

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP TELLIS,

Defendant-Appellant.

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UNPUBLISHED

June 6, 2000

No. 214112

Wayne Circuit Court

LC No. 97-009940

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction after a bench trial for assault with intent to murder, MCL 750.83; MSA 28.278, and felony-firearm, MCL 750.227b; MSA 28.424(2). We affirm.

Defendant argues on appeal that the trial court erred in failing to hold another competency hearing when defendant attempted to injure himself on the first day of trial. We disagree.

MCL 330.2020(1); MSA 14.800(1020)(1) provides

A defendant to a criminal charge shall be presumed competent to stand trial. He shall be determined incompetent to stand trial only if he is incapable because of his mental condition of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner. The court shall determine the capacity of a defendant to assist in his defense by his ability to perform the tasks reasonably necessary for him to perform in the preparation of his defense and during his trial.

The issue of incompetence to stand trial may be raised at any time, by the defense the prosecution, or the court. MCL 330.2024; MSA 14.800(1024); MCR 6.125. The question of the competence of an accused is appropriately presented for a hearing whenever evidence of incompetence appears. *People v Matheson*, 70 Mich App 172, 180; 245 NW2d 551 (1976). The issue can only be raised by presenting evidence of incompetence. *Id.*

There is no showing that the trial court erred in failing to hold another competency hearing in this matter. A hearing was held two months before trial, and defendant was competent. The only additional

evidence presented was defendant's act of scraping himself with a metal object at the eve of trial. While defendant characterizes this as a suicide attempt, the trial court noted that the object was not sharp and the act did not pose a threat to defendant. The court found that defendant's actions were taken to avoid the tough decision of whether to take a plea or go to trial. There is no indication that defendant could not effectively communicate with counsel and assist in his own defense. *People v Mowry*, 63 Mich App 676; 235 NW2d 23 (1975).

Given the court's findings as to defendant's actions, there is no showing that he was deprived of the effective assistance of counsel by counsel's failure to request a competency hearing. There is no showing that if counsel had sought a hearing, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra