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IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL R. NORTON,

Defendant and Appellant.

B271956

(Los Angeles County
Super. Ct. No. MA059084)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daviann L. Mitchell, Judge. Affirmed.

Randall Conner, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Michael Katz, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Michael R. Norton appeals the trial court's reimposition of a sentence of 21 years in state prison following his first appeal to this court. A jury convicted defendant of voluntary manslaughter (Pen. Code, § 192, subd. (a)),¹ and found true the allegation that he personally used a firearm in commission of the offense (§ 12022.5).² The trial court imposed the upper term of 11 years for voluntary manslaughter, plus the upper term of 10 years for the firearm enhancement. Defendant contends, as he did in his prior appeal, that the trial court abused its discretion by relying on improper aggravating circumstances to impose the high terms, and by disregarding circumstances in mitigation. We affirm.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² Defendant was found not guilty of murder (§ 187, subd. (a)), but guilty of the lesser included offense of voluntary manslaughter on a theory of imperfect self-defense.

FACTS

Defendant and the victim, William Mayes, were neighbors. They were drinking alcohol together at about 6:00 p.m. on the evening of March 19, 2013, when defendant made what Mayes believed was an inappropriate remark about his 13-year-old daughter. A physical altercation ensued. Mayes's three young daughters were in the house at the time and witnessed the fight. They begged defendant to leave, but he continued fighting their father. When the fight ended, Mayes told defendant to get out, and defendant returned to his house.

A short while later, Mayes went outside. It was almost dark. Defendant and other neighbors heard Mayes yelling, "You're a dead man," and "I'm going to kill you." Defendant called 911 and grabbed a gun. He opened the chamber to make sure the gun was loaded. After Mayes had been silent for about 10 minutes, defendant stepped outside to look for his dog. There was very little light and defendant could not see past the house. He went into his yard next to a tree looking for the dog, still carrying the gun. Defendant heard Mayes yelling, "I'm gonna kill you. [¶]-[¶] You're a fucking pervert. I'm gonna kill you. Do you hear what I'm—do you understand." Mayes walked back and forth on the sidewalk, and then began moving toward defendant. Mayes had previously told defendant that he had a gun. Defendant thought Mayes was armed and was going to kill him, so he

fired two shots, one of which pierced Mayes's chest, killing him. One of Mayes's daughters witnessed the shooting.

Defendant admitted that he never saw Mayes carrying a gun, and did not see Mayes outside of Mayes's own property during the time between the fight and the shooting. A detective testified that when he asked defendant if he had seen Mayes with a gun, he responded, "I didn't see, it was dark out there. He said I'm gonna kill you and I thought he had a gun. Um but I didn't" Later, he said, "I couldn't see, it was, there were trees and it was already dark any way." A neighbor who lived across the street saw a female come outside before the shooting and state, "Dad, come inside, dad, come inside." The female ran when shots were fired.

PROCEDURAL HISTORY

First Sentencing Hearing

At sentencing, the trial court considered the prosecution's sentencing memorandum, probation report, victim impact statements, and several letters submitted by defendant's family members, friends, and neighbors. It imposed the high terms for defendant's conviction of voluntary manslaughter and the firearm enhancement on the express basis of several aggravating factors, including great violence, great bodily harm, the high degree of cruelty, and the high degree of callousness, but did not clearly

discuss its reasoning with respect to those findings. The court also implicitly relied on the serious danger defendant posed to society and family bereavement. It did not discuss factors in mitigation.

Relevant here, the prosecutor read statements from several of Mayes's friends and family members. John and Gail Degen stated that Mayes was a great friend and father, very kind, giving, and willing to help those in need. Michael Freiberg, Mayes's son-in-law, said that Mayes was a single father with six children who went to work every day and had dinner on the table every night. Freiberg stated that Mayes was an "awesome father" whose children meant the world to him. Mayes's death had "robbed" Mayes and his children of the various activities they engaged in together—riding motorcycles, fishing, camping, and boating. Like others, Freiberg said he was horribly affected by Mayes's death. He believed that defendant deserved the maximum sentence.

