendant and Respondent.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Yun K. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

An information, filed on May 7, 2009, charged Isaac J. Campbell with the murder of Liya Lu under Penal Code section 187, subdivision (a). On December 15, 2011, the jury returned a verdict finding Campbell not guilty of first degree murder. The jury was unable to reach a verdict on the lesser offense of second degree murder, and the trial court declared a mistrial. The court consolidated the case with another against Campbell, and the People filed a new information on January 12, 2012, alleging three counts: (1) sale or transportation of marijuana in violation of Health and Safety Code section 11360, subdivision (a); (2) possession of marijuana for sale in violation of Health and Safety Code section 11359; and (3) the murder of Lu. On June 8, 2012, a new jury found Campbell not guilty of second degree murder but guilty of voluntary manslaughter and the two drug offenses. The court sentenced Campbell to a state prison term of 11 years, the upper term for voluntary manslaughter. It imposed a concurrent three-year term for the violation of Health and Safety Code section 11360, subdivision (a). It imposed a two-year term for the violation of Health and Safety Code section 11359, but stayed execution of sentence pursuant to section 654.

Campbell appealed, raising four arguments: (1) the evidence is not sufficient to support the voluntary manslaughter conviction; (2) the trial court's failure to give a unanimity instruction requires reversal of the judgment; (3) the court erred by admitting certain evidence of a sleeper hold, a martial arts technique; and (4) the upper term imposed for the voluntary manslaughter conviction is improper because the court relied on Campbell's actions after Lu's death to aggravate the sentence. We reject Campbell's arguments and thus affirm the judgment.

DISCUSSION

1. *Substantial Evidence Supports Campbell's Voluntary Manslaughter Conviction*

Campbell makes two substantial evidence arguments with respect to his voluntary manslaughter conviction. First, he contends the evidence is insufficient to support the jury's finding that he caused Lu's death. Second, he contends insufficient evidence of provocation requires reversal of his conviction. Both contentions lack merit.

In reviewing challenges to the sufficiency of the evidence, we “consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt. [Citations.]” (*People v. Mincey* (1992) 2 Cal.4th 408, 432, fn. omitted.) Substantial evidence is that which is “reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

According to the evidence, Campbell and Lu began dating in 2003 after meeting at Pasadena City College, where Campbell was a nursing student. They lived together for a period of time, including in 2007. In June 2007, Lu expressed to David Gibson, a friend of Campbell’s who also purchased marijuana from Campbell, that she was jealous of Campbell’s female study partner and that she was sad and depressed about her relationship with Campbell. Lu rented a new apartment on July 16, with the lease to begin on August 1, and indicated that she would live in the apartment without any roommates. On August 9, Campbell rented a truck and moved Lu’s belongings to her new apartment.

On August 11, a Saturday, Campbell and his female study partner worked at a hospital from approximately 6:30 a.m. to 4:30 p.m. On the same day, he closed out a storage unit, renting a smaller unit instead and telling the facility manager that he and his girlfriend were breaking up and that many of the items in the larger unit belonged to the girlfriend. Around 8:00 p.m. that evening, Campbell went to the room the female study partner rented to study with her. Campbell later told police he returned home around 12:00 a.m. on August 12 and found Lu in his apartment.

Lu, on August 11, went shopping with Jeremy Zhou for household items for her new apartment. She and Zhou planned to do more shopping the following day. On the evening of August 11, Lu asked George Molina to help her move a television from Campbell’s apartment to her new apartment. Campbell was not home when they were at his apartment moving the television. After they had put the television in Lu’s new

apartment, Lu asked Molina to take her to Pasadena City College. They went to the college around midnight on August 12 and drove around the parking lot. Lu did not explain to Molina why they were there, but he sensed that she was looking for someone. They drove around for about 10 minutes. The parking lot was empty.

Lu, who seemed “pretty jumpy” and “nervous,” asked Molina to take her to Campbell’s apartment. Molina waited in his car while Lu went into the apartment. He called and texted Lu telling her to hurry. On one occasion, Molina spoke to Lu, and she told him that she still was waiting for Campbell. When Molina called Lu later, she did not answer. Around 1:45 a.m., Molina received a text message from Lu’s phone stating, “‘I’m very tired. I think I’m going to stay over. Thank you for helping me.’” Molina found the text message “very strange because it didn’t seem like it was [Lu]. . . . It seemed . . . too good of English and it didn’t seem like it was her spelling.” After receiving the text, Molina noticed the lights in the apartment go off, and he drove away, stopping at a drug store to get a drink. On his way home, he drove back by the apartment, saw the lights were off and went home. He got home about 3:00 a.m. and went to sleep. Later that morning, Molina called and texted Lu repeatedly, but she did not answer or respond. About 9:45 a.m., Molina received a text message from Lu’s phone stating, “‘Thank you again for your help. I’m back with my boyfriend.’” That text also did not “sound like her.” Molina never heard from Lu again.

Zhou also called Lu on the night of August 11 and the morning of August 12. He spoke to her around 11:00 p.m. and 12:30 a.m. In the last conversation, Zhou told Lu to go home, but Lu said that she had business to take care of, sounding as though she were crying. Zhou called Lu again about 1:00 a.m. Someone answered but hung up without saying a word. Zhou called her other times, but there was no answer. He left voicemail messages. About 10:00 a.m. on August 12, Zhou received a text from Lu’s phone, stating that everything was okay and she was back with her “‘BF.’” Zhou felt the text message was “very weird” because Lu “didn’t send [him] text messages before, and some English words in it [he] couldn’t understand.” Zhou called and left numerous voicemail messages for Lu, but never spoke to her again.

Telephone records revealed that Lu had sent text messages to Campbell repeatedly between approximately 8:30 p.m. on August 11 and 12:30 a.m. on August 12.

Campbell's neighbor testified that some time after 12:30 a.m. on August 12 she heard Campbell and Lu arguing in Campbell's bedroom, which was above the bedroom in her apartment. The neighbor heard the two argue on prior occasions. During the August 12 argument, Lu said, "Why did you have to fuck her?" Campbell responded, "No, I didn't." Lu kept repeating, as she was crying, "Why did you have to fuck her? Why did you have to fuck her?" Campbell said the word "no" a lot. The neighbor heard Campbell scream, "[f]uck you," followed by "charging footsteps and then a big smack sound . . . and then it was very quiet." The "smack" sounded like "a really intense, fast, hard, skin-on-skin contact" The argument lasted more than five minutes but less than 10 or 15 minutes.

On August 13, a Monday, Lu did not come to work. Her supervisor left her a voicemail but did not hear from her. Lu did not come to work the following day either. The supervisor again left a voicemail for Lu but received no response. The supervisor contacted the police, as well as Zhou, whom Lu had listed on her paperwork as her emergency contact.

On August 14, Gibson contacted Campbell to purchase marijuana. Campbell would not let Gibson come to Campbell's apartment for the purchase, as was their usual custom, but insisted on bringing the marijuana to Gibson. When Campbell arrived at Gibson's apartment, he appeared "really nervous," "really shaky" and "really upset." Campbell, who did not seem "his normal self" and sounded "funny," told Gibson he was going to surprise Lu on August 16 by renting a truck and moving into her new apartment. This plan did not make sense to Gibson because he knew Campbell and Lu were "having trouble" and Lu was jealous of the time Campbell spent studying with another woman and upset by the communications between them. On August 16, Campbell told Gibson that the police had left him a voicemail indicating that Lu was missing. Campbell said he did not know Lu's whereabouts and she had left his apartment while he was out on the morning of August 12. On both August 16 and 19, Campbell rented a truck and visited a

storage facility multiple times. On August 21, Campbell told Gibson, “[M]y life is over. They always blame the boyfriend.” Later that day, Campbell left for Las Vegas for two days with his female study partner to celebrate passing their final examinations.

In interviews with police detectives Campbell did not exhibit a typical reaction for someone missing a loved one. He told police that he believed Lu had disappeared because she was a crime victim, she moved back to China without telling anyone or she changed her identity by assuming a new name. A search of his apartment revealed a martial arts book on how to perform control holds, a bucket with plastic bags containing marijuana and paraphernalia used in selling marijuana. The inside of a door to a bedroom in which Lu’s clothing was found had a “huge crack” in it beneath the doorknob, the interior wall had an indentation from the doorknob and paint chips were scattered on the floor by the doorstep. Campbell’s birth certificate and passport, along with additional bags of marijuana, were found in his car. A video demonstrating a rear naked choke hold, known as a sleeper hold, as well as other martial arts holds was discovered on Campbell’s computer. Papers with Lu’s name on them and martial arts videos were located in a trash bin near a storage facility visited by Campbell.

On September 11, Campbell emailed a former coworker, who now lived in Alaska. Campbell asked to visit because of some “trouble” he was having. The friend told Campbell he could stay for two weeks only. Campbell told the friend not to tell anyone about their communication and used a new email address and a prepaid phone that was not connected to him by name.

Sometime in August Campbell asked Michael Darby, who purchased marijuana from Campbell, if he could store a container in Darby’s garage. Darby initially refused but several days later agreed. Campbell came to Darby’s home, and Darby later saw a blue trash can, covered by a tarp, in his garage. On September 15, when he learned that Campbell’s girlfriend was missing, Darby, along with his brother, opened the trash can, which had been taped shut. Darby found cat litter and a bag. He opened the bag, which revealed a horrible smell. Darby called 911. The next day, a criminalist and toxicologist found the trash can filled with cat litter, an ice bag and a body, determined to be Lu,

wrapped in multiple trash bags, which were filled with decomposed body fluids. A medical examiner said the cat litter and layers of plastic had caused the body to mummify and discolor. As a result, the medical examiner could not determine the cause of death, although he opined based on the “extensive preparations” used to “dispose of th[e] cadaver” that the manner of death was homicide.

By September 24, Campbell was in Minnesota visiting a childhood friend. He told the friend he wanted to move to Alaska. On September 27, the friend returned home from work to find Campbell gone, a half-cooked meal in the kitchen and Campbell’s belongings in the spare bedroom. A few days later, the friend found in Campbell’s belongings several cell phones without batteries, SIM cards, a bus ticket in another name and 20 to 30 Chinese martial arts movies. Campbell was arrested.

A former girlfriend of Campbell’s testified that Campbell was into martial arts, watched martial arts movies, trained with friends and demonstrated various techniques on her, including a choke hold, which he informed her could cause someone to pass out. The former girlfriend also said that Campbell and she had cats and that Campbell used cat litter to absorb the smell of spilled beer.

This evidence, regarding the altercation between Campbell and Lu in the early morning of August 12, Lu’s disappearance, Campbell’s actions after her disappearance and the manner in which Campbell disposed of her body, sufficiently supports the jury’s finding, implicit in its guilty verdict on voluntary manslaughter, that Campbell caused Lu’s death. Although, as Campbell points out, the medical examiner could not pinpoint the cause of death and medical reports and testimony revealed that Lu had complained in the year or so before her death of headaches and olfactory hallucinations, the jury was able to weigh such evidence in reaching its own conclusion that Campbell caused Lu’s death. We are unable to reweigh the evidence to reach a different conclusion. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

As to Campbell’s argument of insufficient evidence with respect to provocation, the People proceeded on the theory of second degree murder, and the trial court instructed the jury on voluntary manslaughter as a lesser included offense. Under these

circumstances, “[b]y statute and long-standing case law, an intentional but nonmalicious criminal homicide is *voluntary* manslaughter but no lesser offense. [¶] Accordingly, where murder liability is at issue, evidence of heat of passion or imperfect self-defense bears on whether an intentional or consciously indifferent criminal homicide was malicious, and thus murder, or nonmalicious, and thus the lesser offense of voluntary manslaughter. In such cases, the People may have to prove the *absence* of provocation, or of any belief in the need for self-defense, in order to *establish* the *malice element of murder*.” (*People v. Rios* (2000) 23 Cal.4th 450, 454; see *People v. Barton* (1995) 12 Cal.4th 186, 199 [“voluntary manslaughter closely resembles an affirmative defense”].)

“Provocation and imperfect self-defense . . . cannot be elements of voluntary manslaughter when murder and voluntary manslaughter are under joint consideration. Were it otherwise, the prosecution would face irreconcilable requirements, where provocation or imperfect self-defense was at issue, to obtain an appropriate conviction. On the one hand, the People would have to prove, beyond a reasonable doubt, the *absence* of these factors in order to establish the greater offense, but on the other hand, would have to prove their *presence* beyond reasonable doubt to establish the lesser one. A fact finder doubtful that provocation or imperfect self-defense was lacking, but also not persuaded beyond reasonable doubt that either was present, could convict the defendant of *neither* murder *nor* voluntary manslaughter, even though it found the defendant had killed intentionally, without justification or excuse. Such a result would turn the law of criminal homicide on its head.” (*People v. Rios, supra*, 23 Cal.4th at p. 462.) The People thus were not required to prove provocation for the jury to convict Campbell of voluntary manslaughter.¹

¹ In line with these principles, the trial court instructed the jury under CALCRIM No. 570 that “[t]he People have the burden of proving beyond a reasonable doubt that the defendant did not kill as the result of a sudden quarrel or in the heat of passion. If the People have not met this burden, you must find the defendant not guilty of murder.”

