FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed February 22, 1979
v.	)	
JAMES BURL HAWK,	)	3 60953
Appellant.	)	

Appeal from Polk District Court - A. B. Crouch, Judge.

Defendant appeals conviction of embezzlement by agent alleging error in refusal to give his requested jury instruction concerning an agent's right to retain funds collected for his principal. - Affirmed.

John P. Roehrick, Des Moines, for Appellant.

Thomas J. Miller, Attorney General of Iowa, Thomas A. Evans, Assistant Attorney General, Dan L. Johnston, Polk County Attorney and Robert A. Burnett, Jr., Assistant Polk County Attorney, for Appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals conviction of embezzlement by agent in violation of § 710.5, The Code 1977. The single issue presented for review is whether trial court erred in refusing to give defendant's requested instruction concerning an agent's right to retain as compensation part of the amount collected on behalf of the principal. We affirm.

The evidence shows that defendant, as a resident manager for Ahern Apartments, was responsible for collecting rent from tenants at two of Ahern's apartment buildings. His compensation was a rent-free apartment, a $300 monthly salary and free telephone service. The business manager for Ahern testified that defendant was supposed to remit all rent collections to the company office. He also stated he never gave defendant permission to retain any of the rent monies collected. Defendant contends that once it was shown he was entitled to compensation for his services, trial court was required to submit his proposed Instruction #5. That instruction, which is identical to Uniform Jury Instruction #507.5, would have informed the jury that defendant had the right to retain from the funds collected by him for the benefit of Ahern such amount as would be reasonable compensation for collecting such funds.

Trial court must, of course, instruct on the law applicable to the facts as supported by the evidence. State v. Armstrong, 203 N.W.2d 269, 274 (Iowa 1972). Here, however, there was no evidence that defendant's salary was to be paid from the rental receipts or that defendant was authorized to compensate himself from the rent money collected. Neither was there evidence that defendant was entitled to a commission on those funds. In the absence of such evidence, we do not believe the requested instruction was warranted. We recognize that the instruction sought by defendant was approved in State v. Christiansen, 231 Iowa 525, 529 1 N.W.2d 623, 625 (1942). The court held in Christiansen, however, that the defendant was not prejudiced by the submission of that instruction to the jury. Id. at 625. We do not believe that Christiansen mandates the giving of defendant's proposed instruction under the circumstances presented herein. Finding no error on the part of the trial court, we affirm defendant's conviction.

AFFIRMED.