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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. LANCE ANDERSON, Defendant and Appellant.	B276741 (Los Angeles County Super. Ct. No. PA079075)

APPEAL from a judgment of the Superior Court of Los Angeles County, Hayden A. Zacky, Judge. Affirmed.

Emry J. Allen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Scott A. Taryle, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Lance Anderson shot and killed his wife and severely disabled sister and told detectives he did so to end their suffering and "send them home." Defendant was charged with two counts of murder and several firearm use enhancements. At the ensuing bench trial, the trial court admitted defendant's incriminating statements to detectives over his objection that his *Miranda*[1] rights were violated. It also rejected defendant's argument that he was culpable only of voluntary manslaughter because he was overcome by passionate feelings of helplessness in the face of the victims' prolonged suffering. The trial court found defendant guilty as charged and sentenced him to an aggregate term of 100 years to life.

Defendant now contends that the trial court erred by admitting his statements to detectives. He further argues that the trial court applied an incorrect legal standard for voluntary manslaughter. Defendant also challenges his sentence, contending the trial court improperly relied on his statements to detectives and failed to accord appropriate weight to his mental distress as a mitigating factor. We reject defendants' contentions and affirm the judgment of the trial court.

PROCEDURAL HISTORY

Defendant was charged by information with two counts of murder. (Pen. Code, § 187, subd. (a).)[2] The information further alleged multiple victim special circumstances (§ 190.2, subd. (a)(3)) and personal use firearm enhancements (§ 12022.53, subds. (b), (c) & (d)) as to both counts. The prosecution dismissed the special circumstance allegations upon defendant's waiver of his right to jury trial.

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[1] *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

[2] All further statutory references are to the Penal Code.

After a bench trial, the trial court found defendant guilty of first degree, premeditated murder on both counts and found true all of the firearms allegations. (§§ 187, subd. (a), 189.) The court sentenced defendant to 50 years on each count: 25 years to life for the murder (§ 190, subd. (a)), plus 25 years for causing great bodily injury and death by personally and intentionally discharging a firearm (§ 12022.53, subd. (d)).[3] The court ran the sentences consecutively to one another, for an aggregate term of 100 years to life. Defendant timely appealed.

FACTUAL BACKGROUND

I. Prosecution Evidence

A. Maxine's Health

Defendant was married to his wife, Bertha Maxine Anderson ("Maxine"), for approximately 32 years. Maxine's son from a previous relationship, Jason King, lived with defendant and Maxine throughout much of his childhood and occasionally as an adult. King wanted his mother to leave defendant because he believed defendant was too controlling of her.

King testified that Maxine suffered from "toxic poisoning from paint" during his childhood, shortly after her marriage to defendant. The poisoning affected Maxine's memory, nervous system, and eyesight severely at first, but her condition progressively improved "after treatment over the next twenty years." She did not work outside the home but was a self-sufficient, "strong" woman; she was able to feed herself, carry on conversations, leave the home, and drive. When King last saw her in person, in 2010, she looked "beautiful" and "[h]er demeanor was on top of the world."

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[3] The trial court imposed and stayed sentences on the lesser firearms enhancements. (§ 12022, subds. (b), (c).)

In approximately 2011 or 2012, Maxine suffered a severe allergic reaction to an antibiotic. When King spoke to her on the phone around that time, she "sounded very tired," "like she needed to recover a little bit." When King spoke to Maxine on the phone in October 2013, he thought she "sounded very shaky" and "nervous," but not depressed. She told him she had some hormonal imbalances and "they were changing medications on her very rapidly, and it was making her feel different." Defendant told King at that time that Maxine was "not doing good" but did not provide King with any further information.

King testified that Maxine "sounded better" during his last phone conversation with her, on Thanksgiving Day 2013. Defendant did not say anything to King about Maxine's health when he came on the line. Maxine never expressed to King that she could not live with the problems she was having or that she wanted to end her own life.

B. Funeral Arrangements

Elizabeth Starrett worked at Eternal Valley Memorial Park Mortuary for approximately five months in 2013. At the preliminary hearing, she gave the spelling Stirrett. In November 2013, she made her first and only large sale of prepaid funeral arrangements, to defendant. Starrett testified—and admitted documents showed—that defendant made full funeral arrangements for himself and Maxine, including purchasing a shared cemetery plot and headstone, pre-ordering death certificates, obtaining inurnment rights and services, and submitting photographs for display during their funerals. Defendant also submitted a eulogy to be read at Maxine's funeral. However, he told Starrett, in response to a standard question she asked for purposes of calculating her sales commission, that

Maxine was not terminally ill.

Starrett testified that defendant also purchased a "travel protection plan," an insurance policy that would cover the cost of transporting the policyholder's body to Eternal Valley if he or she was not in the area at the time of his or her death. Defendant purchased that insurance only for himself. Defendant also directed Starrett to call him exclusively on his cellular phone, not the home phone.

Defendant paid for the arrangements with approximately $24,000 in cash. Starrett personally drove him to the bank the day before Thanksgiving so he could withdraw the funds.

C. Lisa's Death and Investigation

Defendant's sister, Lisa Nave, was a resident of a skilled nursing facility in Los Angeles. Lisa could breathe on her own but used a feeding tube and was unable to care for herself. Lisa's caregiver testified that Lisa looked at her when she spoke to her, and said words when her husband visited.

A taxi driver who worked for Yellow Cab of Santa Clarita testified that he picked up a man from Canyon Country and drove him to Lisa's skilled nursing facility on the morning of December 11, 2013.

Lisa's caregiver testified that defendant, whom she recognized as Lisa's brother, came to visit Lisa at around 9:00 a.m. on December 11, 2013. The caregiver was in Lisa's room with them for about 20 to 25 minutes, tending to Lisa and her roommates. When she left, defendant followed her out of the room; she told him she would be back within 20 to 25 minutes. Defendant returned to the room.

Shortly thereafter, the caregiver heard "a sound like an explosion" from Lisa's room. She returned to the room and saw

Lisa lying in her bed with blood on her left temple. Defendant was outside on the patio.

Lisa's occupational therapist also heard a "bang" on the morning of December 11, 2013. She went to Lisa's room to investigate and saw defendant standing in the doorway separating Lisa's room from the patio. Defendant put his hands in the air and told her that he had just shot his sister. He told the occupational therapist to call the police and said he would be waiting in the courtyard. The occupational therapist called 911. She also tried to assist Lisa, who "had a gunshot hole in her right temple."

Lisa was pronounced dead when paramedics arrived on the scene. The deputy medical examiner who performed an autopsy on Lisa testified that the cause of her death was a gunshot wound to the head. Lisa was 59 years old.

Los Angeles Police Department (LAPD) officer Rebecca Reese responded to the skilled nursing facility at approximately 9:20 a.m. on December 11, 2013. She found defendant sitting calmly on the patio. LAPD detective Efren Gutierrez arrived at the facility at around 10:00 a.m. He testified that he booked into evidence items recovered from defendant's person, including a briefcase containing approximately $5,000 in cash and business cards for a funeral home. Reese took defendant into custody and transported him to the police station.

D. Maxine's Death and Investigation

Los Angeles County Sheriff's Department (LASD) deputy Edward Harrold was dispatched to a home in Canyon Country to perform a welfare check shortly after police responded to Lisa's skilled nursing facility. He entered the home through the unlocked front door. He and another responding deputy found

Maxine lying on the bed in the master bedroom. She had a gunshot wound in her left temple. Firefighters who responded to the scene pronounced her dead. The deputy medical examiner who performed an autopsy on Maxine testified that the cause of her death was a single, close-range gunshot wound to the head. He further testified that, aside from the gunshot, nothing else appeared to be wrong with her body. He conceded on cross-examination that Maxine had a one-inch scar on her breast that was consistent with surgery for breast cancer. Maxine was 68 years old.

LASD detective Ronald Duval was assigned to investigate Maxine's death. He documented several items found near her body, including her birth certificate, a bouquet of three dried roses, a set of clothing, and contact information for Eternal Valley and various friends and family members.

Duval also searched other areas of the Canyon Country home. In the kitchen, he found a nearly full cup of coffee with a handwritten note attached. He testified that the note read, "Good morning, lover," "with an exclamation point that was kind of like drawn in like the shape of a heart," and "[t]he O's in good morning were drawn to make it look like eyes. And in between it was a line and then like a smile underneath it. So it gave the appearance of a happy face." Duval testified that the note continued, "Sleep well. You will suffer no more. Give everyone my love. I will join you soon enough."

In the kitchen trash can, Duval found a note with the words "Yellow Cab" and a series of phone numbers. He also found a receipt dated November 25, 2013 documenting the purchase of a kit to prepare a last will and testament, and a receipt dated November 26, 2013 documenting payment of a

"pistol range fee" at a Newhall gun facility. In the garage, he found a package containing forms and a CD to prepare a last will and testament. In defendant's car, Duval found an envelope containing the car's title on the dashboard. There was a handwritten note on the envelope: "Pidge, please sell vehicle and hold funds for me. I know you may not understand why I did what I did. I pray you do/will (if not now . . . some day.)."[4] Below that were two URLs to Kelley Blue Book, and "List approx 7,000. Please help."

King's friend, Daniel Peckham, testified that he and King visited defendant in jail to obtain "personal belongings release paperwork." On the paperwork was a handwritten note: "Sorry for your pain. I had to fall on my sword for the family. Hope you can understand. And forgive. She said she didn't want to live like this. That she was broken. And I couldn't fix her . . . and more. Hope to see you soon. Love you very very much. Again sorry. Dad." Peckham and King returned a second time to ask defendant about the whereabouts of specific items King wanted from the Canyon Country home. During that visit, defendant told them that he had buried certain items under the porch, including Maxine's "nicer jewelry" and firearms and ammunition. Peckham and King contacted Duval, who accompanied them to the Canyon Country property. King found the described items buried where defendant told him they would be.

E. Defendant's Statements

Defendant made two statements while in custody on December 11, 2013, one to each of the law enforcement agencies investigating the crimes. The trial court admitted recordings of both statements into evidence over defendant's objections that his

[4] "Pidge" is the nickname of another of defendant's sisters.

Miranda rights were violated.

1. Statement to LAPD

Defendant told LAPD detective Gene Parshall that Maxine had a history of serious health problems. Shortly after their wedding 32 years earlier, Maxine developed toxic cerebral encephalopathy that caused brain damage and fostered in her an "unnatural fear of things." She was diagnosed with breast cancer "a couple of years ago," which prompted her doctors to cease the hormone therapy she had been receiving. Maxine beat the cancer, but the hormonal withdrawal was "very rough on her mentally," such that "she kind of went sideways" and developed depression, anxiety, and "24/7 hot flashes." He described the impact of these afflictions on Maxine several times as "brutal," and "brutal to watch." Maxine did not want to take pills, and her doctors kept adjusting her medications and dosages. She "described herself as having lost motivation and desire," "looked in the mirror and would cry," and "didn't want to live that way." Defendant was not able to get a job outside the home because Maxine was afraid to be home without him, and he had to help her with tasks like bathing.

Defendant also told Parshall that his sister Lisa had a heart attack approximately six years earlier. She was "blue on the floor" for about 15 minutes, which caused her to suffer severe brain damage. As a result, she was unable to get out of bed or carry on a conversation, and had to get a feeding tube and breathing tube; she no longer needed the breathing tube at the time of her death. Lisa had been in the skilled nursing facility ever since her heart attack, even though "she never wanted to be in the bed like that." Defendant told Parshall that Lisa had told him, and probably other people, that she never wanted "to be

laying around in my own shit," but had not signed an advanced directive documenting those wishes.

Lisa's husband, Marcus, visited her almost every day, which defendant admired. Marcus would talk to Lisa and could get her to say words, but defendant believed he was in denial about the severity and permanency of Lisa's condition. Marcus would not consent to removing Lisa's feeding tube. Her two children, however, both "expressed that she needs to go home," meaning that she needed to die. Defendant apologized for the pain he caused Lisa's family.

Defendant explained that he originally planned to shoot Maxine and then himself—"[i]t was going to be me and her." He had the funeral arrangements "taken care of last week." Maxine did not know about this plan, and he had not talked to her about a murder-suicide. "She just told me she didn't want to live this way," "over and over again." Defendant removed Maxine's gun from the home, because he was afraid she would take her life even though she said she was "chicken." He thus experienced "mixed emotions because I end up doing it."

