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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. CURTIS JERMAINE WILLIAMS, Defendant and Appellant.	B232508 (Los Angeles County Super. Ct. No. TA113329)

APPEAL from a judgment of the Superior Court of Los Angeles County. Arthur M. Lew, Judge. Affirmed as modified.

Susan Morrow Maxwell, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Lawrence M. Daniels and Scott A. Taryle, Deputy Attorneys General for Plaintiff and Respondent.

Defendant and appellant Curtis Jermaine Williams (defendant) appeals from the judgment entered upon his conviction of burglary and misdemeanor resisting arrest. Defendant contends that entering a motel room with the intent to defraud an innkeeper cannot support a burglary conviction, and thus his conviction was precluded by the "*Williamson* rule."[1] Defendant requests a review of the trial court's in camera *Pitchess* hearing,[2] and contends that the trial court was not authorized to impose a DNA penalty assessment under Government Code section 76104.7. Our review of the *Pitchess* hearing reveals no abuse of discretion. We strike the DNA penalty assessment, but reject defendant's remaining contentions and affirm the judgment.

BACKGROUND

1. Procedural background

Defendant was charged with one count of second degree commercial burglary in violation of Penal Code section 459, and two counts of resisting an executive officer in violation of Penal Code section 69.[3] The information also alleged that defendant had two prior felony convictions within the meaning of the "Three Strikes" law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), and that defendant had served four prior prison terms within the meaning of section 667.5, subdivision (b).

The trial court granted defendant's *Pitchess* motion for discovery of materials from Los Angeles Police Department (LAPD) personnel files, but the court found no discoverable material during its in camera inspection of the files. A jury convicted defendant of count 1 as charged and of misdemeanor resisting, obstructing or delaying a peace officer in violation of section 148, subdivision (a)(1), as lesser included offense of section 69 in both counts 2 and 3.

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1 *In re Williamson* (1954) 43 Cal.2d 651, 654 (*Williamson*).

2 See Penal Code sections 832.7 and 832.8; Evidence Code sections 1043 through 1045; *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 81-82; *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

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

On February 16, 2011, the trial court dismissed defendant's prior strike convictions, and defendant admitted one prior conviction with prison term (§ 667.5, subd. (b)). The court sentenced defendant to the upper term of three years in prison as to count 1, plus a one-year enhancement due to defendant's prior prison term for a total of four years. As to counts 2 and 3, the court imposed two six-month jail terms to run concurrently with the prison term in count 1. Defendant was ordered to pay certain fines and fees, in particular a $20 DNA fee per Government Code section 76104.7 The court awarded a total of 432 days of presentence custody credit. Defendant filed a timely notice of appeal.

2. Prosecution evidence

Between 11:00 p.m. and midnight on July 15, 2010, the manager of the Monterey Motel in Gardena, Amitkumar Patel, saw someone entering room 9, although no one had rented that room. When Patel had checked all the unrented rooms in the motel earlier that night, all the doors were locked as usual, and the windows and doors were undamaged. The police were called, and LAPD Officers Scott Alpert and David Ly arrived about an hour later.

The officers went to room 9 with the master key they were provided. Officer Alpert checked the window and door for signs of a break-in, and saw that the security latch on the window was loose and appeared to have been tampered with. The door to the room was locked, and was opened with the master key. The officers saw defendant lying face-up on the bed with his eyes closed. Officer Ly turned on the light, announced himself and Officer Alpert, and told defendant to wake up.

After being told several times, defendant awoke but disobeyed several orders to get up and leave the room. When the officers attempted to physically detain him, defendant struggled until he was subdued with a Taser strike. The officers searched defendant and his backpack, but found no motel room key.

3. Defense evidence

Defendant testified that he was homeless at the time, and his friend, Kevin Lee, also a transient, offered him a place to spend the night. Defendant claimed that he went

with Lee to the Monterey Motel sometime between 9:30 and 10:00 p.m., and Lee let him into room 9 using a key. Lee left after about five minutes, and defendant lay on the bed and fell asleep with the lights off.