Pedro Renteria, Jr., Mayes's son, described Mayes as a great father with a wonderful and outgoing personality. Mayes taught Renteria many things when he was a child. After Mayes's death, Renteria, a father of two, took in and served as father to his sister Tammy. Renteria's sister Elizabeth took responsibility for their other sisters, Karina and Kimberly. Renteria said, "With him being gone, me being the oldest, I have some big shoes to fill that I wasn't ready to fill. I still had a lot to learn from my father." Renteria felt stress every day trying to take care of his family and making sure that his sisters were okay. Because

of defendant's actions, Renteria's sisters were separated and would not grow up together, and Mayes would not be able to watch his children and grandchildren grow. Defendant had made Renteria's and his sisters' lives "a never ending nightmare."

Mayes's daughter Tammy, age 13, spoke of the difficulty of losing Mayes—who she described as an "amazing" father—and the difficulty of not having her father present for birthdays and holidays. She and her sisters had been separated. She was uncertain about her future without her father's presence at significant life moments.

Angela Mayes-Freiberg also described Mayes as an "amazing" father. Mayes was devoted to his children. Defendant's actions had "ruined" her family and torn it apart. Defendant deserved the maximum sentence.

After considering these statements, the trial court stated: "The choices of [defendant] . . . have affected many, not one, not two, but five children and the grandchildren. [Mayes] will never have the opportunity to walk his daughters down the aisle, watch them graduate or see the birth of his future grandchildren. [¶] They will never know their father and grandfather in their older ages. You've take [sic] from them something they can never ever replace."

First Appeal

On appeal, this court³ concluded that the trial court improperly relied on great violence, great bodily harm, the high degree of cruelty, the high degree of callousness, and the serious danger defendant posed to society as factors in aggravation. Based on the reasons we could discern for the trial court's decision, the crime at issue did not involve a degree of violence, cruelty, or danger to society any greater than that of the usual voluntary manslaughter. (*People v. Norton* (Nov. 12, 2015, B257084) at pp. *8, 9, 11. [nonpub. opn.] (*Norton*).) In particular, we concluded that, in the absence of more thorough guidance from the trial court as to its reasoning, its danger to society finding was “based on the fact that defendant shot Mayes twice and killed him . . . [and was improper because] violence is inherent in any voluntary manslaughter committed with a firearm.” (*Id.* at p. *11.) We concluded the trial court's reliance on great bodily harm was improper as “death—the greatest of all bodily harm—is [] an element of th[e] crime” and could therefore not be considered as an aggravating circumstance. (*Id.* at p. *8, quoting *People v. Piceno* (1987) 195 Cal.App.3d 1353, 1357.) We concluded the trial court improperly considered the high degree of callousness because we understood the callousness

³ The majority and dissenting opinions agreed on the existence of certain sentencing errors, disagreed on others, and disagreed on the question of whether the errors were prejudicial.

finding to be based on the trial court's misunderstanding of what it "believed the jury, by its verdict, said about defendant's mental state." (*Norton, supra*, B257084, at p. *10.) "Having stated it would be bound by the jury's decision on defendant's mental state, the trial court was obligated to proceed on the understanding that defendant actually believed in the need for self-defense." (*Ibid.*) The trial court's callousness finding was predicated on its disbelief in this regard. We held that the trial court properly considered family bereavement as an aggravating circumstance. (*Id.* at p. *11.) Finally, we rejected defendant's contention that the trial court improperly disregarded his proposed mitigating circumstances, because the record did not affirmatively reflect that the trial court failed to consider them. (*Id.* at p. *12.)

We remanded the matter for resentencing on the basis that the trial court had considered multiple improper aggravating circumstances in addition to properly considering family bereavement as a basis for imposing the upper terms, leading us to the conclusion that the error was not harmless because "it is reasonably probable that the trial court would have chosen a lesser sentence had it known that some of its reasons were improper." (*Norton, supra*, B257084, at p. *12.) We emphasized that "[o]ur disposition does not preclude the trial court on remand from finding additional aggravating or mitigating circumstances or rejecting any claimed aggravating or mitigating circumstances." (*Ibid.*)

Second Sentencing Hearing

At resentencing, the trial court again imposed a sentence of 21 years in state prison. The trial court incorporated the impact statements made by the family, as well as all of its own findings with respect to family bereavement from the first sentencing hearing in its decision. The trial court relied on two factors we previously concluded were improper—the high degree of callousness involved in the killing, and the serious danger defendant posed to society—and the single factor that we held proper—the impact on the victim’s family. It weighed these factors against the mitigating circumstances that defendant had no prior criminal record and that the killing was an unusual circumstance, and concluded that the aggravating circumstances far outweighed the circumstances in mitigation. The trial court rejected defendant’s arguments that the victim provoked the killing, that defendant was affected by a mental condition, and that defendant was early in acknowledging guilt as unsubstantiated by sufficient evidence in the record.

In imposing the upper terms, the trial court was mindful of our decision, noting that “[e]ven if the appellate court finds that I’m making improper findings with respect to the high degree of callousness and the serious danger to society, regardless of those, if I was left only with that effect of the family bereavement as a consideration of the Victim’s Bill of Rights that the court may consider victim impact

statements in connection with sentencing, I find this the most profound [basis for imposition of the high terms].” It concluded, “[I]f I am incorrect as to the high degree of callousness and the danger to society, I would make the same finding with respect to the effect on the victim’s family as I did today.”

DISCUSSION

Relevant Legal Principles

A trial court’s sentencing choices are discretionary. (§ 1170, subd. (b) [“When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court The court shall select the term which, in the court’s discretion, best serves the interests of justice”].) We review such choices for an abuse of that discretion—i.e., “sentencing discretion must be exercised in a manner that is not arbitrary and capricious, that is consistent with the letter and spirit of the law, and that is based upon an ‘individualized consideration of the offense, the offender, and the public interest.’ [Citation.] . . . [A] trial court will abuse its discretion under the amended scheme if it relies upon circumstances that are not relevant to the decision or that otherwise constitute an improper basis for decision. [Citations.]” (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) “When a trial court has given both

proper and improper reasons for a sentence choice, a reviewing court will set aside the sentence only if it is reasonably probable that the trial court would have chosen a lesser sentence had it known that some of its reasons were improper.” (*People v. Price* (1991) 1 Cal.4th 324, 492 (*Price*).)

California Rules of Court, rule 4.420(b) provides, “In exercising his or her discretion in selecting one of the three authorized terms of imprisonment referred to in section 1170(b), the sentencing judge may consider circumstances in aggravation or mitigation, 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.” A trial court may use the same “fact or facts to aggravate both a base term and the sentence on an enhancement” (*People v. Moberly* (2009) 176 Cal.App.4th 1191, 1198.) “Only a single aggravating factor is required to impose the upper term [citation]” (*People v. Osband* (1996) 13 Cal.4th 622, 728–729 (*Osband*).)

Our review is restricted insofar as our prior ruling is “law of the case” with respect to principles and rules of law already decided. “Under the law of the case doctrine, when an appellate court “states in its opinion a principle or rule of law necessary to the decision, that principle or rule becomes the law of the case and must be adhered to throughout [the case’s] subsequent progress, both in the lower court and

upon subsequent appeal” (*Kowis v. Howard* (1992) 3 Cal.4th 888, 893.)” (*People v. Barragan* (2004) 32 Cal.4th 236, 246.) “As its name suggests, the doctrine applies only to an appellate court’s decision on a question of law; it does not apply to questions of fact. [Citation.] Nevertheless, it is potentially relevant here because an appellate court’s determination ‘that the evidence is insufficient to justify a finding or a judgment is necessarily a decision upon a question of law.’ [Citation.] Such a determination ‘establishe[s] as the law of the case that all the evidence adduced at the previous trial was insufficient as a matter of law to establish’ the finding or judgment. [Citations.]” (*Ibid.*)

Analysis

Defendant contends that the trial court improperly relied on the high degree of callousness involved in the killing, the serious danger defendant posed to society, and the impact on the victim’s family. He argues that, even if the trial court properly relied on family bereavement, the remaining bases for its decision were improper such that any error cannot be deemed harmless. Defendant also contends that the trial court improperly disregarded the mitigating circumstances, which were supported by a preponderance of the evidence.

Aggravating Circumstances

We interpret the trial court's statement that "if I am incorrect as to the high degree of callousness and the danger to society, I would make the same finding with respect to the effect on the victim's family as I did today" to mean that the trial court found the family bereavement circumstance standing alone sufficient to impose the upper term sentences. A trial court may properly consider victim impact statements in connection with sentencing under the Victims' Bill of Rights. (§ 1191.1; *People v. Jones* (1992) 10 Cal.App.4th 1566, 1574–1576.) As defendant concedes in his opening brief, our prior opinion states the law of the case as to the use of family impact evidence. The trial court incorporated all of the victim statements and its findings regarding them in its decision. We previously held that "[t]he victim impact statements in this case showed the important role that Mayes, a single father, played in his children's lives and the importance of that role to Mayes. By killing Mayes, defendant deprived Mayes of the opportunity to raise his younger children and participate in the lives of all of his children. The trial court properly relied on the victim impact statements in its sentencing considerations." (*Norton, supra*, B257084, at p. *11.) The trial court's reliance on this single factor to impose the upper terms for voluntary manslaughter and personal use of a firearm was within its discretion. (*Osband, supra*, 13 Cal.4th at p. 728–729.)

Even if the trial court's statements instead indicated that it rested its decision on all three aggravating factors discussed, we would conclude that it acted within its discretion. Our prior rejection of the high degree of callousness as a proper ground for imposing the upper terms was based on our belief that the trial court intended to be bound by the jury's decision with respect to its finding that defendant acted in imperfect self-defense, and the trial court's misunderstanding of the ramifications of the jury's finding. Thus, the law of the case does not preclude the trial court's finding that defendant acted with a high degree of callousness on the basis of its own findings. At the resentencing hearing, the trial court clearly acknowledged the jury's imperfect self-defense finding, but correctly pointed out that, under *People v. Towne* (2008) 44 Cal.4th 63, 85 (*Towne*), and *People v. Castorena* (1996) 51 Cal.App.4th 558, 562–563 (*Castorena*), a trial court may take a view of the evidence contrary to that of the jury because the preponderance of the evidence standard governing sentencing is significantly less stringent than the beyond a reasonable doubt standard by which the jury must abide. As the trial court viewed the facts, the victim was unarmed and remained on his own property when defendant shot into the dark, possibly endangering the victim's three daughters or innocent passersby, and displaying a high degree of callousness in commission of the killing. Defendant himself testified that Mayes never left his property, and that he did not see Mayes holding a gun, and in fact, could not clearly

see Mayes. He had been in the house and knew the three girls were present. A witness saw a female who called Mayes “dad” outside with him at the time of the shooting. A preponderance of the evidence presented supports the trial court’s view. We conclude that the trial court did not abuse its discretion in finding that defendant acted with a high degree of callousness, without regard for the feelings or welfare of another under California Rules of Court, rule 4.421(a)(1).

We based our prior ruling that the trial court improperly relied on the serious danger defendant posed to society on our belief that the trial court’s finding was predicated on the fact that “defendant shot Mayes twice and killed him.” (*Norton, supra*, B257084, at p. *11.) We noted that, “*As set forth above*, violence is inherent in any voluntary manslaughter committed with a firearm. (*Id.* at p. *11, italics added.) We limited our holding as applicable only “to the extent that the trial court imposed the upper terms based on its finding that defendant’s violence indicated that he is a serious danger to society” (*Ibid.*, footnote omitted.) The trial court did not rely on this reasoning on remand, instead explaining that “the killing was entirely avoidable. The options for the defendant were to have remained safely inside of his residence until law enforcement arrived, and the violent conduct of this nature indicates the defendant is in fact a serious threat to society. He had options. He chose to go in his house, arm himself, go outside, fire into the dark yard of another with very limited

shrubs and protection between he and the victim, and knowing that there was [sic] family members inside of the house and there was [sic] people -- this was out in front of the house where people from the community could have been walking. In this situation the killing was entirely avoidable. He made an affirmative choice to go outside, confront the victim, and in fact fire.” Again, the court’s view of the facts is supported by a preponderance of the evidence. The trial court did not abuse its discretion in concluding that defendant posed a serious danger to society under California Rules of Court, rule 4.421(b)(1).

Mitigating Circumstances

We reject defendant’s contention that the trial court improperly disregarded his proposed mitigating circumstances under the California Rules of Court, including that: (1) the victim provoked the killing (rule 4.423(a)(2)); (2) the voluntary manslaughter was committed because of an unusual circumstance (rule 4.423(a)(3)); (3) defendant suffered from a mental condition that reduced his culpability (rule 4.423(b)(2)); and (4) defendant voluntarily acknowledged wrongdoing at an early stage of the criminal process (rule 4.423(b)(3)).

Provocation

Although the trial court acknowledged the jury found defendant acted in imperfect self-defense, it rejected defendant's assertion that Mayes provoked the killing, stating: "I do not find that the victim provoked a murder. All the defendant had to do was just disengage and go inside the house and wait for law enforcement if he felt he was in danger. The victim never left his property, never displayed any weapons, and [defendant] chose to arm himself in an otherwise verbal confrontation So he chose to kill a man when there were other options available to him, and I do not find in any way any actions of the victim would have warranted the provocation to this level causing the defendant to shoot the victim." The trial court was free to take a view of the evidence contrary to that of the jury. (*Towne, supra*, 44 Cal.4th at p. 85; *Castorena, supra*, 51 Cal.App.4th at pp. 562–563.) A preponderance of the evidence supports the trial court's finding. It did not abuse its discretion.

Unusual Circumstance

With respect to defendant's unusual circumstance argument, the record demonstrates that the trial court gave the circumstance consideration, but afforded it little weight. The court stated, "I do think this was an unusual circumstance where the defendant doesn't have a history or

pattern of behavior similar to this . . . ,” but the court concluded that this was of little importance in light of its belief that if defendant was placed in such an unusual situation again, he might choose to kill. As the trial court stated throughout its ruling, it found the killing to be an unnecessary, unreasonable reaction to Mayes’s actions for which defendant took no responsibility and felt no remorse. All of these factors support the conclusion that defendant could kill again under the right circumstances. It is not our role to reweigh the factors considered. “[T]he sentencer . . . decides how much weight to give to the . . . mitigating factors, and that decision is not amenable to appellate review.” (*People v. Brown* (1988) 46 Cal.3d 432, 470.) In light of its findings, which were supported by a preponderance of the evidence, it was not an abuse of discretion for the court to conclude that defendant was capable of killing again and thus reject the circumstance as a mitigating factor.

Mental Condition

Defendant argues that the trial court refused to consider his intoxication as a mitigating factor, despite finding that it was a factor to consider in the first sentencing hearing. Defendant characterizes the trial court as having “reversed itself regarding a factor in mitigation, without citing any evidence or reasons for such a reversal.”

At the first sentencing hearing, the trial court stated: “I think the decision initially to arm yourself unnecessarily was largely influenced by the alcohol. You might not have done that if you were in another situation and thinking clearly. You may not have made that choice. You may not have shot at the distance you did through a chain link fence at an unarmed man. [¶] I think those are factors to consider, but they were choices that you made. And your choices have resulted in the death of a father and a grandfather unnecessarily.”

In the second sentencing hearing, the trial court concluded: “With respect to [defendant’s] mental condition, I don’t find that there’s anything to support any findings that there was any evidence of his mental or physical condition that would reduce his culpability in any way.”

We find no merit in defendant’s contention for several reasons. First, defendant does not contend that he had a substance abuse problem, but instead argues his *voluntary intoxication on the night of the killing* was a mental condition that reduced his culpability under California Rules of Court, rule 4.423(b)(2). He cites to no case law in support of this position, instead relying on precedent holding that long-standing alcohol abuse or drug addiction may properly be considered as a mitigating factor. (See *People v. Reyes* (1987) 195 Cal.App.3d 957, 963–964 (*Reyes*) [alcoholism]; *People v. Gaskill* (1980) 110 Cal.App.3d 1, 5 [alcoholism]; *People v. Simpson* (1979) 90 Cal.App.3d 919, 927–928 (*Simpson*) [alcoholism]; *People v. Reid* (1982) 133 Cal.App.3d

354, 370–371 [drug addiction]; *People v. Bejarano* (1981) 114 Cal. App.3d 693, 708 [drug addiction]; *People v. Lambeth* (1980) 112 Cal.App.3d 495, 500–501 [drug addiction]; *People v. Regalado* (1980) 108 Cal.App.3d 531, 538–539 (*Regalado*) [drug addiction].)⁴ The cases defendant relies on considered whether the defendant was under the influence of alcohol or drugs at the time of the crime only where the court found the record established a history of alcoholism or drug addiction, which may be considered “mental conditions.” They did not consider alcohol or drug use during the crime independent of substance addiction as a mitigating circumstance. There is no evidence that defendant had a history of alcohol abuse. Defendant has not offered any arguments in support of his

⁴ Whether addiction may properly be viewed as a mitigating circumstance is fact dependent. (*Regalado, supra*, 108 Cal.App.3d at p. 538.) In some instances, courts have held that alcoholism or alcohol use may be viewed as an *aggravating* circumstance. (*Reyes, supra*, 195 Cal.App.3d at p. 961, fn. omitted [“join[ing] a growing number of courts that have cited *Simpson*[, *supra*, Cal.App.3d 919—the leading case in support of the position that trial courts should consider addiction as a mitigating circumstance—] only for the purpose of distinguishing it”]; see, e.g., *People v. Vacca* (1995) 38 Cal.App.4th 804, 808 (*Vacca*) [intoxication properly considered a factor in aggravation where defendant’s “voluntary consumption of alcohol and drugs contributed to his engaging in the outrageously dangerous conduct of firing two shots in a residential area”], disapproved on another ground in *People v. Ledesma* (1997) 16 Cal.4th 90, 101, fn. 5.)

position, and we do not discern any reason to conclude that a single instance of intoxication is a mental condition warranting consideration as a mitigating circumstance rather than a choice, as the trial court found.

Moreover, there was conflicting evidence regarding the amount of alcohol that defendant consumed on the night of the killing. Defendant's own testimony—which the trial court was free to consider true—was that he consumed only two shots of Jack Daniel's whiskey. No evidence was presented that defendant was intoxicated by this amount of alcohol, or if intoxicated, to what extent. "It is perfectly plain that the mere assertion by a defendant that his or her 'conduct was partially excusable for . . . [a] reason not amounting to a defense' (rule 423(a)(4)) or that he or she 'was suffering from a mental or physical condition that significantly reduced his culpability for the crime' (rule 423(b)(2)) does not establish that assertion as a fact." (*Regalado, supra*, 108 Cal.App.3d at p. 538.)

Here, the trial court considered whether defendant was influenced by alcohol in the first hearing and found that he was, but ultimately determined that defendant had made a choice. It was not an abuse of discretion for the court to conclude that intoxication did not partially excuse or significantly reduce defendant's culpability and was therefore not a mitigating factor without providing further explanation at the second hearing. (*Vacca, supra*, 38 Cal.App.4th at p. 808 [where the defendant's "voluntary consumption of alcohol and drugs contributed to his

engaging in the outrageously dangerous conduct of firing two shots in a residential area, . . . [t]he trial court properly rejected this consumption as a mitigating factor”).)

Early Acknowledgment of Wrongdoing

Substantial evidence also supports the trial court’s finding that defendant was not early to acknowledge wrongdoing in this case. In making its ruling, the court stated, “He blamed the victim as I saw it. The jury accepted his imperfect self-defense. I heard the evidence. I see it differently.” The evidence presented supports the trial court’s view. Defendant never took responsibility for his role in the killing, continually arguing that Mayes had frightened him into believing that his life was in immediate danger. The trial court did not abuse its discretion in determining that defendant had not acknowledged his responsibility for Mayes’s death.

Harmless Error

Finally, even if the trial court had abused its discretion, it is not reasonably probable that it would have chosen a lesser sentence. (*Price, supra*, 1 Cal.4th at p. 492.) We previously held that the trial court properly considered family bereavement as an aggravating factor in this case. The trial court clearly found this factor to be of great significance, and expounded on its reasoning in both

sentencing hearings. “Only a single aggravating factor is required to impose the upper term [citation].” (*Osband, supra*, 13 Cal.4th at p. 728.) It is highly unlikely that the court would find the weight of family bereavement insufficient to outweigh any mitigating factors in light of its prior rulings.

DISPOSITON

The judgment is affirmed.

KRIEGLER, J.

I concur:

TURNER, P.J.

The People v. Michael Norton
B271956

BAKER, J., Concurring

I concur in the judgment for the reasons stated in the paragraph that immediately follows the “Aggravating Circumstances” subheading in the majority opinion.

BAKER, J.