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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTON ALERIC EWING,

Defendant and Appellant.

D058699

(Super. Ct. No. SCD220065)

APPEAL from a judgment of the Superior Court of San Diego County, Charles R. Gill, Judge. Affirmed.

Anton Aleric Ewing was charged with committing four counts of stalking (counts 1, 3, 5, & 7) in violation of Penal Code¹ section 646.9, subdivision (a) (hereafter § 646.9(a)) and four counts of extortion (counts 2, 4, 6, & 8) in violation of section 523. As to each of the four victims, Ewing was charged with one count of stalking and one count of extortion.

¹ Undesignated statutory references will be to the Penal Code.

As is pertinent here, Ewing was charged in count 5 with stalking Robert Cross in 2008 and early 2009. The court denied Ewing's motion to dismiss the complaint at the preliminary hearing and held Ewing to answer all eight charged counts. Ewing had moved for dismissal of count 5 on the asserted ground that none of his alleged acts were criminal acts under section 646.9(a) because they were all valid exercises of the constitutional right of free speech. In his motion, Ewing asserted the prosecution could not show he made a credible threat with the intent to place Cross in reasonable fear of death or great bodily injury, which he claimed was required under section 646.9(a).

Ewing's guilty plea and court's certificate of probable cause

Ewing thereafter pleaded guilty to count 5. In pleading guilty to that stalking charge, Ewing admitted, as the factual basis for his crime, that he "repeatedly contacted and harrassed [*sic*] [the] victim in an attempt to collect a debt with intent to place [the] person in fear." The court sentenced Ewing to a two-year prison term.

In November 2010 Ewing filed his notice of appeal. The court thereafter granted Ewing's request for a certificate of probable cause.²

² The certificate of probable cause states: "Judgment of conviction upon a plea of guilty or nolo contendere, or an admission of violation of probation, was entered in the above-entitled cause on 2/19/10 and [Ewing] was sentenced on 11/24/10. [Ewing] submitted a Notice of Appeal and Request for Certificate of Probable Cause on 11/24/10. The court finds [Ewing] has shown reasonable constitutional, jurisdictional, or other grounds for appeal relating to the legality of the proceedings and certifies that there is probable cause for an appeal in the referenced judgment."

Contentions

Ewing appeals, contending the court erred in denying his pretrial motion to dismiss the count charging him with stalking Cross because (1) his communications were protected speech under the First Amendment to the federal Constitution, and (2) the prosecution failed to show that he violated section 646.9(a). We conclude these contentions are unavailing. Accordingly, we affirm the judgment.

FACTUAL BACKGROUND³

In late 2007, Cross, who has a doctorate in special education and cognate educational psychology and was a professor at Grand Valley State University in Michigan, rented a condominium in San Diego from Patrice Haas and her husband. In January 2008, Cross and Haas became embroiled in a dispute regarding Haas's desire to show the condominium to prospective buyers. When they could not resolve the dispute, Cross asked his daughter, a real estate attorney, for assistance. Haas thereafter directed Cross's daughter to contact Ewing, to whom she referred as her attorney.

Ewing began e-mailing Cross's daughter and copying Cross on the e-mails. Cross's daughter showed Cross other e-mails that Ewing had sent, which, according to Cross's testimony, contained "strictly threatening, nasty stuff," including such comments as, "You're stupid" and "You'll be held accountable for representing [Cross]," and threatened to report Cross's daughter to the state bar.

³ As Ewing pleaded guilty to count 5 prior to trial, the factual background is derived from the reporter's transcript of the preliminary hearing.

As a result of Ewing's e-mails, Cross believed Ewing was "abnormal" given that his first contact with someone was "attacking" in nature. Feeling his daughter was not safe and concerned that Ewing might have an issue with women, Cross replaced her with a male attorney. Ewing thereafter began what Cross described as a "barrage" of e-mails, faxes, and phone calls to that attorney. Ewing also continued to copy Cross on various e-mails to Cross's daughter in which Ewing informed her he intended to file complaints against her.

Cross testified that the "intense anger" and "verbiage" in Ewing's e-mails caused Cross to fear for his daughter's safety, and he was concerned that his daughter had to "deal with someone who is . . . irrational, and that irrational behavior . . . could lead to something more extreme and dangerous."