Defendant woke up at 4:30 a.m. on December 11, 2013. He shot Maxine in the left temple while she was asleep in their bed. He did not attempt to shoot himself, however, because he "thought about Lisa," "thought about how I can do this," and decided to "sacrifice my freedom for theirs." Immediately after shooting Maxine, defendant "started writing notes," the ones that Duval found throughout the home and garage. He put some notes on the bed, along with "some dried flowers and some clothes for her." He put a check for his siblings in the mail, grabbed his briefcase and laptop, and called a taxi.

Defendant took the taxi to Lisa's skilled nursing facility, where he "spent some time with her." He "told her I was going to send her home to see mom," and "she had a little tear." He then told Lisa to "turn your head, honey," and "she turned her head and I sent her home" by shooting her in the right temple. He heard someone in the hall ask what that was, and he said, "you need to call the police." He unloaded his gun—a "little Derringer"—and set it on the table before going outside to the patio with his briefcase and laptop. He explained to Parshall that he brought the briefcase because he wanted access to certain personal effects while in custody, including his Bible, a Joel Osteen book, phone books, a notebook, and other paperwork.

Defendant told Parshall he had served in the military for six years during the Vietnam War and had been diagnosed with PTSD. He experienced suicidal thoughts previously, when his father, who also had traumatic experiences in the military, committed suicide after being diagnosed with Alzheimer's disease. Defendant also experienced suicidal thoughts when his daughter was killed by a drunk driver ten years earlier. He developed a plan to kill the drunk driver "on the courthouse steps" by stabbing a "little gold pen" into his neck, but Maxine persuaded him not to go through with it.

2. Statement to LASD

A few hours after defendant made his statement to Parshall, Duval and his partner, Frank Salerno, came to the jail to speak to him.

Defendant's statement to the LASD detectives was similar to his statement to LAPD's Parshall. He told them he and Maxine were married in 1981 and raised her son, Jason King, together. About six months into their marriage, Maxine "had an

eight-week overexposure to the paint overspray" at her job that caused her to develop toxic cerebral encephalopathy. The paint also affected Maxine's hormones, so doctors gave her hormone therapy "so she would detox." When Maxine was diagnosed with breast cancer, the doctors stopped the hormone therapy "cold turkey." Maxine did not adjust well, and doctors prescribed various medications to help her hot flashes, depression, anxiety, and panic attacks. At some point, doctors gave her antibiotics and triggered a severe allergic reaction that "almost killed her" and "threw off her thyroid gland." "[H]er mind became worse, . . . and the effect on her eyes gave her cataracts." The allergic reaction also worsened Maxine's anxiety and panic attacks. Additionally, she suffered from bulging discs in her back and polyps in her colon.

Maxine "didn't know how to continue" because she "didn't want anybody to see her like this" and "didn't wanna live like this." Defendant again described the entire situation as "brutal." Maxine told him she was "chicken" to do anything about it. She never said she was going to kill herself or that she wanted defendant to help her end her life.

After attending a funeral for a friend a few weeks earlier, defendant developed a plan to "take us both out," though he admitted that he had thought about it prior to that. He made funeral arrangements for himself and Maxine, using an advance on an expected inheritance to pay for them. He also went to a gun range to practice using the Derringer, which he had owned for 10 years but never fired, and to ensure the gun's dated ammunition still worked.

Defendant decided "pretty much this morning" to kill Maxine, and "then I remembered Lisa who never wanted to be

where she was and she's been there five years." He explained to Duval and Salerno that he and Lisa "had discussions prior to her heart attack over the years about not wanting to be, you know, bedridden and, you know, unplug me and all that." Lisa also told him at some point that she had seen their deceased mother and "had to go home now," and "told Marcus one time why are you keeping me in this prison."

Defendant told the detectives he woke up to use the bathroom at around 4:30 or 5:00 that morning and sat in the dark, "wondering what the hell I'm gonna do. How I can I help her. What . . . what do you do? What do you do? You fall on your sword for the family you love, man." He then "went and got the little Derringer," "said a prayer and said goodbye," and then "just pulled the trigger."

After firing the single shot, defendant "[c]ried, went and wrote the notes, tried to do as best I could because I knew I wouldn't be probably going back." Along with the notes, defendant put dried flowers, a set of clothing, and documents including Maxine's birth certificate and family contact information by the bed. He made coffee for himself and Maxine, leaving a note on her coffee cup. It took defendant "several hours to write the notes and do what I did." Around 8:00 a.m., he concluded "enough is enough" and called a cab to go see Lisa. He put the gun in his pocket, and also brought a laptop and a briefcase containing a Bible, a Joel Osteen book, some personal papers, his resume, and about $4,500 in cash.

III. Defense Evidence

Dr. Richard Romanoff, a clinical and forensic psychologist, testified for the defense. He reviewed the LAPD's and LASD's investigation reports and defendant's statements. Dr. Romanoff

also met with defendant six times, spending more than 13 hours with him.

Dr. Romanoff concluded from his review that there was "no evidence to support an insanity defense as defined in California law." Defendant had a high-average I.Q., a normal awareness and perception of his surroundings, and was able to control and regulate his behavior. According to Dr. Romanoff, defendant "knew what he was doing " and "made what he believed was a rational justified decision to act as he did."

However, Dr. Romanoff concluded "there was an impairment in his ability to reason at that time that . . . undermined his ability to understand what he was doing from any perspective other than the one that he was rigidly stuck in at that time." Dr. Romanoff explained that, in his opinion, defendant "had a deep lack of understanding of . . . ways in which he interacted with people that could be controlling, off putting, at some times incredibly irritating and frustrating for those who were around him." Defendant also "lacked skills to cooperate or resolve conflict," and "lived in a world that tended to go towards an 'us versus them' mentality"; even Dr. Romanoff "personally experienced" defendant "as moderately to seriously controlling in his interactions" with him.

Dr. Romanoff opined that defendant had "more impairment than he could admit to himself." This impairment stemmed from various tragedies in his life. Defendant's father was addicted to alcohol and painkillers and was violent toward defendant's mother and possibly the children; defendant's mother divorced his father when defendant was very young because she was afraid for her safety and that of the children. Defendant's father later committed suicide, purportedly after being diagnosed with

Alzheimer's disease. His daughter died suddenly in an accident. His sister Lisa had a heart attack and was in "a lengthy vegetative state." His wife Maxine suffered from "physical and psychological symptoms . . . that kept getting worse and that Mr. Anderson saw as causing her more and more both physical and mental anguish."