2. *The Trial Court Was Not Required to Give a Unanimity Instruction*

Campbell contends that, “assuming . . . sufficient evidence to sustain his . . . manslaughter conviction, that conviction nevertheless must be reversed because the trial court erroneously refused to instruct the jury that[,] before it could convict [him], it had to unanimously agree on which act killed . . . Lu.” Campbell maintains that the jurors may have concluded that Lu died as a result of a sleeper hold or by the application of a sudden blow and that, because either of these two possible acts may have resulted in Lu’s death, the court erred by failing to give a unanimity instruction and instead allowing the prosecutor to argue that the jurors did not need to agree on the specific act that caused Lu’s death. We disagree.

“In a criminal case, a jury verdict must be unanimous. [Citations.] . . . Additionally, the jury must agree unanimously the defendant is guilty of a *specific* crime. [Citation.] Therefore, cases have long held that[,] when the evidence suggests more than one discrete crime, either the prosecution must elect among the crimes or the court must require the jury to agree on the same criminal act. [Citations.] [¶] This requirement of unanimity as to the criminal act ‘is intended to eliminate the danger that the defendant will be convicted even though there is no single offense [that] all the jurors agree the defendant committed.’ [Citation.] . . . ‘The [unanimity] instruction is designed in part to prevent the jury from amalgamating evidence of multiple offenses, no one of which has been proved beyond a reasonable doubt, in order to conclude beyond a reasonable doubt that a defendant must have done *something* sufficient to convict on one count.’ [Citation.] [¶] On the other hand, where the evidence shows only a single discrete crime but leaves room for disagreement as to exactly how that crime was committed or what the defendant’s precise role was, the jury need not unanimously agree on the basis or, as the cases often put it, the ‘theory’ whereby the defendant is guilty. [Citation.]” (*People v. Russo* (2001) 25 Cal.4th 1124, 1132.) In other words, “[w]here . . . the evidence suggests that a defendant committed only one discrete criminal action—but may have done so in one of several different ways—no unanimity instruction is required. [Citations.] Unanimity is not required in this situation even if the jurors might conclude that the

defendant is guilty based on different facts, or on different findings about the acts the defendant committed or his mental state. [Citations.] That is because, in this situation, the jury's guilty verdict will still reflect unanimous agreement that the defendant committed a single crime.” (*People v. Quiroz* (2013) 215 Cal.App.4th 65, 73-74.)

“The key to deciding whether to give the unanimity instruction lies in considering its purpose. The jury must agree on a ‘particular crime’ [citation]; it would be unacceptable if some jurors believed the defendant guilty of one crime and other jurors believed her guilty of another. But unanimity as to exactly how the crime was committed is not required. Thus, the unanimity instruction is appropriate ‘when conviction on a single count could be based on two or more discrete criminal events,’ but not ‘where multiple theories or acts may form the basis of a guilty verdict on one discrete criminal event.’ [Citation.] In deciding whether to give the instruction, the trial court must ask whether (1) there is a risk the jury may divide on two discrete crimes and not agree on any particular crime, or (2) the evidence merely presents the possibility the jury may divide, or be uncertain, as to the exact way the defendant is guilty of a single discrete crime. In the first situation, but not the second, it should give the unanimity instruction.” (*People v. Russo, supra*, 25 Cal.4th at pp. 1134-1135.)

