

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN ALLEN DOPLER,

Defendant and Appellant.

G045307

(Super. Ct. No. 10WF0658)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William M. Monroe, Judge. Affirmed as modified.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry J.T. Carlton and Anthony Da Silva, Deputy Attorneys General, for Plaintiff and Respondent.

\* \* \*

A jury convicted defendant Brian Allen Dopler of stalking (Pen. Code, § 646.9, subd. (a))<sup>1</sup> and attempted criminal threats (§§ 422, 664, subd. (a)). The jury found defendant not guilty of making criminal threats (§ 422). The trial court sentenced defendant to three years and four months in prison, consisting of a term of three years for stalking and a consecutive term of four months for attempted criminal threats. Defendant asserts the court erred with regard to jury instructions and the sentence imposed. Defendant also claims there is insufficient evidence to support his stalking conviction. We agree that section 654 precludes the court from executing sentence on the consecutive prison term for attempted criminal threats. But we reject each of defendant's remaining claims and affirm the judgment as modified to correct the court's sentencing error.

## FACTS

Throughout 2009, Detective Gary Kim investigated defendant in connection with multiple instances of defendant monitoring and communicating with defendant's ex-girlfriend, who had obtained a restraining order against defendant. In a prohibited July 2009 message to his ex-girlfriend, defendant wrote in relevant part: "I do consider more and more of ending my life myself, but lack the courage to carry it out. I've also pondered the idea of buying a fake gun so I can display it in front of a police officer so he will shoot me. It would make the [Huntington Beach Police Department] look foolish and end my life without me having to carry it out myself." In a subsequent message to his ex-girlfriend, defendant claimed he was not going to his domestic violence classes anymore and that he had obtained a fake gun to force the police to kill him the next time he is arrested. Despite being arrested after these incidents, defendant continued to contact his ex-girlfriend in August and September 2009. He again was threatening

---

<sup>1</sup>

All statutory references are to the Penal Code.

“suicide by cop.” Defendant was arrested again in September 2009. There was no physical violence ever committed against his ex-girlfriend during defendant’s entire history with her. But she was clearly frightened and emotionally upset by her ordeals with defendant.

Kim took defendant very seriously. Kim testified that defendant always told him the truth about his communications with his ex-girlfriend, which suggested he might also be telling the truth about his plans to commit “suicide by cop.” In September 2009, defendant began contacting Kim directly. Defendant made polite inquiries at first. The tone of the calls began to change toward the end of 2009 and the beginning of 2010. Defendant referred to Kim as a liar, used obscenities, and expressed anger. From January 8 to February 10, 2010, defendant contacted Kim 41 times and the general police department line an additional 21 times.

Kim recorded 16 of defendant’s phone calls and text to landline messages. The calls were played for the jury and a transcription of the calls was admitted into evidence as exhibit No. 6. We reproduce these messages herein.

January 8, 2010 at 2:09 p.m.: “Hey cock-sucker, Brian DOPLER, give me a call back when you get a chance.”

January 20, 2010 at 5:43 p.m.: “Hey Detective KIM, it’s Brian DOPLER. Um I was just calling to uh, you asked me what you lied about and how ‘bout we start with you acting as if you don’t know about the letter that I sent and the fact that you have people following me as a result. Now just wanted to let you know that what I said in that letter regarding um me, well, kind of um, I guess ending my life if you do intend to arrest me, then uh that, that is going to hold true, so I just want to let you know that um before you try to pursue me and arrest me. So yeah just letting you know. Um, yeah, bye.”

January 28, 2010 at 10:54 p.m.: “Hey, Detective KIM, this is Brian DOPLER. Uh I’m about to drive by [my ex-girlfriend’s] house right now. Thought I’d let you know because it’s only a few seconds that more would take me to do something

drastic so I just wanted to make sure that somebody's on the, this uh deal. So us, yeah, give me a call back. Bye."

January 29, 2010 at 4:13 p.m.: "Hey, Detective KIM, it's Brian DOPLER, uh wondering why you're not calling me back. Uh, give me a call."

February 1, 2010 at 12:31 p.m.: "Say, Detective KIM, it's Brian DOPLER, I was calling cause I got this uh fix-it ticket to take care of. And, you know, I figured since we knew each other maybe you could uh sign it off for me. Um, otherwise, I guess if I run into another cop, I'll uh have him do it. But give me a call, you know, I've been trying to get a hold of you. But uh, yeah, no worries. Bye."

February 2, 2010 at 1:51 p.m.: "Hey, Detective KIM, it's Brian DOPLER. You want to call me back. Uh, I I don't know what you're, the hell you're doing about this uh [ex-girlfriend] safety thing cause uh. I, I've been practicing and I got my uh, my, my thing down to about 27 seconds roughly. Um so there's other people involved \*\*\* few seconds \*\*\* if they're any complications \*\*\* but obviously add a few seconds as well uh yeah, so I don't know I don't know, dude, give, give me a call back, I guess. The number \*\*\* so talk to ya later bye."

February 3, 2010 at 9:10 p.m.: "Come on, Gary, I just wanted to talk. I mean I was walking through her neighborhood today and I just don't think that I should be able to get away with things like that. And I, I don't know what you're doing to protect her. And I think that we should talk about that and um, you know, I don't understand why you're not returning my calls. Maybe you hurt your shoulder, whatever, jerking off again but uh, yeah, just uh give me a call, I guess, whenever you get a chance, all right. Bye."

February 3, 2010 at 9:54 p.m.: "Fucking cock-sucker, you need to call me back. This is Brian DOPLER. Yeah, call me the fuck back because I'm really fucking pissed right now, really fucking pissed right now and you are by far the biggest fucking piece of shit I have ever met, ran into my entire life, and your whole fucking department

too. Some asshole just fucking stopped me for no Goddamn reason just because he recognized me. Fuck you.”

February 5, 2010 at 10:59 a.m.: “Hey, pussy, why don’t you call me back. Why don’t . . . I don’t understand. Uh give me a call, all right? Bye.”

February 8, 2010 at 12:17 p.m.: “Hey, faggot, uh I know you’re working today so uh give me a call back, 714 381-XXXX. Bye.”

February 8, 2010 at 12:17 p.m.: phone hangs up.

February 8, 2010 at 6:04 p.m.: “Come on Gary why you being such a [douche bag], one of your peons told me you were working today and you didn’t call me so I don’t know why you don’t feel like calling me ever but I really think we should talk so gimme a call back all right?”

February 9, 2010 at 3:15 p.m.: “Hey Detective KIM, Brian DOPLER. Um, guessing that you probably got the letter that I sent to [my ex-girlfriend]. Um, and this is why you have people calling me but you don’t want to arrest me for some odd reason. Maybe it’s uh, I don’t know. Maybe you’re waiting for something else. Um, ‘cause you’d rather not turn in that letter because you know that everything that I put in there is true. Uh, so I mean, I don’t know, I don’t know what you plan to do by having me followed all the time. But uh you need to um stop and stop having officers harass me. All right? Just letting you know. Bye.”

February 10, 2010 at 1:08 a.m.: “You fuck with my life anymore, I will fucking kill you. You fucking slant eyed Fuck. That’s a promise. The next cop that follows me will die as well. Fuck you.”

February 10, 2010 at 1:25 a.m.: “Fuck you, Korean faggot. If you got the letter . . . I sent last month, then arrest me. Otherwise, tell those faggots to leave me alone.”

February 10, 2010 at 1:41 a.m.: “Come after me, Fucker. I dare you. Just as I said in the letter, you won’t take me alive. Fuck you, Korean fucking piece of shit \*\*\* you.”

Kim testified he was in fear from February 10, 2010 until defendant was arrested on February 12, 2010. Kim warned his wife and neighbors about defendant. Another officer testified that Kim appeared to be genuinely agitated and upset after receiving the February 10 messages from defendant. A police bulletin was issued warning officers about defendant’s statements.

## DISCUSSION

Defendant was convicted of stalking and attempted criminal threats. Stalking is defined as follows: “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 the state prison.” (§ 646.9, subd. (a).)<sup>2</sup> It is constitutional to punish

---

<sup>2</sup> “[H]arasses’ means 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.” (§ 649.9, subd. (e).) “[C]ourse of conduct’ means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of ‘course of conduct.’” (*Id.*, subd. (f).) “[C]redible threat’ means 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. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a

violators of section 646.9, despite free speech rights guaranteed by the United States Constitution. (*People v. Borrelli* (2000) 77 Cal.App.4th 703, 712-721; see also *People v. Falck* (1997) 52 Cal.App.4th 287, 297 [§ 646.9 “limited its application to only such threats as pose a danger to society and thus are unprotected by the First Amendment”].)

The substantive offense of making a criminal threat is defined as follows: “Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family’s safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.” (§ 422, subd. (a).)<sup>3</sup> It is constitutional to punish violators of section 422, despite free speech rights guaranteed by the United States Constitution. (*People v. Wilson* (2010) 186 Cal.App.4th 789, 801-804.) There is a crime of attempted criminal threats, which occurs if the intended victim does not actually suffer from fear for his or her safety. (*People v. Toledo* (2001) 26 Cal.4th 221, 230-235; *In re Sylvester C.* (2006) 137 Cal.App.4th 601, 611.)

---

person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of ‘credible threat.’” (*Id.*, subd (g).)

<sup>3</sup> We quote the current version of the statute, although non-pertinent changes have been made to section 422 since February 2010, when defendant committed his offenses.

### *Stalking Jury Instruction*

As part of the booklet of jury instructions provided to the jury, the court included a copy of CALCRIM No. 1301, which pertains to stalking (§ 646.9, subd. (a)).<sup>4</sup> The court included the following optional language in the written instruction: “A person is not guilty of stalking if (his/her) conduct is constitutionally protected activity.” The written jury instruction did not provide further guidance with regard to how the jury might go about determining whether defendant’s conduct was constitutionally protected activity.

When reading the instructions to the jury, however, the court inserted additional commentary pertaining to the question of “constitutionally protected activity.” The court explained to the jury that it had “reviewed the phone messages in [exhibit No. 6].” The court specifically quoted 14 of the 16 recorded messages transmitted by defendant to Kim and deemed these messages to be constitutionally protected. The court

---

<sup>4</sup> As provided to the jury, CALCRIM No. 1301 provided: “The defendant is charged in Count 2 with stalking in violation of Penal Code section 646.9. [¶] To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. The defendant willfully and maliciously harassed or willfully, maliciously, and repeatedly followed another person; [¶] AND [¶] 2. The defendant made a credible threat with the intent to place the other person in reasonable fear for his safety. [¶] A *credible threat* is one that causes the target of the threat to reasonably fear for his or her safety and one that the maker of the threat appears to be able to carry out. [¶] A *credible threat* may be made orally, in writing, or electronically or may be implied by a pattern of conduct or a combination of statements and conduct. [¶] *Harassing* means engaging in a knowing and willful course of conduct directed at a specific person that seriously annoys, alarms, torments, or terrorizes the person and that serves no legitimate purpose. [¶] A course of conduct means two or more acts occurring over a period of time, however short, demonstrating a continuous purpose. [¶] **A person is not guilty of stalking if (his/her) conduct is constitutionally protected activity.** [¶] Someone commits an act *willfully* when he or she does it willingly or on purpose. [¶] Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, annoy, or injure someone else. [¶] *Repeatedly* means more than once. [¶] The People do not have to prove that a person who makes a threat intends to actually carry it out.”

made no mention of two of the February 10, 2010 messages. First, February 10, 2010 at 1:08 a.m.: “You fuck with my life anymore, I will fucking kill you. You fucking slant eyed Fuck. That’s a promise. The next cop that follows me will die as well. Fuck you.” Second, February 10, 2010 at 1:41 a.m.: “Come after me, Fucker. I dare you. Just as I said in the letter, you won’t take me alive. Fuck you, Korean fucking piece of shit \*\*\* you.”

Defense counsel, having objected to the court’s initial inclination to explicitly instruct the jury that defendant’s integrated course of conduct was not constitutionally protected, affirmatively requested that the court instruct the jury that 15 of the 16 recorded messages were constitutionally protected. The court ultimately agreed to do so, but only as to 14 of the 16 messages. The prosecutor warned that the problem with this instruction was it “would be probably reversible error to tell the jury directly or to imply that some of the conduct was, without a doubt, not protected. And I think we want to avoid that.”

Defendant now contends the court improperly instructed the jury by implying to the jury that the two messages the court did not address *were not* constitutionally protected. Defendant claims the jury should have decided whether each of the messages were constitutionally protected, i.e., it was error for the court to have mentioned anything about constitutional protection for any of the particular statements made by defendant to Kim. Defendant characterizes the question of whether the conduct at issue is constitutionally protected as an element of the crime of stalking.