Defendant had a limited ability to tolerate the pain and suffering of those he cared most about, including Lisa and Maxine. "[O]ver time, the exposure to that pain and suffering wore on him and wore him down and I think resulted in a process that drove him to need to alleviate their suffering. And . . . he came to believe the only way to do that was to act to end their life by shooting them."

DISCUSSION

I. Admission of defendant's statements

Defendant contends the trial court erred in admitting the statements he made to LAPD detective Parshall (LAPD statement) and LASD detectives Duval and Salerno (LASD statement). He argues that he did not unequivocally and intelligently waive his *Miranda* rights before making the LAPD statement, and asserts that he invoked his right to counsel before making both statements. We conclude that both statements properly were admitted.

A. Legal Framework

In the seminal case of *Miranda*, *supra*, 384 U.S. at p. 444, the United States Supreme Court held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." The procedural

safeguards include warning a defendant, prior to his or her interrogation, that he or she "has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." (*Ibid.*) "The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him." (*Id.* at pp. 444-445.)

A defendant seeking to invoke his or her *Miranda* right to counsel must do so unambiguously, unequivocally, and clearly. "Invocation of the *Miranda* right to counsel 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.' [Citation.]" (*Davis v. United States* (1994) 512 U.S. 452, 459.) A defendant who has unambiguously asserted his or her right to counsel "is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." (*Edwards v. Arizona* (1981) 451 U.S. 477, 484-485.) "An accused 'initiates' such dialogue when he speaks words or engages in conduct that can be 'fairly said to represent a desire' on his part 'to open up a more generalized discussion relating directly or indirectly to the investigation.' [Citation.] In the event he does in fact 'initiate' dialogue, the police may commence interrogation if he validly waives his rights." (*People v. Mickey* (1991) 54 Cal.3d 612, 648-649.)

If a defendant "makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning." (*Davis v. United States*, *supra*, 512 U.S. at p. 459; see also *Berghuis v. Thompkins* (2010) 560 U.S. 370, 381.) Indeed, if a defendant makes an ambiguous statement that could be construed as an invocation of his or her *Miranda* rights, the interrogators are permitted to ask follow-up questions to clarify the defendant's understanding of and desire to invoke or waive his or her *Miranda* rights. (*People v. Sauceda-Contreras* (2012) 55 Cal.4th 203, 206.)

"An appellate court applies the independent or de novo standard of review, which by its nature is nondeferential, to a trial court's granting or denial of a motion to suppress a statement under *Miranda* insofar as the trial court's underlying decision entails a measurement of the facts against the law. [Citations.] As for each of the subordinate determinations, it employs the test appropriate thereto. That is to say, it examines independently the resolution of a pure question of law; it scrutinizes for substantial evidence the resolution of a pure question of fact; it examines independently the resolution of a mixed question of law and fact that is predominantly legal; and it scrutinizes for substantial evidence the resolution of a mixed question of law and fact that is predominantly factual." (*People v. Waidla* (2000) 22 Cal.4th 690, 730.)

B. LAPD Statement

1. Background

When LAPD detective Parshall first came to speak to defendant, he advised defendant of his *Miranda* rights.

Defendant said he understood each of the advisements and then said, "I think I need to talk with the public defender before making any further statements." Parshall responded, "Okay. All right. No problem." He also reminded defendant, "it's totally up to you" whether to talk to Parshall or wait and speak with an attorney. Defendant said, "I should probably talk to the attorney assigned first." Parshall reiterated that was not a problem and took defendant to a holding cell.

Less than ten minutes later, Parshall testified, another officer came to his office and told him that defendant wanted to speak to him. Parshall reconvened with defendant in the interview room. He asked, "Did you change your mind?" to which defendant responded, "Somewhat, yeah." Parshall then asked defendant if he told the other officer he wanted to talk to Parshall; defendant replied, "Yes, I did." Defendant then asked what he was being charged with, explaining that he did "not know how it works." Parshall said that he just investigates crimes, and that it is up to the district attorney to decide what, if any, charges to file. He noted, "a lot of it depends on what comes from you, in my mind. Obviously, you're a big piece of the puzzle because you were there and can tell us what happened." He continued, "So, if you want to tell me what happened, if we can get this thing done and over with, then I'm here to listen. I have some questions of you and I'll answer any questions you have of me. . . ."

Defendant then asked, "How soon would they have the public defender available?" Parshall explained that defendant would be assigned a public defender at his arraignment a few days later. He further stated, "Now, if you want to call a private defender or if you want to call an attorney, then they can perhaps

meet you down in Van Nuys Division. We'd be happy to set up a phone for you if you want to call anyone. All right?" Parshall also reiterated, "So, that's up to you. If you want to clear this thing up and tell me why you did what you did, if you did anything. . . ." Defendant again stated, "I just thought I needed to see a public defender before going," to which Parshall responded, "No, we don't have public defenders that work here at the station that, hey, Joe, we got another one, come on in, and - - it doesn't work like that."

Parshall continued, "I'm not going to let you give me a statement if there's any doubt in your mind. . . . If you unequivocally and intelligently wanted to talk to me about what happened, then I need you to tell me that, and I will listen to what you - - it can be just you and I. You can ask officers to leave. We can get this done. Okay? If not, you'll go down and then you'll eventually be booked, okay? And then you can - - your chance to tell the story - - you would have an opportunity in court to tell your story at the trial, okay?" He also told defendant that, in his experience, attorneys "have never called me," "because attorneys will tell you not to say anything. Okay? [¶] That's what they would normally tell you." Parshall then reiterated, "So, if you have any doubt in your mind, then, I don't - - I'd rather not talk to you. I don't want to be accused of - - of pushing you to say anything or not properly advising you have your rights."

