FILED
MAR 31 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed March 31, 1986
vs.	)	6-08 85-82
LEROY CANNON,	)	
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (No. 25664) - Ray A. Fenton, Judge.

Defendant appeals his conviction and sentence for theft in the first degree. **AFFIRMED.**

Joseph G. Bertogli, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General, and Christie J. Scase, Assistant Attorney General, and Susanne Engman, Assistant County Attorney, for plaintiff-appellee.

Heard by Donielson, P.J., and Snell, and Sackett, JJ.

Defendant was accused of robbing a victim at knife point. The knife in question was admitted into evidence. Defendant claims there was no testimony in the record regarding the length of the knife and consequently there was insufficient evidence to support his conviction because no evidence regarding use of a dangerous weapon was presented. Defendant questions whether testimony of a policeman as to the length of the knife is properly in the record. We find it unnecessary to determine whether the testimony is properly in the record. The knife was introduced into evidence. The jury had the knife before it. We have examined the knife. The knife itself establishes the nature of the weapon. Defendant's argument is totally without merit.

The defendant also contends trial court erred in giving the jury an incomplete instruction on the definition of a dangerous weapon. When a weapon falls within the list set out in Iowa Code section 702.7 as being dangerous weapons by law, the trial court should so instruct the jury. The trial court gave the following instruction:

> A "dangerous weapon" is any instrument designed primarily for use in inflicting death or injury upon a human being or animal, and which is capable of inflicting death upon a human being when used in the manner for which it was designed.

The defendant asserts, and the state concedes, that this definitional instruction was incomplete. If an instruction is erroneous, in order for that error to be found harmless it must be proven that the error was harmless beyond a reasonable doubt. State v. Ogle, 367 N.W.2d 289, 292 (Iowa App. 1985)(citing State v. Davis, 228 N.W.2d 67, 73 (Iowa 1975)). "An error in instructing the jury does not necessitate reversal unless it is prejudicial." State v. Seiler, 342 N.W.2d 264, 268 (Iowa 1983). The error in this case was harmless.

The jury in this case was given an incomplete instruction and decided, as the trial court should have determined as a matter of law, the knife used was a dangerous weapon. The defendant could not have been prejudiced by this occurrence.

> There can be no error when the issue on which the instruction is premised should have been resolved as a matter of law against the complaining party.

State v. Welton, 300 N.W.2d 157, 161-62 (Iowa 1981); see also State v. Pinckney, 306 N.W.2d 726, 729 (Iowa 1981)(where the trial court should have instructed the jury a shotgun was a dangerous weapon, despite the trial court's failure to do so and the fact an erroneous instruction was given on the definition of a dangerous weapon or firearm, the court found prejudice was not demonstrated by the defendant).

The defendant has not demonstrated he was prejudiced by the trial court's dangerous weapon instruction.

Defendant requested the court conclude in its charge to the jury an instruction on the consideration to be given prior inconsistent statements. The trial court refused the request. Defendant contends this is error.

The court did instruct the jury on the general credibility of witnesses. The following instruction, Uniform Instruction No. 105, was given:

> You are the sole judges of the weight of the evidence, the credibility of the witnesses, and the conclusions to be drawn from the facts and circumstances proved.
>
> If the testimony or any part thereof is conflicting, you will reconcile it if you can, so that it may all have weight and effect, but if you cannot, you will then give credit to the testimony and to those witnesses that to you as fair-minded men and women seem most entitled thereto.
>
> In passing on the credibility of the witnesses and weighing their testimony, you may and should consider their appearance and conduct on the witness stand, their age, intelligence, strength of memory, and means of knowledge of matters of which they speak, the remoteness

> of events about which they testify, their interest or lack of interest in the result of the trial, the motives, if any, actuating them as witnesses, their candor, fairness, bias or prejudice, the reasonableness and probability of their statements or the want thereof, whether their testimony is corroborated or contradicted by other witnesses or facts proven, and from all of these and all other facts and circumstances proven upon the trial determine where to give credit and where to withhold the same, and give to the testimony of each witness the weight to which you believe it is fairly entitled.

We determine the instruction given properly covered defendant's request. See State v. Harrington, 284 N.W.2d 244, 250 (Iowa 1979).

AFFIRMED.