IN THE COURT OF APPEALS OF IOWA

No. 3-411 / 12-1628
Filed July 24, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TRAVIS DEWAYNE WILLET,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve, Judge.

Travis Dewayne Willett appeals his conviction for the crime of operating while intoxicated third offense, in violation of Iowa Code sections 321J.2(5), 321J.2(2)(c) and 321J.21 (2011). **AFFIRMED.**

Joel Walker, Davenport, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Michael J. Walton, County Attorney, and Joseph Grubisich, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Travis Dewayne Willett appeals his conviction for the crime of operating while intoxicated, third offense, in violation of Iowa code sections 321J.2(5), 321J.2(2)(c) and 321J.21 (2011). Willett argues his constitutional right to confront and cross-examine the State's witnesses was violated when the district court admitted records of his prior convictions. He also argues the evidence concerning his identity was insufficient to support his conviction. Because we find the records were not testimonial and there is sufficient evidence establishing Willett's identity, we affirm.

I. Background Proceedings and Facts

Willett was arrested and charged with the crime of operating while intoxicated third offense on June 18, 2011. A bifurcated jury trial was held. The first portion was to determine whether Willett was guilty of the crime of operating while intoxicated. Following a guilty verdict, a second trial was held to determine whether Willett had two prior convictions for operating while intoxicated. During the second trial, the State introduced certified records showing two prior convictions. Willett objected to the records on Confrontation Clause grounds.[1]

The jury determined that Willett had two prior convictions for operating while intoxicated. He was sentenced to an indeterminate term of imprisonment not to exceed five years with a mandatory minimum thirty-day sentence.

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[1] Willet also objected on the grounds of hearsay. The hearsay issue is not raised on appeal.

II. Standard of review

Constitutional claims arguing the Confrontation Clause are reviewed de novo. *State v. Shipley*, 757 N.W.2d 228, 231 (Iowa 2008). We review the sufficiency of the evidence claim for correction of errors at law. *State v. Lane*, 743 N.W.2d 178, 181 (Iowa 2007). Court findings supported by substantial evidence are binding upon us. *Id.* Substantial evidence is evidence which could be relied upon by a rational fact finder to establish guilt. *Id.* Evidence is viewed in the light most favorable to the State granting all legitimate inferences from the record. *Id.*

III. Discussion

A. Confrontation Clause

Willett argues his constitutional right under the Confrontation Clause was violated when records of his prior convictions were admitted without the opportunity to cross-examine a witness.[2]

The Sixth Amendment provides that all criminal defendants have a right to confront witnesses presented against them. U.S. Const. amend. VI. The United States Supreme Court has held that the amendment guarantees the right to confront those "who bear testimony" against the accused. *Crawford v. Washington*, 541 U.S. 36, 51 (2004). Thus, the testimony of a witness is inadmissible unless the witness personally appears or there has been a prior opportunity to cross-examine. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 310 (2009).

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[2] Willet does not offer argument under our state constitution. We will limit our analysis accordingly.

Documentary evidence is of particular concern when prepared in a manner which would lead the witness to reasonably expect the statements to be used at a later trial. *Id.* at 311 (citing *Crawford*, 541 U.S. at 52). In *Melendez-Diaz*, the United States Supreme Court discussed confrontation issues surrounding the admission of certificates of analysis indicating a substance was cocaine. The Court found the certificates were affidavits which plainly fell within the core class of testimonial statements developed by *Crawford*. *Melendez-Diaz*, 557 U.S. at 309–11. The Court also found the individuals preparing the reports were witnesses because the documents were prepared, under Massachusetts law, for the purpose of constituting prima facie evidence of the composition of the substance, a testimonial purpose. *Id.* at 311.[3]

Our supreme court entered into its own discussion of documentary evidence in light of *Crawford* in *State v. Shipley*, 757 N.W.2d 228 (Iowa 2008). Searching for the types of evidence with the "closest kinship to historical abuses at which the Confrontation Clause was directed," the court restated the categories of statements which are traditionally testimonial. *Shipley*, 757 N.W.2d at 235 (internal quotation marks omitted). They included the functional equivalent of in-court testimony which was expected to be used at trial, formalized testimonials such as confessions or depositions, and statements made when a witness might reasonably expect the statements would be used at

[3] The Supreme Court also found the preparers of the documents would be subject to cross-examination even if the records were found to be official or business records because they were prepared for use at trial. *Id.* at 321.

trial. *Id.* Our supreme court also noted *Crawford*'s statement that most common law hearsay exceptions would be nontestimonial. *Id*. at 237.

In *Shipley*, the document in question was an abstract of a driving record being used to prove Shipley was driving under suspension. *Id.* at 230. Relying in part upon decisions from other jurisdictions, our supreme court sided with the majority of courts and held the record was nontestimonial. *Id* at 236. The *Shipley* decision also noted the number of courts which have found a variety of governmental records to be nontestimonial. *Id*. Some courts have held all public records fall within a government records category of nontestimonial evidence; however, our supreme court examined the record in *Shipley* under a more particularized analysis. *Id.* at 237.

The *Shipley* decision determined the driving records to be nontestimonial. *Id.* Of central importance was the fact the records were created prior to the events leading to prosecution and the records would have existed even if the defendant had never been charged with any crime. *Id.* Officials creating the records were performing ministerial tasks in a nonadversarial purpose under a statutory mandate. *Id.* The records were "thus created under conditions far removed from the inquisitorial investigative function—the primary evil that *Crawford* was designed to avoid." *Id.* at 238.

Our supreme court has not addressed whether records of judgment, as found in this case, are testimonial under *Crawford*. Following the analytical framework of *Shipley*, we find the records are nontestimonial and do not carry with them the right to confront the preparers as witnesses. The records were

created prior to the criminal proceedings in this case for record-keeping and ministerial purposes. Though use of the records could be anticipated in a subsequent criminal proceeding, due to our escalating operating-while-intoxicated punishment scheme, we do not believe this is a primary purpose for the creation of the records. Instead, the records were created by governmental employees acting in purely ministerial functions creating records which would exist irrespective of subsequent prosecutions. Other courts have reached similar conclusions. *See United States v. Weiland*, 420 F.3d 1062, 1076–77 (9th Cir. 2005) (stating "it is undisputed that public records, such as judgments, are not themselves testimonial").[4]

B. Substantial Evidence

Willett argues the evidence was insufficient to support his conviction. He admits evidence of prior convictions was introduced but claims because no witness testified he is the Travis Willett found in the records of the prior convictions, there is insufficient evidence to conclude he was previously convicted of operating while intoxicated. Willett does not directly argue he was not convicted of the crime evidenced in the record only that there is insufficient proof of the fact.

Iowa law requires more than identity of names to establish the identity of an individual for purposes of proving the existence of prior convictions. *State v. Sanborn*, 564 N.W.2d 813, 815 (Iowa 1997). Other identifying information, such

[4] Though not binding upon us today, our decision falls in line with our earlier decision in *State v. Redmond*, No. 10-1392, 2011 WL 3115845, at *5 (Iowa Ct. App. July 27, 2011), which found no meaningful distinction between certified records of convictions and the certified abstract of a driving record as found in *Shipley*.

as date of birth or an identical social security number, may be used by a jury to infer common identity. *Id.* at 816. The uniqueness of an individual's name can also be used to reinforce a jury's factual finding. *Id*.

At trial, Officer Samuel Miller testified to the home address and date of birth provided by Willett. Records of the prior convictions introduced by the State contain an identical address and date of birth. Coupled with the unique nature of Willett's name, including his middle name, the evidence is sufficient to support the jury's factual findings.

AFFIRMED.