Defendant responded, "You've been wonderful. That's my problem - -" He continued, "it's just in my head, um, I don't know if . . . possibly a reduced sentenced [*sic*] depending on what the district attorney wants to do. You know, I just - - I just want to be cooperative now." Parshall then asked if defendant wanted to tell him what happened, and defendant said, "Yeah, I'll be happy

to." Parshall immediately confirmed, "You're sure about this?" Defendant said, "Yeah," then, "It is what it is." He then began his "long story," which included many incriminating statements. The trial court found that defendant "clearly" sought out Parshall to speak to him. It further found that Parshall took steps to be "100 percent sure that Mr. Anderson wanted to speak," such as using the words "unequivocally and intelligently," and stating, "I don't want to be accused of pushing to you say anything or not properly advising you of your rights." The court found "no threats, no coercion whatsoever," and remarked that defendant and Parshall seemed to have "a rapport" marked by "mutual respect." The trial court concluded that defendant's statement was "entirely voluntary" and that there was no *Miranda* violation based on the totality of the circumstances.

2. Analysis

Defendant first argues that the LAPD statement was not admissible because he did not validly waive his right to counsel. He points to a comment he made during his subsequent LASD statement—"I don't remember them saying I had the right to have someone present during questioning. The guy said that I could go away and you can go to court in two days and then they'll get you a, uh, an attorney if you can't afford one. I remember that." That statement, he contends, demonstrates that he did not fully appreciate and voluntarily waive his right to counsel. We are not persuaded.

Defendant, whom a psychologist opined was of high-average intelligence, expressly told Parshall that he understood each of the *Miranda* rights when Parshall read them during their first encounter. Indeed, he told Parshall, ""I think I need to talk with the public defender before making any further statements."

Parshall responded by ceasing the interrogation. Defendant then "initiated" further discussion with Parshall within minutes by asking another officer if he could talk with Parshall again. (*People v. Mickey*, *supra*, 54 Cal.3d at pp. 648-649.) In response to defendant's queries, Parshall explained that the district attorney was responsible for the charging decision and that defendant would be assigned a public defender at his arraignment two days hence. Parshall also offered to provide defendant with a phone so he could contact a private attorney, noted that an attorney would probably tell him not to talk, and reiterated a willingness to listen only if defendant "unequivocally and intelligently wanted to talk to me about what happened." Only then did defendant affirmatively state that he would be "happy to" talk to Parshall, a desire he reiterated when Parshall asked him if he was "sure about this." We find no error in the trial court's conclusion that these circumstances were indicative of defendant's understanding and voluntary waiver of his right to counsel.

Defendant's subsequent statement to LASD detectives does not change this conclusion. Even if we were to assume this statement was before the trial court at the time of its ruling—the record suggests the contrary, and defendant did not mention the LASD statement in his argument to the court—it does not undermine the court's finding that defendant understood and voluntarily waived his rights before making the LAPD statement. Parshall informed defendant when he would be appointed a public defender, offered to provide him a phone so he could call a private attorney sooner, and reiterated several times that it was defendant's decision whether to speak to him. "*Miranda* does not require that attorneys be producible on call, but only that the

suspect be informed, as here, that he has a right to an attorney during questioning and that an attorney would be appointed for him if he could not afford one." (*Duckworth v. Eagan* (1989) 492 U.S. 195, 204.) "If the police cannot provide appointed counsel, *Miranda* requires only that the police not question a suspect unless he waives his right to counsel." (*Ibid.*) That was done here.

Defendant also contends that his query, "when will a public defender be available?" "by itself indicates a clear and unequivocal desire to consult with counsel," particularly in light of his initial statement that he wanted to speak to an attorney. We disagree.

The United States Supreme Court has recognized that "it must be relatively commonplace for a suspect, after receiving *Miranda* warnings, to ask *when* he will obtain counsel." (*Duckworth v. Eagan*, *supra*, 492 U.S. at p. 204.) Indeed, the Third District considered a very similar scenario in *People v. Simons* (2007) 155 Cal.App.4th 948 (*Simons*). There, defendant Simons asked, "How long would it take for a lawyer to get here for me?" (*Simons*, *supra*, 155 Cal.App.4th at p. 955.) One of the detectives speaking to him responded that would be "up to you" and asked Simons if he wanted an attorney "right now." (*Id.* at p. 956.) Simons again asked, "How long would it take if I said yeah?" (*Ibid.*) The detective said that he would "stop your questions if you want an attorney," at which point Simons again asked "how long would it take?" (*Ibid.*) After the detectives explained that Simons would receive an attorney when he made his first court appearance, they asked him if he wanted to continue talking to them. (*Id.* at pp. 956-957.) Simons said, "Yes, I do," and proceeded to make incriminating statements. (*Id.* at p.

957.)

The trial court concluded that Simons' queries as to when he would receive counsel did not amount to an unequivocal assertion of the right to counsel, and the Court of Appeal agreed. (See *Simons*, *supra*, 155 Cal.App.4th at pp. 953, 959.) The Court of Appeal held that Simons's "questions regarding how long it would take for an attorney to get there if he asked for one would lead a reasonable officer to understand only that defendant *might* want an attorney if it would not take too long, which is not enough to require cessation of the interrogation." (*Id.* at p. 958.) The same rationale applies here. Defendant asked when a public defender would be available; he did not definitively say that he wanted one. Parshall provided accurate and appropriate follow-up information and did not substantively interrogate defendant until defendant indicated that he was "sure" he wanted to talk.

Defendant argues that *Simons* is distinguishable because Simons did not previously assert his right to counsel as defendant did during his initial interaction with Parshall. Defendant claims, without citation to authority, that "the only reasonable interpretation available is that appellant was re-invoking his right to counsel, with a request for clarification of the implementation of that right." We disagree. Parshall promptly ceased interrogating defendant when defendant said that he "should probably talk to the attorney assigned" and thought he needed "to talk with the public defender before making any further statements." Assuming those statements constituted an unequivocal request for counsel, there is no indication that defendant's follow-up query about how long it would take to get counsel was a reiteration of that request. Rather, defendant sought out Parshall to continue the conversation and asked him

several questions about the process before confirming that he wanted to proceed without counsel. The totality of the circumstances indicates that defendant understood his rights and voluntarily waived them before making the LAPD statement.

C. LASD Statement

1. Background

LASD detectives Duval and Salerno came to the police station to talk to defendant later in the day on December 11, 2013. At the outset of that conversation, Duval confirmed that the LAPD previously advised defendant of his *Miranda* rights, that he understood them, and that he agreed to speak with Parshall. Salerno then asked defendant if he wanted to "go ahead again." Defendant responded, "Yeah. Uh, at first I wasn't sure if I should, uh, have representation or not and then I don't know if it makes any difference." Salerno advised defendant of his *Miranda* rights, including, "You have the right to an attorney during questioning." Defendant said he understood that he had a right to an attorney, but did not remember Parshall "saying I had the right to have someone present during questioning. The guy said that I could go away and you can go to court in two days and then they'll get you a, uh, an attorney if you can't afford one. I remember that."

Salerno reiterated that defendant had a right to an attorney during questioning and asked him if he understood. Defendant said, "Yeah. Can you bring one in now?" Duval responded, "Um," and defendant said, "That's probably the same problem he had today," presumably referring to Parshall. Defendant further explained, "I would've preferred one, but it sounded like it was gonna be several days before anybody would talk to me about it, so." Salerno reiterated, "if you want an

attorney present, then that's your right. That's . . . that's up to you. Uh, if not, then we'd like to ask you questions about what happened at your place . . . ." Defendant responded, "Like I said, I don't know if it'll make any difference. I'm willing to cooperate." The detectives reminded him that "it's strictly up to you" and "[w]e can't answer the question for you," after which defendant said, "I understand. I don't know if I should or shouldn't so I guess we just go ahead with it since you're here." Salerno again said the detectives were "not here to force you to talk to us," and asked defendant if he was willing to answer questions about the morning's events. Defendant said that he was, then said, "I got no problem with cooperating." The detectives moved forward with the interrogation, and defendant made an incriminating statement.

The trial court admitted the statement into evidence. Relying on *Simons*, *supra*, it found that defendant's query, "Can you bring one in now?" was not a clear and unequivocal request for counsel. Based on the totality of the circumstances, the court found that the LASD statement was voluntary.

2. Analysis

Defendant contends that "[t]he analysis of this statement is simple and straightforward" because his request, "Can you bring one in now?" was "an express and unequivocal invocation by appellant of his right to counsel." Therefore, he argues, Duval and Salerno were compelled to end the interview. We disagree.

Like defendant's query to Parshall, his query to Duval and Salerno, "Can you bring one in now?" was not an unequivocal invocation of the right to counsel. In addition to *Simons*, *People v. Sauceda-Contreras*, *supra*, 55 Cal.4th at p. 219 (*Sauceda-Contreras*) is instructive. There, an officer read the defendant his

Miranda rights and then asked him, "'Having in mind these … rights I just read, the detective would like to know if he can speak with you right now?'" (*Sauceda-Contreras*, *supra*, 55 Cal.4th at p. 219.) The defendant responded, "'If you can bring me a lawyer, that way I[,] I with who . . . that way I can tell you everything that I know and everything that I need to tell you and someone to represent me.'" (*Ibid.*) The Supreme Court held that defendant's statement was "conditional, ambiguous, and equivocal." (*Ibid.*)

Specifically, "[i]t was conditional in that it began with an inquiry as to whether a lawyer *could* be brought to defendant." (*Sauceda-Contreras*, *supra*, 55 Cal.4th at p. 219.) "It was equivocal in that defendant went on to plainly state his intent and desire to waive his right to remain silent and 'tell you everything that I know and everything that I need to tell you,' but then ended his response ambiguously with the words 'and someone to represent me.'" (*Ibid.*) The Court also found that the statement was ambiguous in that defendant was "expressly asking the officer whether a lawyer could be brought to him, and impliedly asking whether one could be provided *right now*." (*Ibid.*) The Court accordingly concluded that, from an objective standpoint, "a reasonable officer under the circumstances would not have understood defendant's response to be a clear and unequivocal request for counsel." (*Ibid.*)

The same is true here. Defendant's statement was conditional in that it asked whether an attorney could be brought to him immediately. It was also made after defendant reported that Parshall told him that he would not get an attorney until he went to court in two days. An objectively reasonable officer thus would have understood defendant's statement as a query about

whether LASD would follow the same procedures as LAPD. The detectives accordingly were permitted to ask follow-up questions to clarify defendant's intent. (*Sauceda-Contreras*, *supra*, 55 Cal.4th at p. 219.) They did so, and defendant said he wanted to cooperate and move forward with questioning. His subsequent statement properly was admitted.

II. Voluntary Manslaughter

Defendant contends the judgment must be reversed because the trial court erroneously concluded that, as a matter of law, "there was not and could not be adequate provocation in a case such as this" to reduce the charges from murder to voluntary manslaughter. He challenges the court's verdict that he was guilty of murder on two bases. First, he argues that the court improperly concluded that defendant's passive victims could not have provoked him. Defendant asserts this was error because "[t]here is no requirement that the victim do anything, let alone anything wrong, other than provoke the defendant," and here the victims provoked him "by becoming ill, by suffering, and by not improving notwithstanding appellant's persistent efforts." Second, defendant argues that the court "confused the present claim of voluntary manslaughter with mercy killing," which is not a defense to a charge of murder. (See *People v. Cleaves* (1991) 229 Cal.App.3d 367, 375-376.) In defendant's view, the court thus failed to "consider the possibility that such a killing could be the product of an emotional response so intense that the reason of the actor was obscured so as to negate the element of 'malice' required to prove a murder charge; and reduce a charge of murder to manslaughter."

These arguments are not persuasive. The trial court allowed defendant to present a voluntary manslaughter

argument and expressly considered that theory when making its ruling. There is thus no indication that the court rejected the theory as a matter of law rather than on the facts of this case. Substantial evidence supports the court's implicit conclusion that defendant acted with malice when he killed Maxine and Lisa.

A. Background

At trial, defendant conceded that he killed Maxine and Lisa after reflecting upon doing so. Defense counsel argued, however, that the killings constituted voluntary manslaughter rather than murder because "[h]e was overcome with the feelings of helplessness that he could do nothing to end the suffering of his wife and sister." "[W]hether misguided or not, Lance Anderson had a perception and it overcame him." "He couldn't stand seeing them suffer. He couldn't help himself." In short, the defense argued, "he was powerless. Or he felt that he was powerless. That he had to do what he did." Counsel described a slowly simmering "heat of passion," one that was "a festering wound in his soul, festering wound in his heart," that caused him to break down and kill Maxine and Lisa.