Cross learned that Ewing was an accountant, not an attorney, and thereafter filed a complaint against Ewing with the California Accountancy Board.

Thereafter, on May 20, 2008, Ewing e-mailed Cross's colleagues at Grand Valley State University, including the president of the university and a majority of the 127 staff members in Cross's department, telling them, "Beware of Robert Cross," and that Cross was "not to be trusted." The next day, Ewing e-mailed Cross telling him he could either withdraw his complaint with the accountancy board or Ewing would continue sending similar e-mails to other people with whom Cross worked.

Cross testified he became "very alarmed" following events that caused him to suspect that Ewing had broken into his e-mail account. One of Cross's colleagues, who had received Ewing's e-mail, e-mailed Cross and asked, "Is this guy nuts?" Cross

responded, "Yes, he's a kook." Cross indicated that he did not send this response to Ewing, and Cross's colleague did not send his e-mails to Ewing. Thereafter, Cross and his colleague received an e-mail from Ewing stating to Cross's colleague:

"You, sir, are a material witness in a defamation case I'm filing in federal district court against [Cross]. The next communication I have with you would be a subpoena for your e-mails and for your appearance at a deposition and then at trial. So you see, there are many reasons for further communication with you. When Mr. Cross calls me a kook, and communicates that defamatory remark to third parties, that is actionable. Name calling is unethical, unprofessional, and grounds for a cause of action. Regards, Anton Ewing."

Cross testified that he immediately reported the incident to the university's technology department, but the hard drive in his computer crashed that same day. Cross also reported the incident to the campus police because he was concerned for his safety. Cross testified that "it became apparent as time went on that [Ewing] was willing to go to any lengths to try to get even."

According to Cross, Ewing continued to send e-mails, including an e-mail on May 21, 2008, informing Cross that Ewing was "sending a personalized package of your actions, including all e-mails, letters, and court documents to the entire board of trustees in the morning. Regards, Anton Ewing."

Cross testified he became "very concerned for [his] safety" at this point because he was "worried about where [Ewing] would go next." Cross explained that "[t]his . . . is totally out of character for most people. I mean . . . you would not typically address someone who has nothing to do with a matter with this kind of rhetoric and blatant lies."

When asked whether he feared Ewing would be violent with him, Cross replied, "I did." He explained that, in his experience, "there are some things to be concerned about. The measure of emotional disturbance is a measure that differentiates the behavior of someone from normal behavior based on three tests or pieces of criteria, and that's intensity, duration, and frequency." Cross indicated that Ewing's behavior was intense, frequent, and had been going on for a year and a half.

Cross also testified he hired an attorney who specialized in temporary restraining orders because he "needed to stop [Ewing's] barrage of e-mails to other people" about him (Cross). Cross filed for a temporary restraining order, but his attorney had to withdraw from the representation after Ewing created a Web site on which he posted personal information about her and invited visitors to leave negative comments about her.

After Cross saw Ewing's Web site, he became even more fearful of him because "it was getting beyond bizarre[, i]t was getting scary." Cross explained, "I realized I'm dealing with somebody who was just not the average guy on the street here. I'm dealing with somebody who has some significant problems." Cross indicated he continued to be fearful for his daughter's safety, in part because someone had gone into her office suite, which was also the office suite of Cross's new attorney, to take photographs while the staff was there.

Cross also explained that what made him feel unsafe was "the whole series of things that occurred over a long period of time." He also testified that Ewing's continuing contacts caused him to fear for his safety because he realized he was "dealing with

someone who was going to do whatever it took to try [to] get even with me. This was just pure retaliation."

DISCUSSION

Ewing contends the court erred in denying his pretrial motion to dismiss count 5, which charged him with stalking Cross in violation of section 646.9(a) because his communications were protected speech under the First Amendment to the federal Constitution, and the prosecution failed to show that he violated section 646.9(a). Specifically, relying principally on *Virginia v. Black* (2003) 538 U.S. 343 (*Black*) and *People v. Lowery* (2011) 52 Cal.4th 419 (*Lowery*), Ewing contends that (1) under the First Amendment, the "credible threat" provision of section 646.9 must be construed as requiring proof of a "true threat," which (he asserts, quoting *Black* at p. 359) "in turn requires a showing that the 'speaker means to communicate a serious expression of an intent to commit an act of unlawful violence'" (italics omitted); and (2) the People "failed to make this showing." Ewing also contends that (3) his communications served legitimate purposes, and they were thus protected by the First Amendment and did not violate section 646.9(a). These contentions are unavailing.

