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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
MICHAEL JOSEPH CRAWFORD,)
Defendant-Appellant.)

Filed April 20, 1988
7-481
86-1873
185

Appeal from the Iowa District Court for Buena Vista County (No. 6480), Richard F. Branco, Judge.

Defendant appeals his conviction of first- and second-degree theft. **AFFIRMED.**

Charles L. Harrington, Chief Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Corwin R. Ritchie, County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J.

Michael Crawford was convicted of theft in the first degree, in violation of Iowa Code sections 714.1(2) and 714.2(1), and two counts of theft in the second degree, in violation of Iowa Code sections 714.1(2) and 714.2(2) for misappropriating insurance premiums he received. He now appeals claiming the jury instructions failed to adequately present his theory of the case, that he kept the insurance premiums in safekeeping for the insurance company. We affirm.

Crawford, an insurance agent, sold three single-premium life insurance policies and two annuities to two couples. Instead of paying the total amount of their checks to the insurance company, he paid the annual premiums and kept the remainder in his personal bank account. He claims the insurance company instructed him to follow this practice. The insurance company denied this. Crawford was then convicted.

The trial court gave the following instructions in relevant part:

Instruction No. 15

[A] person has property in his "trust," when it is given to him by the owner for the owner's benefit. When the property is so given, a fiduciary relationship is then created . . . , and the person who receives the property is . . . a "trustee" . . . .

Instruction No. 14

The law provides that any person who takes, obtains, disposes of, or otherwise uses or acquires property is not guilty of theft by reason of such acts if he reasonably believes he has a right, privilege or license to do so, or if he does in fact have such right, privilege or license.

With regard to the term "right, privilege or license", you are instructed that a "right" means an interest or title in the property or a legal claim to hold, use or enjoy it. "Privilege" means a particular permission or authority given to a particular person to hold, use, or enjoy the property as opposed to a general permission. "License" means that the owner gave either express or implied permission or authority to hold, use or enjoy the property.

Thus, if the defendant had, in fact, a right, privilege or license, to use or dispose of the property; or, if he reasonably believed under

> the existing facts and circumstances, he had such right, privilege or license, then he is not guilty.

Crawford argues the trial court erred in not expanding the definition of trust to include property given "to be held in safekeeping for the owner or another . . . ." He maintains the absence of this language removed his theory from the jury.

It is necessary to read the court's instructions as a whole when determining whether there has been error. State v. Horn, 282 N.W.2d 717, 730 (Iowa 1979); see also State v. Lindsey, 302 N.W.2d 98, 102 (Iowa 1981). A trial court is not required to instruct in the language of requested instructions if the subject is covered in the court's own instructions. Horn, 282 N.W.2d at 730. The trial court is obligated to instruct fully on the law applicable to all jury issues. Lindsey, 302 N.W.2d at 102. A trial court is not required to word jury instructions in any particular way. State v. Morrison, 368 N.W.2d 173, 175 (Iowa 1985). The ultimate test of their sufficiency is whether they set out for the jury the issues to be determined. State v. Mumford, 338 N.W.2d 366, 370 (Iowa 1983).

We find no error in the trial court's instructions. The defendant's theory was that he was holding the funds in safekeeping for the insurance company, under express instructions from the company. This theory is included in Instruction 14. The jury was instructed that they had to find Crawford not guilty if he reasonably believed he had the "right, privilege or license" to hold the money. "Privilege" was defined to mean "a particular permission or authority given to a particular person to hold, use, or enjoy the property . . . ." This is exactly what Crawford was claiming as his defense. He claimed the insurance company told him to hold the money and only pay the annual premium amount.

We conclude the trial court properly instructed the jury on Crawford's theory and find no error. Accordingly, the defendant's conviction is affirmed.

AFFIRMED.