IN THE COURT OF APPEALS OF IOWA

No. 2-887 / 11-0814
Filed November 15, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LARRY ALLEN BELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes, Judge.

Defendant appeals his conviction for driving while barred as a habitual offender. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Patricia Reynolds, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Michael J. Walton, County Attorney, and Robert Bradfield, Assistant County Attorney, for appellee.

Considered by Potterfield, P.J., Tabor, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

PER CURIAM

I. Background Facts & Proceedings.

Larry Bell was charged with driving while barred as a habitual offender, in violation of Iowa Code sections 321.555 and 321.561 (2009). He represented himself with standby counsel. Bell filed several motions before the trial challenging the jurisdiction of the court on the ground that he had a constitutional right to travel and he was not subject to the laws of the State of Iowa. The district court denied the motions.

Bell attempted to subpoena the director of the Iowa Department of Transportation (DOT) and the director of driver services, who filed motions to quash. Bell resisted the motions to quash, claiming he had a Sixth Amendment right to face his accusers. Bell also objected, on the basis of the Sixth Amendment, to the State presenting a certified copy of his driving record. The district court granted the motions to quash and denied Bell's request to exclude his certified driving record.

At the trial, the State presented evidence Bell was barred from driving and he had been operating a motor vehicle on December 16, 2010. A jury found Bell guilty of driving while barred as a habitual offender. He was sentenced to a term of imprisonment not to exceed two years and ordered to pay a fine. He appeals his conviction.

II. Confrontation Clause.

Bell contends the district court should not have granted the motions to quash or ruled that his certified driving record could be admitted into evidence. He claims that under the Sixth Amendment he had the right to confront witnesses

against him and asserts his certified driving record should not have been admissible unless someone from the DOT testified at his criminal trial. He relies upon the United States Supreme Court opinion *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 324 (2009), which held laboratory reports "prepared specifically for use at petitioner's trial" were testimonial in nature, and thus the Confrontation Clause applied. Our review of issues involving the Confrontation Clause is de novo. *State v. Bentley*, 739 N.W.2d 296, 297 (Iowa 2007).

The Confrontation Clause applies to testimonial statements. *State v. Rainsong*, 807 N.W.2d 283, 289 (Iowa 2011) (citing *Crawford v. Washington*, 541 U.S. 36, 68 (2004)). "If the declarant would reasonably expect the prosecution to use his or her extrajudicial statements contained in affidavits or depositions at trial, the extrajudicial statements are testimonial hearsay." *Id*. The Iowa Supreme Court has determined certified driving records are non-testimonial in nature, noting that such records are "created *prior* to the events leading up to [the] criminal prosecution." *State v. Shipley*, 757 N.W.2d 228, 237 (Iowa 2008). The analysis of *Melendez-Diaz* does not change the conclusion that Bell's driving record was non-testimonial, and was admissible without the testimony of a live witness.

We conclude the district court properly denied Bell's objections based on the Confrontation Clause.

III. Competency Evaluation.

Bell asserts the district court should have ordered that he be evaluated for competency. He asserts there was no legal basis for his own claim that he was

exempt from the legal requirements for driving privileges in Iowa and the court should have, therefore, ordered a competency evaluation.

The issue of whether a defendant is competent to stand trial implicates a constitutional right, and therefore our review is de novo. *State v. Lyman*, 776 N.W.2d 865, 873 (Iowa 2010). A defendant is presumed to be competent to stand trial, and a defendant has the burden of proving incompetency by a preponderance of the evidence. *Id*. at 874. The test to determine competency is whether the defendant is suffering from a mental disorder that prevents the defendant from appreciating the charge, understanding the proceedings, or assisting effectively in the defense. Iowa Code § 812.3(1); *State v. Hunt*, 801 N.W.2d 366, 370-71 (Iowa Ct. App. 2011). "When 'sufficient doubt' exists as to the defendant's competency, the trial court has an absolute responsibility to order a hearing sua sponte." *State v. Mann*, 512 N.W.2d 528, 531 (Iowa 1994).

There is no evidence in this case to show Bell was suffering from a mental disorder, did not understand the proceedings, or was not able to assist effectively in his defense. As has been noted, "[m]any litigants articulate beliefs that have no legal support." *United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003). In addition, the trial court has the ability to observe a defendant's demeanor in the courtroom and is better able to determine whether there is probable cause to question a defendant's competency. *See State v. Johnson*, 784 N.W.2d 192, 195 (Iowa 2010).

Bell has not shown the district court violated his due process rights by failing to suspend the proceedings and order a competency evaluation under section 812.3.

We affirm Bell's conviction for driving while barred as a habitual offender.

AFFIRMED.