A. *Background*

In his pretrial motion, as pertinent here, Ewing moved for dismissal of count 5 on the ground that "none of [his] alleged acts [were] criminal acts under [section] 646.9(a) because they [were] all valid exercises of the constitutional right of free speech." He asserted the prosecution could not prove that in any of his e-mails or other communications that he made "a credible threat against [Cross's] safety such as would

cause a reasonable person to fear death or great bodily injury to their person or that of their immediate family," which he claimed was required under section 646.9(a). Ewing also claimed the prosecution could not show that his conduct "served 'no legitimate purpose'" as required by section 646, subdivision (e) (hereafter § 646(e)), and thus could not prove he harassed Cross within the meaning of section 646.9(a).

In its opposition to Ewing's motion, the prosecution cited this court's decision in *People v. Halgren* (1996) 52 Cal.App.4th 1223 (*Halgren*) among other authorities in arguing that the "credible threat" element of the crime of stalking does not require proof that the threat be a threat of death or great bodily injury.

At the preliminary hearing held on July 1, 2009, the court denied Ewing's motion to dismiss the complaint after receiving the oral arguments of counsel on the motion and held Ewing to answer all eight counts alleged in the criminal complaint. Regarding the "credible threat" element of the stalking offense charged in count 5, the court stated:

"The case law regarding [section] 646.6 is fairly substantial. And there are many, many different factual patterns on which the court has ruled. There does not have to be an explicit threat to commit bodily harm. The cases have held that if there is a pattern from which one could reasonably draw an inference of a credible threat, then that is sufficient. And in fact, 'credible threat' is defined as one that causes a target of a threat to reasonably fear for his or her safety, or the safety [of] his or her immediate family, and one that the maker of the threat appears to be able to carry out."

B. *Applicable Legal Principles*

1. *California's stalking statute (§ 646.9)*

Section 646.9(a), which defines the crime of stalking, provides:

"Any person who willfully, maliciously, and repeatedly follows or *willfully and maliciously harasses* another person and who makes a *credible threat* with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison." (Italics added.)

Thus, under section 646.9(a), conviction of the crime of stalking requires proof that the defendant (1) "willfully, maliciously, and repeatedly follow[ed] or *willfully and maliciously harass[e]* another person"; and (2) "ma[de] a *credible threat* with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family." (Italics added.)

Section 646.9(e) defines "harasses" to mean "engages in a knowing and willful course of conduct directed at a specific person that *seriously alarms, annoys, torments, or terrorizes the person*, and that *serves no legitimate purpose*." (Italics added.)

Section 646.9, subdivision (g) (hereafter § 646.9(g)) defines "credible threat" as:

"[A] verbal or written threat, including that performed through the use of an electronic communication device, or *a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family*, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably

fear for his or her safety or the safety of his or her family." (Italics added.)

Section 646(g) expressly provides that "[c]onstitutionally protected activity is not included within the meaning of 'credible threat.'"

2. *First Amendment and the term "true 'threat'"*

"The First Amendment, applicable to the States through the Fourteenth Amendment, provides that 'Congress shall make no law . . . abridging the freedom of speech.' The hallmark of the protection of free speech is to allow 'free trade in ideas'—even ideas that the overwhelming majority of people might find distasteful or discomforting." (*Black, supra*, 538 U.S. at p. 358.)

However, the protections afforded by the First Amendment are not absolute. (*Black, supra*, 538 U.S. at p. 358; *Lowery, supra*, 52 Cal.4th at p. 423.) "Not within the First Amendment's protection are "'certain well-defined and narrowly limited classes of speech'"—those "'of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.'"" (*Lowery, supra*, 52 Cal.4th at p. 423.) Falling into that category is what the United States Supreme Court has described as a "'true threat[]." (*Ibid.*; see *Watts v. United States* (1969) 394 U.S. 705, 707-708 (*Watts*) [using the term "true 'threat'"]; see also *Black, supra*, at p. 359 [using the term "true threat"].)

Although the high federal court held in *Watts* that a true threat falls outside the protection of the First Amendment, it did not define that term in that case.⁴ (*Lowery, supra*, 52 Cal.4th at p. 424.) Later, in *Black*, the United States Supreme Court explained that "[t]rue threats' encompass those statements where *the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals*" (*Black, supra*, 538 U.S. at p. 359, italics added) and cited *Watts* for the proposition that "political hyperbole" is not a true threat. (*Watts, supra*, 394 U.S. at p. 708.)

Construing the term "encompass" in *Black* to mean "includes but is not limited to," the California Supreme Court in *Lowery* recently explained that "the category of threats that can be punished by the criminal law without violating the First Amendment *includes*

⁴ *Watts* involved a conviction under a federal statute that prohibited "knowingly and willfully" making a "threat" to "take the life of or to inflict bodily harm upon" the President of the United States. (*Watts, supra*, 394 U.S. at p. 705.) The defendant in *Watts*, while speaking at a public rally, was arrested for saying he had just received a draft notice to report for military service, and "[i]f they ever make me carry a rifle the first man I want to get in my sights is L. B. J. [U.S. President Lyndon B. Johnson]." (*Id.* at p. 706.) The United States Supreme Court reversed the conviction, deeming the defendant's statement to be mere "political hyperbole" (*id.* at p. 708) and, as such, insufficient to support the conviction for threatening to kill or inflict bodily harm upon the President of the United States (*id.* at pp. 706–707). The high court explained that any statute that "makes criminal a form of pure speech[] must be interpreted with the commands of the First Amendment clearly in mind," and that "[w]hat is a threat must be distinguished from what is constitutionally protected speech." (*Id.* at p. 707.) Applying that distinction, the *Watts* court concluded that the defendant's statement about shooting President Johnson was not a "true 'threat.'" (*Id.* at p. 708.) As noted, the high court did not define the term "true threat" in *Watts*. (*Lowery, supra*, 52 Cal.4th at p. 424.)

but is not limited to threatening statements made with the specific intent to intimidate."
(*Lowery, supra*, 52 Cal.4th at p. 427.)

C. Analysis

1. Constitutionality of section 646.9

We reject Ewing's contention that, under the First Amendment, the "credible threat" element of the crime of stalking (§ 646.9, subs. (a) & (g)) must be construed as requiring proof of a "'true threat' of physical violence;" that is, proof that the alleged stalker meant to communicate a serious expression of an intent to commit an act of unlawful violence. Our determination is governed by this court's decision in *Halgren, supra*, 52 Cal.App.4th 1223, in which we held that the "credible threat" provision of section 646.9 "applies only when there has been a credible threat made with an intent to instill fear for personal safety or the safety of immediate family," and the type of speech proscribed by section 646.9 "is not afforded the protection of the First Amendment."⁵

⁵ In *Halgren*, this court examined the constitutionality of the "credible threat" provision codified in former subdivision (e) of section 646.9, the language of which, for purposes of this appeal, was substantially the same as the language now set forth in section 646(g) and defined "credible threat" as "a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family." (See *Halgren, supra*, 52 Cal.App.4th at p. 1229.) As noted, section 646(g) now defines "credible threat" as "a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to

(*Halgren*, at p. 1231.) In holding that section 646.9 passes muster under the First Amendment, we observed that the term "credible threat" used in the statute was defined in the initial version of section 646.9 as "a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety. The threat must be *against the life of, or a threat to cause great bodily injury to*, a person as defined in Section 12022.7." (*Halgren, supra*, 52 Cal.App.4th at p. 1230, italics added, citing Stats. 1990, ch. 1527, § 1, p. 7144.) We also explained that in 1993, following other amendments, the statute was again amended and "the intent requirement was modified by replacing *threats of death and great bodily injury* with threats intended to place a person in reasonable fear for his or her safety or the safety of his or her immediate family." (*Halgren* at p. 1230, citing Stats. 1993, ch. 581, § 1; italics added.)

The subsequent decisions in *Black, supra*, 538 U.S. 343 and *Lowery, supra*, 52 Cal.4th 419, on which Ewing relies, do not require us to reverse our holding in *Halgren*. *Black* involved convictions under Virginia's cross-burning statute prohibiting cross burning "with the intent of *intimidating* any person" (*Black* at p. 348, italics added.) The Virginia statute, however, also provided that burning a cross would be prima facie evidence of an intent to intimidate. (*Ibid.*) The United States Supreme Court struck down the Virginia statute in *Black*, reasoning that the statute's provision that burning a cross would be prima facie evidence of an intent to intimidate allowed for a conviction

cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family."

"based solely on the fact of the cross burning itself," thereby creating an unacceptable risk of the suppression of ideas. (*Id.* at pp. 364-365 (plur. opn. of O'Connor, J.); see *id.* at p. 385 (conc. & dis. opn. of Souter, J).)

In reaching this decision, the plurality in *Black* cited *Watts, supra*, 394 U.S. at page 708 for the proposition that "the First Amendment also permits a State to ban a 'true threat.'" (*Black, supra*, 538 U.S. at p. 359.) The plurality opinion explained (as previously noted) that the term "true threats" used in *Watts* "encompass those statements where the *speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.*" (*Ibid.*, italics added.)

Ewing relies on the foregoing italicized language in *Black* for the proposition that the plurality in that case "held that under the First Amendment the state can punish threatening expression, but only 'true threats' where the 'speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.'" Ewing has quoted *Black* out of context and misconstrues the holding in that case. As already noted, the California Supreme Court, after examining the foregoing quotation from the plurality opinion in *Black*, has construed the term "encompass" used in that quotation to mean "includes but is not limited to," and concluded that "the category of threats that can be punished by the criminal law without violating the First Amendment *includes but is not limited to* threatening statements made with the specific intent to *intimidate.*" (*Lowery, supra*, 52 Cal.4th at p. 427, second italics added.) This interpretation finds support in the plurality

opinion in *Black* itself, which explained that "[i]ntimidation in the constitutionally proscribable sense of the word is *a type of true threat*, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of *bodily harm or death*." (*Black, supra*, 538 U.S. at p. 360, italics added.) Thus, under both *Black* and *Lowery*, "intimidation" as defined in *Black*—which was an element of the Virginia cross-burning statute at issue in that case but is not an element of California's stalking statute (§ 646.9)—is only *one* type of constitutionally proscribable "true threat." *Black* does not hold that, under the First Amendment, any criminal statute that proscribes any type of threatening expression—such as the type of threat defined in the "credible threat" provision set forth in section 646.9(g) and proscribed by section 646.9(a)—must be construed as requiring proof of a "'true threat' of physical violence"; that is, proof that the "speaker means to communicate a serious expression of an intent to commit an act of unlawful violence," as Ewing contends.

Lowery also does not support Ewing's contention that any statute that proscribes any type of "threatening expression" must be construed as requiring proof of a "'true threat' of physical violence." *Lowery* involved a conviction under section 140,

subdivision (a)⁶ (hereafter section 140(a)), which prohibits "willfully" threatening to "use *force or violence*" (italics added) against a crime witness or victim. (*Lowery, supra*, 52 Cal.4th at p. 421.) Thus, unlike the stalking statute at issue here, the statute at issue in *Lowery* (§ 140(a)) expressly prohibits threats to use *force or physical violence*.

In *Lowery*, the defendant argued that section 140(a) violated his right to free speech under the First Amendment because the statute lacked a specific intent requirement. (*Lowery, supra*, 52 Cal.4th at p. 421.) Noting that section 140(a) requires that a threat against a crime victim or witness be made "willfully," the California Supreme Court stated that "a penal statute's use of the term 'willfully' to describe the intent with which an act is done ordinarily implies 'simply a purpose or willingness to commit the act,' not 'any intent to violate law, or to injure another . . .'" (*Lowery* at p. 427, quoting § 7, subd. 1.) Thus, the high court explained, "a person who under section 140(a) 'willfully' utters threatening language against a crime victim or witness could be found to have violated section 140(a) even if the person had no intention of carrying out the threat, as the mere use of the threatening language, without more, completes the crime." (*Lowery* at p. 427.)

