IN THE COURT OF APPEALS OF IOWA

No. 3-199 / 10-2007
Filed May 15, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LARRY ALLEN BELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Thomas H. Preacher (motion to dismiss), District Associate Judge, and Mark J. Smith (trial), 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.

Larry Allen Bell, Davenport, pro se.

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 Eisenhauer, C.J., and Danilson and Bower, JJ.

PER CURIAM

On June 28, 2010, a police officer observed Larry Bell driving on a city street. Bell was arrested and charged with driving under suspension while barred as a habitual offender. *See* Iowa Code §§ 321.555(1), .561 (2009).

In August, Bell filed a pro se motion to dismiss. This motion is identical to the August dismissal motion Bell filed in criminal case AGCR331132, which was based on a June 26, 2010 traffic stop. A joint hearing on both motions was held on September 7, 2010. The court denied the motions to dismiss and appointed standby counsel.

Immediately prior to the October 18, 2010 jury trial, Bell argued his recently-filed "Motion for Mistake." He alleged the proceedings constituted a fraud by the State and the prosecuting attorney, and he also argued he had no contract and no dispute with the State of Iowa. The court denied his motion.

At trial, Bell did not contest that he was driving and that his state-issued driver's license had been barred. The State offered into evidence Bell's certified driving record. Bell objected and questioned the accuracy of the document. The court overruled his objection, noting Bell had not objected to the admissibility of the certified driving record during the final pretrial conference. The jury found Bell guilty of driving while barred as a habitual offender.

At the start of his December 1, 2010 sentencing hearing, Bell presented and argued his "Motion to Challenge the Jurisdiction of This Court and Dismiss for Lack of Jurisdiction." The court denied the motion. Bell was sentenced to an indeterminate term of incarceration not to exceed two years. The court ordered

his sentence "to run concurrent with the sentence imposed in AGCR331132."[1] This appeal followed.

Bell first argues the court erred in admitting the certified copy of his driving record because the exhibit violates Bell's constitutional right to be confronted with the witnesses against him. Bell recognizes the certified abstract of his driving record is admissible under *State v. Shipley*, 757 N.W.2d 228, 231 (Iowa 2008), but argues we should overrule *Shipley* based on the more recent United States Supreme Court case, *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009).

We *assume* error is preserved. We review de novo. *Shipley*, 757 N.W.2d at 231. We find no merit to Bell's argument. The *Melendez-Diaz* case did not involve a copy of an existing governmental driving record. Accordingly, *Shipley* still governs. *See Shipley*, 757 N.W.2d at 237 n.2.[2]

Bell, noting the arguments he presented at trial had no legal basis, next argues the court erred in failing to sua sponte order a mental competency evaluation in derogation of his due process rights. *See* Iowa Code § 812.3. The State argues there "is no doubt Bell holds an unorthodox and misguided perception of the State's authority to enforce the law against him. But such a misunderstanding of the law does not equate to incompetency to stand trial."[3]

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[1] In an opinion filed contemporaneously with this case, we affirm Bell's conviction for the June 26 driving offense. *See State v. Bell*, No. 10-2001, ___WL___ (Iowa Ct. App. May 15, 2013).

[2] We reached the same conclusion that *Melendez-Diaz* does not require a second look at *Shipley*, in *State v. Wixom*, No. 11-1278, 2012 WL 2123309, at *2 (Iowa Ct. App. June 13, 2012) (driving record), and *State v. Redmond*, No. 10-1392, 2011 WL 3115845, at *6 (Iowa Ct. App. July 27, 2011) (certified record of convictions).

[3] The State also asserts Bell has failed to succeed with the identical competency claim on three separate occasions: *State v. Bell*, No. 11-0814, 2012 WL 5614002, at *2 (Iowa Ct. App. Nov. 15, 2012); *State v. Bell*, No. 11-1263, 2012 WL 3590752, at *2 (Iowa

We *assume* error has been preserved. We review de novo. *State v. Lyman*, 776 N.W.2d 865, 873 (Iowa 2010). "We presume a defendant is competent to stand trial," and a defendant has the burden of proving incompetency by a preponderance of the evidence. *Id*. at 874.

Our de novo review of the record reveals no error. While Bell's claims and defenses were ultimately determined to be meritless, nothing suggests Bell's unconventional viewpoint resulted from a mental disorder, and the record does not demonstrate impairment of his ability to appreciate the charge, understand the process, or assist in his defense. *See United States v. James*, 328 F.3d 953, 955 (7th Cir. 2003) (stating many defendants articulate beliefs that have no legal support but such beliefs do not imply mental instability).

Bell has not shown the district court violated his constitutional rights by failing to suspend the proceedings and order a competency evaluation.

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

AFFIRMED.

Ct. App. Aug. 22, 2012); *State v. Bell*, No. 11-1267, 2012 WL 3196646, at *1 (Iowa Ct. App. Aug. 8, 2012).