Defendant testified that he was awakened by a sharp pain in his chest. The lights were on, and two men were standing over him, holding him down. He claimed that he did not struggle with the men at first, but panicked when he tried to get up from the bed and received another sharp pain, this time in his back. It was not until the men handcuffed him that defendant realized that they were police officers.

DISCUSSION

I. Evidence was sufficient to support burglary conviction

Defendant contends that the evidence was insufficient to support his burglary conviction because at most he entered the hotel room with the intent to avoid payment for the use of the room which cannot constitute burglary.

Defendant argues that burglary cannot be supported without evidence that he entered the room with the intent to commit either a felony or larceny. Since his offense was "more appropriately a violation of section 537,[4] a misdemeanor of defrauding the proprietor or manager of a motel by obtaining accommodations . . . without paying," he could not be convicted of burglary. He reasons, the prosecution was required to establish that defendant entered the motel room with the intent to commit the theft of something

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[4] Section 537, subdivision (a) provides: "Any person who obtains any food, fuel, services, or accommodations at a hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, ski area, or public or private campground, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at a hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, or public or private campground by the use of any false pretense, or who, after obtaining credit, food, fuel, services, or accommodations, at a hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, or public or private campground, absconds, or surreptitiously, or by force, menace, or threats, removes any part of his or her baggage therefrom with the intent not to pay for his or her food or accommodations is guilty of a public offense . . . ."

other than accommodations, such as water or electricity. Defendant's contentions lack merit. "Larceny" means theft in all its forms. (§ 490a; *People v. Ashley* (1954) 42 Cal.2d 246, 258-259.) "Theft" includes the appropriation of services by means of fraud. (§ 484.) A violation of section 537 is a form of theft. (*People v. Fiene* (1964) 226 Cal.App.2d 305, 308; § 537, subd. (a).) It follows that defendant's intent to obtain accommodations by fraud was an intent to commit larcency; thus his entry into the room with such an intent was burglary. (See § 459.)

In arguing the contrary, defendant relies on *People v. Lewis* (1980) 109 Cal.App.3d 599 (*Lewis*), in which the defendant had been arrested on suspicion of burglary and violating section 537 by sleeping in a motel room without intending to pay for it. Defendant contends that "*Lewis* makes clear that sleeping in a motel without permission or intent to pay for the motel room is not burglary." We disagree. As respondent explains, the appellate court merely held that because the arresting officer had probable cause to arrest the defendant for a violation of section 537, the arrest was lawful whether the officer did or did not have probable cause to arrest the defendant for burglary. (*Lewis, supra*, at p. 609.) The *Lewis* court did not rule that entering a motel with the intent to violate section 537 could or could not amount to burglary as a matter of law, and we do not construe the court's dictum as suggesting such a rule.

Moreover, probable cause appeared to be lacking in *Lewis* because the arresting officer did not know how or under what circumstances the defendant had entered the room, which had been rented by someone who then requested another room. (See *Lewis, supra,* 109 Cal.App.3d at p. 608.) Here by contrast, the circumstances suggested that before defendant entered the room, he had formed the intent to sleep in the room without paying for it: defendant testified he went to the motel to stay for the night; was seen entering the previously unrented, locked room alone -- despite his claim that his friend let him in.

As respondent points out, burglary may be committed by entering with the intent to steal services. (*People v. Dingle* (1985) 174 Cal.App.3d 21, 29 [long-distance telephone service].) Similarly, burglary may be committed by entering with the intent to

defraud. (*People v. Nguyen* (1995) 40 Cal.App.4th 28, 30 [purchase with a worthless check]; *People v. Salemme* (1992) 2 Cal.App.4th 775, 783 (*Salemme*) [sale of fraudulent securities].) We discern no logical difference between an intent to steal services, pass a worthless check, or sell fraudulent securities and an intent to obtain accommodations by defrauding an innkeeper. It is an intent to steal; defendant's entry with such an intent was burglary.