Defendant invited any error that might be deemed to have occurred and is therefore barred from contending on appeal that the court committed prejudicial error. (*People v. McKinnon* (2011) 52 Cal.4th 610, 675 [“When a defense attorney makes a “conscious, deliberate tactical choice” to [request or] forego a particular instruction, the invited error doctrine bars an argument on appeal that the instruction was [given or] omitted in error”].) The prosecutor specifically warned the court on the record that its

instruction might be deemed reversible error and defense counsel did not change course and ask for a general instruction not mentioning any of the specific communications. We need not address the question of whether the court's instruction was proper. Defendant claims he did not invite the error because his attorney actually asked the court to deem his final, sixteenth message as constitutionally protected. But defendant did not retract his request for the mode of instruction utilized based on the court's decision that the final message was not constitutionally protected.<sup>5</sup>

Although the issue is not squarely presented, we reject defendant's theory on appeal regarding the "constitutionally protected activity" language of CALCRIM No. 1301. "The elements of the crime of stalking (§ 646.9) are (1) repeatedly following or harassing another person, and (2) making a credible threat (3) with the intent to place that person in reasonable fear of death or great bodily injury." (*People v. Ewing* (1999) 76 Cal.App.4th 199, 210.) Section 646.9 does not require a prosecutor to disprove as a *separate element* of the crime that the harassing conduct at issue concerns constitutionally protected activity. Instead, by proving the elements of section 646.9 beyond a reasonable doubt, the prosecutor has also proved to the finder of fact that the defendant's conduct is not constitutionally protected. (See *People v. Borrelli, supra*, 77 Cal.App.4th at pp. 712-721.) Defendant sought and received a pinpoint instruction with regard to his defense, i.e., his communications to Kim were constitutionally protected and therefore not threats or harassment. Defendant was free to argue that his communications were legitimate exercises of his rights and not criminal harassment/threats.

---

<sup>5</sup> The issue of jury instructions and the viability of a stalking cause of action were tied together in this case. If only one message was not constitutionally protected, defendant could not have been convicted of stalking because he would not have engaged in an actionable course of conduct. Had defendant convinced the court that all but one of his messages were constitutionally protected, the court should have dismissed the stalking count.

Finally, we note that courts have an obligation to independently review the record in cases in which a plausible First Amendment claim is made “to ensure that a speaker’s free speech rights have not been infringed by a trier of fact’s determination that the communication at issue constitutes a criminal threat.” (*In re George T.* (2004) 33 Cal.4th 620, 632 [§ 422 case involving alleged threat by high school student communicated through poetry].) The jury in this case was tasked with determining whether defendant’s conduct violated section 646.9 or section 422. The trial court and this court are tasked with independently determining whether the conduct at issue is constitutionally protected and cannot be punished as a matter of law. We need not definitively answer in this case the question of whether the jury (as opposed to the court) should ever be asked to decide whether a defendant’s alleged conduct in a stalking or criminal threats case is constitutionally protected according to general principles of constitutional law (rather than being asked to determine whether a defendant’s conduct fell afoul of the specific elements of crimes delineated in the Penal Code).

#### *Unanimity Instruction*

Defendant also claims the court erred by not, sua sponte, providing a unanimity instruction with regard to defendant’s stalking conviction. A unanimity instruction (e.g., CALCRIM No. 3500) must be given in cases in which evidence of multiple acts has been presented, such that a jury might wrongly convict a defendant of a single count even though the jury did not unanimously agree that a defendant committed a criminal act. (*People v. Russo* (2001) 25 Cal.4th 1124, 1135.)

Because the stalking statute requires a “course of conduct,” courts are not required to provide a unanimity instruction. (*People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1198; *People v. Jantz* (2006) 137 Cal.App.4th 1283, 1292-1293; *People v. Zavala* (2005) 130 Cal.App.4th 758, 768-769 [applying to stalking the “well-

established exception to the unanimity instruction requirement in cases in which the defendant is charged with violating a statute by a continuous course of conduct”].)

Defendant claims these cases are not dispositive of his assertion of instructional error because some of defendant’s messages were constitutionally protected. According to defendant, a unanimity instruction would have made it clearer to the jury that they could not consider defendant’s constitutionally protected messages as part of the course of conduct. But the court already ruled as a matter of law that 14 of defendant’s messages were constitutionally protected and instructed the jury on this point. There was no obligation to duplicate this instruction through the indirect means of a unanimity instruction.