The trial court rejected this argument. Before rendering its verdict, it orally explained: "The issue is whether or not the motive, if it was based on love, and if Mr. Anderson had good intentions, does that act to negate malice. And my conclusion to that question is no. It does not act to negate malice. The evidence clearly showed, and based on the argument by [defense counsel], that Mr. Anderson was overcome by a sense of helplessness. In my world, when somebody feels helpless, they go to counseling or go to a support group to try to get some help and learn how to cope. They don't take the law into their own hands and kill someone. As we get older in our individual lives, every

one of us in this room is probably going to have to deal with the illness and the deaths of loved ones. I know I have dealt with it in my life dealing with people who are terminally ill, and it is terrible to watch that. I concede that. It's horrible. But the law simply does not allow a person to go in and end somebody's life in this manner. . . . [T]he law specifically does not allow a person to be killed by a lethal injection or a mercy killing, which is what I believe happened here. I believe Mr. Anderson thought that what he did was a mercy killing."

The court noted that it had read and considered the cases proffered by defendant, including *People v. Wright* (2015) 242 Cal.App.4th 1461 (*Wright*), and found them factually distinguishable. It explained: "The defense wants the court to accept its position that Mr. Anderson killed Mrs. Anderson and Ms. Nave and that it was based on heat of passion and/or provocation, which under [CALCRIM No.] 570 must be present to reduce murder to manslaughter. Provocation typically is words or conduct that leads to a killing in the heat of passion without reflection or deliberation. In this case, the victims were passive victims. One was sleeping and one was incapacitated. And, hence, they did nothing to provoke the defendant into killing them. If such conduct were allowed, then people would be allowed to go into hospitals and commit mercy killings on a daily basis, and that's simply not what's allowed in this society. In this case, based on the evidence presented, and in light of CALCRIM instructions 520 and 521, and in light of CALCRIM instruction 220, which is reasonable doubt, the court has an abiding conviction of the truth of the charges and does find, beyond a reasonable doubt, that Mr. Anderson is guilty of murder as to

counts 1 and 2."[5]

The court further found that both murders were committed with premeditation and deliberation. It stated that the evidence of premeditation and deliberation, including "the planning, the meticulous preparation, the location of the . . . gunshots," was "strong" and "clear." It reiterated that "Mr. Anderson thought he was doing the right thing, but his actions simply are not something that a law-abiding society should accept as being proper."

B. Analysis

Defendant was convicted of murder, "the unlawful killing of a human being . . . with malice aforethought." (§ 187, subd. (a).) Malice may be express or implied. "It is express when there is manifested a deliberate intention to take away the life of a fellow creature. It is implied, when no considerable provocation appears. . . ." (§ 188.) Defendant contends, essentially, that the evidence supported only the lesser-included offense of voluntary manslaughter, which is the unlawful killing of a human being without malice, "upon a sudden quarrel or heat of passion." (§ 192, subd. (a).)

"Although section 192, subdivision (a), refers to 'sudden quarrel or heat of passion,' the factor which distinguishes the 'heat of passion' form of voluntary manslaughter from murder is provocation. The provocation which incites the defendant to homicidal conduct in the heat of passion must be caused by the

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[5] CALCRIM No. 520 is "First or Second Degree Murder With Malice Aforethought (Pen. Code, § 187)." CALCRIM No. 521 is "First Degree Murder (Pen. Code, § 189)." CALCRIM No. 570 is "Voluntary Manslaughter: Heat of Passion—Lesser Included Offense (Pen. Code, § 192(a))."

victim [citation], or be conduct reasonably believed by the defendant to have been engaged in by the victim. [Citations.] The provocative conduct by the victim may be physical or verbal, but the conduct must be sufficiently provocative that it would cause an ordinary person of average disposition to act rashly or without due deliberation and reflection." (*People v. Lee* (1999) 20 Cal.4th 47, 59.) In other words, there is both a subjective and an objective component to voluntary manslaughter. (*People v. Steele* (2002) 27 Cal.4th 1230, 1252.) "The defendant must actually, subjectively, kill under the heat of passion." (*Ibid.*) "But the circumstances giving rise to the heat of passion are also viewed objectively," (*ibid.*), as is the nature of the defendant's response. A defendant is not permitted to set his or her own standard of conduct and justify his or her actions by claiming his or her passions were aroused. (*Id.* at 1253.) However, the "provocation is not evaluated by whether the average person would *act* in a certain way: to kill. Instead, the question is whether the average person would *react* in a certain way: with his reason and judgment obscured." (*People v. Beltran* (2013) 56 Cal.4th 935, 949.) The provocative conduct prompting the rash reaction need not be a single incident; it may consist of a series of incidents over a period of time. (*Wright*, *supra*, 242 Cal.App.4th at p. 1481.)

Evidence that a defendant acted rashly in response to provocation may "mitigate[ ] an intentional, unlawful homicide, otherwise murder, to a lesser offense. (*People v. Rios* (2000) 23 Cal.4th 450, 459.) "For this reason, provocation 'closely resembles an affirmative defense' on which evidence is ordinarily presented by the accused, not the People." (*Ibid.*) "Indeed, in a murder case, unless the People's own evidence suggests that the

killing may have been provoked. . . , it is the *defendant's* obligation to proffer some showing on these issues sufficient to raise a reasonable doubt of his guilt of murder." (*Id.* at pp. 461-462.) Once a defendant presents such evidence, the prosecution has the burden of proving beyond a reasonable doubt that provocation and an objectively reasonable rash reaction thereto were lacking to establish the malice element of murder. (*Id.* at p. 462.)

The trial court found that the prosecution met that burden of proof here, and that conclusion was amply supported by the evidence. There was no evidence of immediate provocation; Maxine was asleep when defendant killed her, and Lisa was lying in bed, awake but incapacitated. There likewise was no evidence that either victim had a history of long-simmering enmity with defendant, or that the victims actively engaged in any conduct whatsoever. Rather, they had the misfortune of being afflicted with medical maladies. The court, as trier of fact, reasonably could have concluded on this evidence that neither victim provoked defendant. "[W]hether the provocation is considerable enough to negate malice must be judged objectively." (*People v. Steele*, *supra*, 27 Cal.4th at p. 1254.)

However, the court acknowledged that the victims' suffering was hard on defendant and could serve as a basis for a strong emotional response. Indeed, it observed that defendant "was overcome by a sense of helplessness." This observation addressed the subjective component of provocation; to conclude defendant was guilty of voluntary manslaughter, the court also would have had to find that an ordinary person afflicted by similar emotion would react with his or her reason and judgment obscured. But the evidence showed that even *defendant* did not

act in such a way—he carefully planned and considered both shootings and, according to his own witness, "made what he believed was a rational justified decision to act as he did." The trial court specifically found that both killings "were committed with premeditation and deliberation," which "is manifestly inconsistent with having acted under the heat of passion—even if that state of mind was achieved after a considerable period of provocatory conduct." (*People v. Wharton* (1991) 53 Cal.3d 522, 572; see also *People v. Peau* (2015) 236 Cal.App.4th 823, 831-832.)

"'[I]t is not a matter of law but a matter of fact for the jury in each case to determine under the circumstances of the case whether the assault or whether the blow, or whether the indignity or whether the affront, or whatever the act may be, was such as is naturally calculated to arouse the passions, and so lessen the degree of the offense by relieving it from the element of malice.'" (*People v. Beltran*, *supra*, 56 Cal.4th at pp. 951-952, quoting *People v. Jones* (1911) 160 Cal 358, 368.) The court, sitting as the trier of fact, concluded that defendant's reaction to his emotional suffering was not objectively reasonable. This was not error on the facts of this case.

Defendant points to *Wright, supra*, for the proposition that "a finding of heat of passion may be deemed supported notwithstanding some evidence of premediatation and planning activity on the part of the defendant." We have no quarrel with this proposition. In *Wright*, the defendant waited in the parking lot of her ex-boyfriend's townhouse complex for him until he arrived home from work, and then shot and killed him. (See *Wright*, *supra*, 242 Cal.App.4th at pp. 1466, 1477-1478.) At her trial for first degree murder with a special circumstance of lying in wait, the trial court refused the defendant's request for a

voluntary manslaughter instruction. (*Id.* at p. 1466.) The appellate court concluded this was error, reasoning that "the evidence adduced at trial was sufficient to raise a factual question whether defendant was acting under the heat of passion provoked by [the victim's] repeated threats to take custody of her son away from her when she shot him." (*Id.* at p. 1486.) That is, it held that the defendant was entitled to receive a jury instruction on voluntary manslaughter because she presented evidence of a long-simmering provocation supporting the defense; the theory was not foreclosed as a matter of law because the prosecution presented evidence of premeditation and lying in wait. The *Wright* court nonetheless concluded that the error was harmless, because the jury's true finding on the special circumstance of lying in wait "cannot be reconciled with a finding she *also* lacked malice because [the victim's] conduct provoked in her an 'emotion so intense that an ordinary person would simply *react*, without reflection.' [Citation.]" (*Wright*, *supra*, 242 Cal.App.4th at p. 1497.)

Though trial in this case was to the court, the record is clear that defendant essentially received the instruction to which he claims entitlement under *Wright*. The trial court permitted defendant to present evidence of provocation and argue that theory. The court also specifically cited CALCRIM No. 570, a pattern voluntary manslaughter jury instruction that must be given sua sponte when the evidence suggests a defendant may not be guilty of murder but rather the lesser-included offense of voluntary manslaughter. (*People v. Breverman* (1998) 19 Cal.4th 142, 159-160.) Despite his efforts to cast the issue as an error of law—he claims the trial court failed to "consider the possibility that such a killing could be the product of an emotional response

so intense that the reason of the actor was obscured so as to negate the element of malice required to prove a murder charge; and reduce a charge of murder to manslaughter"—the record is clear that the trial court considered and rejected defendant's theory as a matter of fact and did not, as defendant suggest, foreclose its viability as a matter of law. Indeed, as defendant recognizes, the trial court "was not *required*" under *Wright* to find that he acted under the heat of passion. Its rejection of that theory, and contrary factual findings that defendant acted with premeditation and deliberation, were proper on this record.

III. Sentence

Defendant's final contention is that he was improperly sentenced "based on nonexistent facts or facts secured by means of a federal constitutional violation." This argument rests both on his *Miranda* contentions—the alleged federal constitutional violations—and an assertion that the trial court "failed to attribute appropriate mitigating effect to appellant's state of mind (heat of passion)." He claims that "the confessions depicted appellant, whether accurately or not, as a cold, calculating killer. The trial court relied on this perception to impose consecutive sentences." We reject these arguments.

As discussed above, the trial court properly admitted both of defendants' statements to law enforcement into evidence. Any subsequent reliance by the trial court on those statements accordingly was not error.

A trial court generally has broad discretion to tailor a sentence to a particular case. (*People v. Scott* (1994) 9 Cal.4th 331, 349.) Discretionary choices include the decision to impose consecutive rather than concurrent sentences. (*Ibid.*) California Rule of Court, rule 4.425 enumerates "Criteria affecting the

decision to impose consecutive rather than concurrent sentences." The trial court indicated at sentencing that it had read and considered rule 4.425, and explained that it found all three enumerated "Criteria relating to crimes" to weigh in favor of consecutive sentences. "The crimes and their objectives were predominantly independent of each other, I think that's true; the crimes involved separate acts of violence, that's true; the crimes were committed at separate times or at separate places, that's true." (See Cal. Rules of Court, rule 4.425(a).) The court further noted that "the crimes involved planning, deliberation, and the use of a deadly weapon; and the crime victims in both of the incidences were vulnerable victims." The court properly relied on these factors when exercising its discretion to impose consecutive sentences.

Defendant asserts that the trial court should have given more weight to his "compromised mental state." He points to California Rules of Court, rule 4.423(b)(2), which lists among "[c]ircumstances in mitigation" "[t]he defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime." Unless the record "affirmatively demonstrates otherwise," we presume the trial court considered this and all other relevant factors in mitigation or aggravation. (Cal. Rules of Court, rule 4.409.) The record suggests the court did consider this factor; it reiterated its rejection of defendant's voluntary manslaughter theory and stated that "the evidence was indisputable that clearly there was an intent to kill." We accordingly find no abuse of discretion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, Acting P. J.

MANELLA, J.