

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICKY JONES,

Defendant-Appellant.

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UNPUBLISHED

January 28, 1997

No. 188024

Recorder's Court

LC No. 94-003627

Before: Corrigan, P.J., and J.B. Sullivan\* and T.G. Hicks,\*\* J.J.

PER CURIAM.

Following a jury trial in Detroit Recorder's Court, defendant was convicted of larceny from a person, MCL 750.357; MSA 28.589. He was sentenced to two to ten years' imprisonment. He filed this appeal as of right and we affirm.

Defendant's only claim on appeal is that his counsel was ineffective for failing to properly object to the competency of the six year old complainant from whom defendant took a diamond engagement ring. Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms and there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.*

There is a presumption of competency which may be rebutted by showing that the witness does not have sufficient capacity or sense of obligation to testify truthfully or understandably. *People v Coddington*, 188 Mich App 584, 597 (1991); MRE 601. A child witness' competency to testify is further governed by MCL 600.2163; MSA 27A.2163 which provides in pertinent part:

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\* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

\*\* Circuit judge, sitting on the Court of Appeals by assignment.

Whenever a child under the age of 10 years is produced as a witness, the court shall by an examination made by itself publicly, or separate and apart, ascertain to its own satisfaction whether such child has sufficient intelligence and sense of obligation to tell the truth to be safely admitted to testify. . .

Once the trial court is satisfied that the child is competent to testify, a later showing of the child's inability to testify truthfully reflects on credibility, not competency. *Coddington, supra*.

In this case, prior to the testimony of the six year old complainant, the trial court questioned him about his age, his grade, his school, whether he knew what lies are, what happens to people who tell lies, and whether he had ever told a lie; the court then elicited complainant's promise to tell the truth. Complainant testified that he found the ring at his grandmother's house, took it to school, and that, while walking home from school, defendant took the ring away from him. When his testimony became contradictory, defense counsel objected without basis but was permitted only to bring out the contradictory testimony on cross-examination.

Defendant's claim of error has no merit. First, plaintiff is correct that any objection during the initial determination by the court of complainant's competency would have been overruled. Moreover, there is no valid objection to a change in testimony, that testimony being subject to cross-examination. In any event, the two children who accompanied complainant, twelve year old Latrice Fountain and ten year old Lakara Bailey, both testified that defendant bent back complainant's finger and took the ring. Hence, any error regarding complainant's testimony was harmless. *People v Robinson*, 386 Mich 551, 563; 194 NW2d 709 (1972).

Affirmed.

/s/ Maura D. Corrigan

/s/ Joseph B. Sullivan

/s/ Timothy G. Hicks