⁶ Section 140, former subdivision (a), as amended (Stats. 1998, ch. 245, § 1), as pertinent here, provides: "[E]very person who willfully . . . *threatens to use force or violence* upon the person of a witness to, or a victim of, a crime or any other person . . . because the witness, victim, or other person has provided any assistance or information to a law enforcement officer, or to a public prosecutor in a criminal proceeding . . . shall be punished by imprisonment in the county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years." (Italics added.) Subdivision (a) of section 140 was again amended in 2011. (Stats. 2011, ch. 15, § 254.) All references to subdivision (a) of section 140 are to the former version.

Citing *Black, supra*, 538 U.S. at page 359, the *Lowery* court concluded that, in order to "ensure the constitutionality of section 140(a)," that statute must be construed "as applying only to those threatening statements that a reasonable listener would understand, in light of the context and surrounding circumstances, to constitute a true threat, namely, 'a serious expression of an intent to commit an act of unlawful violence' [citation], rather than an expression of jest or frustration." (*Lowery, supra*, 52 Cal.4th at p. 427.) The high court then held that, "[s]o construed, section 140(a) does not violate the First Amendment." (*Ibid.*)

Contrary to Ewing's suggestion, *Lowery*, like *Black*, does not hold that, under the First Amendment, any criminal statute that proscribes any type of threatening expression—such as the type of threat defined in the "credible threat" provision set forth in section 646.9(g) and proscribed by section 646.9(a)—must be construed as requiring proof of a "'true threat' of physical violence."

For all of the foregoing reasons, we reject Ewing's constitutional challenge to section 646.9. Because we have rejected his claim that section 646.9 must be construed as requiring a showing of a "'true threat' of physical violence," we also reject his related contention that his conviction of count 5 must be reversed because "[t]he prosecution failed to make this showing."

2. *Sufficiency of the evidence*

Last, Ewing contends his conviction of count 5 must be reversed because his "communications served legitimate purposes," and, thus, they were protected by the First Amendment and did not violate section 646.9(e). This contention is unavailing.

As already discussed, a stalking conviction requires proof that the defendant "willfully, maliciously, and repeatedly follow[ed] or willfully and maliciously *harasse[d]*" the victim. (§ 646.9(a), italics added.) Section 646.9(e) defines "harasses" to mean "engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that *serves no legitimate purpose.*" (Italics added.)

Here, by claiming his "communications served legitimate purposes," Ewing is essentially challenging the sufficiency of the evidence. However, in pleading guilty to count 5, Ewing admitted, as the factual basis for his crime, that he "repeatedly contacted and *harrassed [sic]* [the] victim in an attempt to collect a debt with intent to place [the] person in fear." (Italics added.)

"A guilty plea admits every element of the crime and constitutes a conviction." (*People v. Hoffard* (1995) 10 Cal.4th 1170, 1177.) Thus, by pleading guilty to count 5 and admitting he "harassed" Cross within the meaning of the stalking statute, Ewing admitted that he "engage[d] in a knowing and willful course of conduct directed at a specific person that seriously alarm[ed], annoy[ed], torment[ed], or terrorize[d] the person, and that *serve[d] no legitimate purpose*" within the meaning of section 646.9(e).

It is well established that, "[b]y pleading guilty, a defendant admits the sufficiency of the evidence establishing the crime, and is therefore not entitled to a review on the merits." (*People v. Meyer* (1986) 183 Cal.App.3d 1150, 1157; see also *People v. Marlin* (2004) 124 Cal.App.4th 559, 566.) Thus, "claims involving sufficiency of the evidence [citation] have been held not cognizable on appeal following a guilty plea." (*Meyer*, at p.

1157.) As noted, the trial court granted Ewing's request for a certificate of probable cause. However, the existence of a certificate of probable cause cannot widen the scope of review so that it includes noncognizable issues. (*People v. Hoffard, supra*, 10 Cal.4th at p. 1178.) We conclude Ewing's claim that his conviction of count 5 must be reversed because his "communications served legitimate purposes" is not cognizable on appeal.

DISPOSITION

The judgment is affirmed.

NARES, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.