II. The *Williamson* rule is inapplicable

Defendant contends that if this court concludes, as we have, that theft may consist of sleeping in a motel room without paying, we must find that the *Williamson* rule precluded a burglary prosecution. "Under the *Williamson* rule, if a general statute includes the same conduct as a special statute, the court infers that the Legislature intended that conduct to be prosecuted exclusively under the special statute. In effect, the special statute is interpreted as creating an exception to the general statute for conduct that otherwise could be prosecuted under either statute. [Citation.]" (*People v. Murphy* (2011) 52 Cal.4th 81, 86; citing *Williamson*, *supra*, 43 Cal.2d at p. 654.)

"[T]he courts must consider the *context* in which the statutes are placed. If it appears from the entire context that a violation of the 'special' statute will necessarily or commonly result in a violation of the 'general' statute, the *Williamson* rule may apply even though the elements of the general statute are not mirrored on the face of the special statute." (*People v. Jenkins* (1980) 28 Cal.3d 494, 502 (*Jenkins*).) Defendant has not shown that defrauding an innkeeper necessarily or commonly results in a burglary. As respondent argues, the crime may often be one of opportunity or the result of displeasure over the quality of services or the size of the bill.

Published cases involving section 537 are few, and defendant has not cited any in which a violation of section 537 resulted in a burglary prosecution. Instead, to demonstrate his contention that section 537 is a special statute that covers the same subject as section 459, defendant relies on the following cases in which a special theft statute has been compared with a general theft statute: *People v. Ruster* (1976) 16 Cal.3d 690, 694 (false insurance claim and forgery); *People v. Fiene*, *supra*, 226 Cal.App.2d at

page 308 (petty theft and § 537); *People v. Silk* (1955) 138 Cal.App.2d Supp. 899, 901-902 (petty theft and welfare fraud). Each of the cited cases compared theft with theft; none holds or suggests that theft and burglary cover the same subject. Here, on the other hand, section 537 prohibits a form of theft, whereas section 459 prohibits an entry with a specific state of mind. The cases do not illustrate defendant's point.

Defendant also relies on *Abuelhawa v. U.S.* (2009) 556 U.S. 816. That case is not helpful, as it did not involve the *Williamson* rule, but merely held that using a telephone to make a misdemeanor drug purchase did not amount to the felony offense of facilitating drug distribution. (*Abuelhawa*, at p. 818.)

The only authority cited by defendant that appears to support his position is *In re Joiner* (1960) 180 Cal.App.2d 250 (*Joiner*). In *Joiner*, the defendant had engaged in the "surreptitious removal" conduct prohibited in former Vehicle Code section 430, which made it a '"misdemeanor for any person to obtain possession of any vehicle or any part thereof subject to a lien . . . through surreptitious removal or by trick, fraud, or device perpetrated upon the lien holder."' (*Joiner, supra*, at pp. 253-254; see Stats. 1917, ch. 197, § 1.)[5] Although its reasoning was not particularly clear, the court held in essence that such conduct necessarily involved entering the lien holder's premises to remove the automobile; thus, applying the *Williamson* rule, the court found that former section 430 was a special statute prohibiting an entry to steal a specific thing, whereas section 459 was the general statue prohibiting an entry for the purpose of stealing anything. (*Joiner, supra,* at p. 254; see *Williamson, supra,* 43 Cal.2d at p. 654.) Nowhere does section 537 prohibit a surreptitious removal or an entry of any kind. Further, section 537 neither states nor suggests that, should the defendant enter a motel or other enumerated establishment, he must harbor the intent to defraud at the time of entry.

