STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD BERNARD LITTLEJOHN,

Defendant-Appellant.

UNPUBLISHED
July 29, 1997

No. 193378
Recorder's Court
LC No. 95-006211

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Defendant appeals by right his jury convictions of one count each of third degree criminal sexual conduct and of assault with intent to commit criminal sexual conduct involving penetration. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The claim that the trial court abused its discretion in qualifying the babysitter-victim's seven-year old charge as a witness is unpreserved, there having been no objection at trial either to the quality of the trial court's investigation of the competence of the witness or to the actual testimony given by the witness. The failure to object precludes appellate review. *People v Cobb*, 108 Mich App 573, 575; 310 NW2d 798 (1981).

Defendant additionally claims that the failure of trial counsel to object to the testimony by this witness deprived him of the effective assistance of counsel. The witness was presumed competent, and to disqualify the child as a witness there would have to be a showing that he lacked sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably. MRE 601; *People v Larry*, 162 Mich App 142; 412 NW2d 674 (1987). During the trial court's preliminary questioning of the witness, the witness showed a general capacity to relate observed facts and a sense of obligation regarding truthfulness, and any questionable answers appear to have been a function of confusion rather than lack of competence. *People v Norfleet*, 142 Mich App 745; 371 NW2d 438 (1985). Any such inconsistencies go to the weight and credibility of the evidence, not the competency of the witness, and are to be resolved by the trier of fact, as to which point the trial judge gave the jury a correct preliminary

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

instruction. *In the Matter of Jones*, 142 Mich App 207; 369 NW2d 212 (1985). The record therefore fails to establish that, had trial counsel objected, the trial court must necessarily have disqualified the witness, or that its failure to do so constitutes an abuse of discretion. Accordingly, defendant has failed to establish the prejudice prerequisite to appellate relief on a claim of ineffective assistance of counsel. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Kathleen Jansen
/s/ Myron H. Wahls
/s/ Patrick R. Joslyn