This case involves a single, discrete criminal event—the homicide of Lu. The evidence reasonably presented two possibilities as to the exact way Campbell killed Lu—either by use of a sleeper hold or by a forceful blow. Unlike a situation in which a unanimity instruction is required, e.g., when the defendant is charged with a single count of bribery, but the evidence shows two discrete bribes (*People v. Diedrich* (1982) 31 Cal.3d 263, 280), the discrepancies between the factual details on how Campbell killed Lu did not warrant a unanimity instruction. (*People v. Pride* (1992) 3 Cal.4th 195, 250 [jury need not unanimously agree on whether defendant was guilty of first degree murder based on theory of premeditation or felony murder as long as it unanimously agreed he committed first degree murder and thus “it follows that the same jury need not have unanimously agreed on the precise factual details of how a killing under one or the other theory occurred in order to convict defendant of first degree

murder”; defendant “not entitled to a unanimous verdict as to the particular manner in which any such felony murder occurred”]; *People v. Taylor* (2010) 48 Cal.4th 574, 626-628 [juror unanimity not required in relation to felony murder charge as to whether defendant committed burglary with the requisite felonious intent when he entered the home or when entered a bedroom inside the home; jurors need not agree as to the exact way defendant is guilty of a single discrete burglary].) Campbell could kill Lu only once, and the jury unanimously agreed on voluntary manslaughter. How exactly he committed that crime does not require juror unanimity.

Campbell relies on *People v. Dellinger* (1984) 163 Cal.App.3d 284, 301, in which the appellate court concluded that one basis, among several bases, to reverse a judgment of conviction on second degree murder was the trial court’s failure to give a unanimity instruction. The appellate court recognized that “[m]ost of the reported cases involving multiple criminal acts by a defendant [in which courts have held a unanimity instruction was required] also involve potential multiple offenses. [Citations.]” (*Ibid.*) Nevertheless, without citing authority, the appellate court held a unanimity instruction was required even though “there was only one offense and one victim but there were several hypotheses as to which act or acts caused [the victim’s] death[, either blunt force trauma to the head or forced ingestion of cocaine]. As long as there are multiple acts presented to the jury which could constitute the charged offense, a defendant is entitled to an instruction on unanimity.” (*Ibid.*) Although *Dellinger* supports Campbell’s position, given that it conflicts with more recent Supreme Court authority (e.g., *People v. Taylor*, *supra*, 48 Cal.4th at p. 628; *People v. Russo*, *supra*, 25 Cal.4th at p. 1132; *People v. Pride*, *supra*, 3 Cal.4th at p. 250) and that it failed to cite any support for its holding, we will not follow it.

3. *The Trial Court Did Not Err By Admitting Certain Evidence of a Sleeper Hold*

Campbell contends that admission of “sleeper hold-related evidence,” including two photographs from a book found in his apartment, constitutes reversible error “because the prosecution failed to introduce a sufficient foundation showing that . . . Lu had died of a sleeper hold or that . . . Campbell could even perform one.” We disagree.

“Except as otherwise provided by statute, all relevant evidence is admissible.” (Evid. Code, § 351.) Relevant evidence includes that “having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (*Id.* at § 210.) “The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (*Id.* at § 352.) “An appellate court applies the abuse of discretion standard to review any ruling by a trial court on the admissibility of the evidence, including a ruling on an Evidence Code section 352 objection. [Citation.]” (*People v. Cox* (2003) 30 Cal.4th 916, 955 (*Cox*), overruled in part on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421 & fn. 22)

“‘When the specific type of weapon used to commit a homicide is not known, it may be permissible to admit into evidence weapons found in the defendant’s possession some time after the crime that could have been the weapons employed. There need be no conclusive demonstration that the weapon in defendant’s possession was the murder weapon. [Citations.]’” (*Cox, supra*, 30 Cal.4th at p. 956; see also *People v. Farnam* (2002) 28 Cal.4th 107, 157 (*Farnam*) [“‘If a victim’s wound *could* have been caused by a specific type of weapon or instrument, such a weapon or instrument found in defendant’s possession is admissible in evidence. Such a weapon or instrument is considered relevant on the theory that a trier of fact may reasonably draw an inference from defendant’s possession of the weapon or instrument to the fact that he used the weapon or instrument to commit the offense—a disputed fact of consequence in the action’”].) Thus, in *Cox*, the Supreme Court concluded that the trial court properly had admitted evidence of three guns found in the defendant’s car after the three murders with which he was charged, even though the prosecution “argued that the evidence pointed to a stabbing” (*Cox*, at p. 956.) That argument, the Supreme Court reasoned, “did not preclude the reasonable possibility that one or all three of the victims had been shot” or that defendant had used the guns to transport some of the victims to the murder location. (*Ibid.*) And in *Farnam* the Supreme Court concluded that evidence that defendant possessed a knife two

months after the crimes of murder and sexual offenses was admissible as relevant and not more prejudicial than probative because it tended to establish that defendant was the perpetrator, even though “the prosecution could not conclusively connect defendant’s knife to the . . . crime scene.” (*Farnam*, at p. 157.)

Here, according to the evidence, a “reasonable possibility” existed that Campbell employed a sleeper hold in killing Lu, given his martial arts experience and possession of a book and a video demonstrating the technique, and this theory was the main one relied on by the prosecution. (*Cox, supra*, 30 Cal.4th at p. 956.) The evidence thus was relevant to establish Campbell’s involvement in the killing of Lu. Although Campbell’s counsel argued that Campbell did not have the expertise to perform such a hold, at least without leaving marks on Lu, and relied on the medical examiner’s failure to determine a cause of death to maintain that the sleeper-hold evidence was not admissible, such argument did not render the evidence irrelevant but merely was for the jury to consider in determining the strength of the evidence. (See *Farnam, supra*, 28 Cal.4th at p. 157 [even though inferences from evidence that defendant possessed a knife after the crime may have been weak and “diminish[ed] the strength of the evidence,” that did not make the evidence “irrelevant”].)

Nor was the probative value of the evidence outweighed by a substantial danger of undue prejudice under Evidence Code section 352. Given the “reasonable possibility” that Lu died as the result of a sleeper hold (*Cox, supra*, 30 Cal.4th at p. 956), the probative value was strong, and the trial court ensured that the evidence did not overwhelm the jurors by admitting just two photographs from the book and excluding the cover page, which it found could be “unduly prejudicial” based on the title of the book, “Killer Submissions.” As the court concluded, the graphics demonstrated that “the sleeper hold is applied in a position where the people are on the ground. And so I assume there will be arguments about whether that could have been applied in this case in light of the fact that apparently there’s some evidence of a bang and a thump. The point is not . . . necessarily to embrace any argument, but simply to recognize that this is a matter

of argument and it's not something that should be taken from the jury." Such a conclusion was not an abuse of discretion.

4. *The Trial Court Did Not Err By Imposing an Upper-term Sentence*

In selecting the upper term of 11 years for Campbell's voluntary manslaughter conviction, the trial court relied on Campbell's "concealment and . . . handling of the body" after the offense. Campbell argues that the court erred by considering his actions after completion of the crime to impose the upper term. Again, we disagree.

California Rules of Court, rule 4.420(b) provides that, "[i]n exercising his or her discretion in selecting one of the three authorized prison terms referred to in section 1170(b), [the upper, middle or low term,] the sentencing judge may consider circumstances in aggravation [Cal. Rules of Court, rule 4.421] or mitigation [Cal. Rules of Court, rule 4.423], and any other factor reasonably related to the sentencing decision. The relevant circumstances may be obtained from the case record, the probation officer's report, other reports and statements properly received, statements in aggravation or mitigation, and any evidence introduced at the sentencing hearing." In addition, California Rules of Court, rule 4.408(a) provides that "[t]he enumeration in these rules of some criteria for the making of discretionary sentencing decisions does not prohibit the application of additional criteria reasonably related to the decision being made. Any such additional criteria must be stated on the record by the sentencing judge."

Based on these rules, the trial court did not err in considering Campbell's concealment and handling of Lu's body after commission of his crime to impose an upper-term sentence. The concealment and handling of Lu's body were "reasonably related" to the sentencing decision, as specified in California Rules of Court, rules 4.420(b) and 4.408(a). For example, in *People v. Bloom* (1983) 142 Cal.App.3d 310, 321, the trial court imposed an upper-term sentence on a vehicular manslaughter conviction in part because after the crime "[t]he defendant had a 'complete lack of remorse,' evidenced by the fact that 'this defendant, knowing that he had taken the life of another person by virtue of his drinking alcohol, still continued to drink alcohol.'" The appellate court concluded that the defendant's actions after the crime constituted a basis

for the upper-term sentence because they were “‘reasonably related’” to the sentencing decision. (*Id.* at p. 322; see also *People v. Gonzales* (1989) 208 Cal.App.3d 1170, 1172 [trial court properly used defendant’s conviction for firing three shots from a revolver at a gas station attendant, occurring three years after the voluntary manslaughter offense for which he was being sentenced, to impose upper term because such conduct was “‘reasonably related’” to the sentencing decision].)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.