

No. 90-179

IN THE SUPREME COURT OF THE STATE OF MONTANA

1991

STATE OF MONTANA,
Plaintiff and Respondent,
v.
ROBERT E. HOWARD,
Defendant and Appellant.

FILED

MAR 22 1991

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

APPEAL FROM: District Court of the Seventh Judicial District,
In and for the County of Richland,
The Honorable Dale Cox, Judge presiding.

COUNSEL OF RECORD:

For Appellant:

J. Douglas Alexander, Sidney, Montana

For Respondent:

Marc Racicot, Attorney General, Joseph E. Thaggard,
Assistant Attorney General, Helena, Montana

Phillip N. Carter, Deputy County Attorney, Sidney,
Montana

Submitted on Briefs: January 17, 1991

Decided: March 21, 1991

Filed:



Clerk

Justice William E. Hunt, Sr. delivered the Opinion of the Court.

Defendant, Robert E. Howard, was convicted by a jury empaneled in the Seventh Judicial District Court, Richland County, of one count of felony sexual assault. From this conviction, he appeals. We affirm.

The sole issue is whether the trial court erred in allowing the testimony of the complaining witness.

Defendant was charged by information with the felony offense of sexual assault pursuant to § 45-5-502, MCA. The information alleged that defendant committed the offense by making sexual contact with A.D., a nine-year-old girl.

A.D. was 10 years of age when she testified at trial. At the beginning of her testimony, the State laid a foundation regarding her ability to understand the truth. After laying the foundation, the State questioned A.D. about the substantive issues in the case. Defendant did not at any time object to A.D.'s competence to act as a witness.

On appeal, defendant claims that A.D. was incompetent to testify at trial. We hold that defendant waived any right to appeal this issue because he failed to object to the witness's competency during trial. Section 46-20-104(2), MCA.

Affirmed. Let remittitur issue forthwith. See Rules 34 and 35, M.R.App.P.

Pursuant to § I, Par. 3(c), Montana Supreme Court 1988 Internal Operating Rules, this decision shall not be cited as precedent and shall be published by its filing as a public document

with the Clerk of the Supreme Court and by a report of its result
to West Publishing Company.

William E. Hendon
Justice

We Concur:

J. A. Tamm
Chief Justice

John Conway Harrison

R. C. McLaughlin

W. J. Tucker
Justices