#### *Sufficiency of Evidence Supporting Stalking Conviction*

Defendant next contends there was insufficient evidence to support defendant’s stalking conviction. As previously noted, we review the record independently to prevent a defendant from being punished for constitutionally protected activity. But, with regard to determining the facts providing the basis for the jury’s verdict, “[t]he question, of course, is not whether there is evidence from which the jury could have reached some other conclusion, but whether, viewing the evidence in the light most favorable to respondent, and presuming in support of the judgment the existence of every fact the trier reasonably could deduce from the evidence, there is substantial evidence of [defendant’s] guilt — i.e., evidence that is credible and of solid value — from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt.” (*People v. Falck, supra*, 52 Cal.App.4th at p. 297.)

As already noted, “[t]he elements of the crime of stalking (§ 646.9) are (1) repeatedly following or harassing another person, and (2) making a credible threat (3) with the intent to place that person in reasonable fear of death or great bodily injury.” (*People v. Ewing, supra*, 76 Cal.App.4th at p. 210.) “[H]arasses means 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.”

(§ 646.9, subd. (e).) “[C]ourse of conduct’ means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of ‘course of conduct.’” (§ 646.9, subd. (f).)

There is substantial evidence supporting defendant’s stalking conviction. Defendant harassed Kim by sending two separate messages that seriously alarmed Kim. (*People v. McCray* (1997) 58 Cal.App.4th 159, 168-171 [stalking conviction may be based on one course of conduct consisting of multiple acts in a short period of time; harassment need not occur repeatedly].) There is sufficient evidence that defendant made a credible threat against Kim. (See *People v. Uecker* (2009) 172 Cal.App.4th 583, 594-597 [threat determined from factual context].) The two messages at issue were not constitutionally protected as they credibly threatened Kim with violence. And it can be inferred from all of the evidence in the record that defendant intended to place Kim in reasonable fear of death or great bodily injury.

Defendant, quoting an outdated version of section 646.9, claims there is insufficient evidence that Kim actually suffered from “substantial emotional distress.” (See *People v. Borrelli, supra*, 77 Cal.App.4th at p. 716 [“the victim must actually suffer substantial emotional distress”].) The current, applicable version of section 646.9 does not require the prosecution to establish that the victim suffered substantial emotional distress.

### *Sentencing*

Finally, defendant asserts he may not be punished for both stalking and attempted criminal threats because both convictions were based on the same criminal conduct. Defendant specifically notes that the court deemed all but two of his messages

(which came roughly one-half hour apart) to be constitutionally protected. Thus, those two messages met the bare minimum requirement for a harassing “course of conduct” under the stalking statute (“two or more acts occurring over a period of time, however short”). (§ 646.9, subd. (f).) One of these two messages also constituted the attempted criminal threat. The rest of defendant’s conduct was (at least according to the court), constitutionally protected free speech and petitioning of a police officer, and therefore could not have been the basis for finding defendant guilty of stalking or attempted criminal threats.

Section 654, subdivision (a), provides: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” By its plain terms, “[s]ection 654 prohibits multiple punishment for a single physical act that violates different provisions of law.” (*People v. Jones* (2012) 54 Cal.4th 350, 358 [holding defendant could not be punished under three different criminal statutes for single act of illegally possessing firearm].) Clearly, a court cannot punish a single defendant twice for making a single threat to a single victim. (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1345-1346 [defendant cannot be punished for both making a terrorist threat and dissuading a witness based on same statement].)

The wrinkle in this case is that the record includes evidence of two, non-constitutionally-protected, threatening statements. Thus, defendant acted twice, not once. But defendant’s stalking conviction required at least two acts to result in a conviction. By punishing defendant separately for making a criminal threat, the court erred under section 654 by punishing defendant twice for one act, the threatening statement that provided the basis for the jury’s guilty finding on the attempted criminal threats count.

The parties focus much of their briefing on the question of whether the court was entitled to find that defendant had multiple intents and objectives in

committing his criminal acts. Section 654 ““has been extended to cases in which there are several offenses committed during “a course of conduct deemed to be indivisible in time.””” (*People v. Hicks* (1993) 6 Cal.4th 784, 789.) ““Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the *intent and objective* of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.”” (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.)

Here, there is no need to inquire into whether defendant had multiple criminal objectives. Regardless of his objectives, defendant cannot be punished twice for a single act. (*People v. Mesa* (2012) 54 Cal.4th 191, 199-200 [defendant cannot be punished for street terrorism if he is already being punished for underlying felonious conduct].)

#### DISPOSITION

The judgment is modified to stay execution of defendant’s four month sentence for attempted criminal threats. As modified, the judgment is affirmed.

IKOLA, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.