Defendant seems to contend that a burglary prosecution is precluded whenever one succeeds in committing the theft he intended to commit at the time of an unlawful

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5 The subject is now covered in Civil Code section 3070, subdivision (b), which reads: "It is a misdemeanor for any person to obtain possession of any vehicle or any part thereof subject to a lien pursuant to this chapter by trick, fraud, or device."

entry. The rule has long been to the contrary. Subject to section 654's prohibition against dual punishment, a defendant can be convicted of burglary as well as the theft he intended to commit at the time of his unlawful entry. (*People v. McFarland* (1962) 58 Cal.2d 748, 762-763; *People v. Bernal* (1994) 22 Cal.App.4th 1455, 1458-1459.)

Further, as respondent notes, the *Williamson* rule evolved to determine and effectuate legislative intent, and should not be applied to defeat legislative intent. (See *Jenkins*, *supra*, 28 Cal.3d at p. 505; *Salemme*, *supra*, 2 Cal.App.4th at p. 783.) The Legislature intended to prohibit both burglary and theft. (See §§ 459, 484, 487.) The enactment of statutes proscribing specific types of theft does not indicate that the Legislature intended to permit a burglary prosecution only when the burglar is unsuccessful in accomplishing the theft for which he or she entered a structure. (*Salemme*, at p. 783.) "Such a result would be absurd, and we must 'presume that the Legislature did not intend absurd results.' [Citation.]" (*Id.* at p. 784.) We conclude that a violation of section 537 was not intended to be an exception to section 459; the *Williamson* rule is thus inapplicable. (See *People v. Murphy*, *supra*, 52 Cal.4th at p. 86.)

III. *Pitchess* Review

The trial court granted defendant's *Pitchess* motion for discovery of relevant evidence contained in the personnel files and other confidential records pertaining to Officers Ly and Alpert. (§§ 832.7, 832.8; Evid. Code, §§ 1043-1045; see *City of Santa Cruz v. Municipal Court*, *supra*, 49 Cal.3d at pp. 81-82.) In granting the motion, the trial court limited its in camera review to records relevant to any alleged use of force, fabrication, or dishonesty on the part of the officers. The court found no documents relevant to these issues. Defendant requests a review of the trial court's determination that there were no discoverable items in the records produced.

We review the trial court's determination for an abuse of discretion. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1220-1221.) The records produced in the trial court were not retained, but the sealed transcript of the in camera hearing demonstrates that the custodian of the records described them, and that the trial judge examined each one. We thus find the transcript sufficiently detailed to review the trial court's discretion. (See

People v. Mooc (2001) 26 Cal.4th 1216, 1228-1229.) Upon review of the sealed record of the in camera proceedings, we conclude the trial court properly exercised its discretion in determining that the documents produced complied with the scope of the *Pitchess* motion, and that none of the documents or information should be disclosed to the defense.

IV. DNA Fee

Defendant contends that the DNA penalty assessment authorized by Government Code section 76104.7 and imposed by the trial court at sentencing, was done in error and should be stricken. Respondent agrees.

We also agree, as the court did not impose any fine, penalty, or forfeiture for which the penalty is authorized. Government Code section 76104.7, subdivision (a), provides in relevant part: "Except as otherwise provided in this section, in addition to the penalty levied pursuant to Section 76104.6, there shall be levied an additional state-only penalty of three dollars ($3) for every ten dollars ($10), . . . in each county upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses." The penalty does not apply to restitution fines. (Gov. Code, §§ 76104.6, subd. (a)(3)(A), 76104.7, subd. (c)(1).) Criminal conviction assessments imposed under Government Code section 70373 are also excluded (Gov. Code, § 70373, subd. (b)), as are court security assessments imposed under section 1465.8. (*People v. Valencia* (2008) 166 Cal.App.4th 1392, 1396.) Because these were the only fines and assessments imposed against appellant, the $20 DNA penalty assessment is unauthorized and must be stricken.

DISPOSITION

The $20 DNA penalty assessment imposed under Government Code section 76104.7, is stricken. The superior court is directed to prepare an amended abstract of judgment reflecting this modification and forward a certified copy to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST