IN THE COURT OF APPEALS OF IOWA

No. 9-785 / 08-0401
Filed November 12, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PATRICIA ANN ATWOOD,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Hobart Darbyshire, Judge.

Plaintiff appeals from her convictions for arson in the second degree and fraudulent insurance submission. **AFFIRMED.**

Jack E. Dusthimer, Davenport, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, and Michael J. Walton, County Attorney, for appellee.

Considered by Sackett, C.J., Vaitheswaran, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

SACKETT, C.J.

Patricia Ann Atwood appeals her convictions following a jury trial of arson in the second degree in violation of Iowa Code section 712.3 (2005) and fraudulent insurance submission in violation of Iowa Code section 507E.3(2). She contends the district court erred in not maintaining impartiality to the extent it impacted on her right to a fair and impartial trial. We affirm.

I. SCOPE OF REVIEW. We review a judge's recusal decision for an abuse of discretion. *State v. Millsap*, 704 N.W.2d 426, 432 (Iowa 2005). There are also constitutional overtones to a recusal decision in a criminal case because the due process clause requires an impartial judge. *Id.* There is a federal and state constitutional right to have a neutral and detached judge. *See State v. Mann*, 512 N.W.2d 528, 532 (Iowa 1994).

II. BACKGROUND. Patricia Atwood and her husband Lawrence Atwood were accused of setting fire on March 5, 2006, to a home they occupied in Scott County, Iowa, and claiming insurance to cover the loss of personal property from their insurer, State Farm Insurance.[1] A joint trial information was filed charging the couple. There were a number of pretrial motions filed by Patricia without success. These included motions for discovery, to suppress statements of her and her husband, and to sever their trials. Many objections made by defense counsel during trial were overruled. Only Lawrence's attorney objected to instructions, and his objection was overruled. Patricia was sentenced to ten

[1] The claim was subsequently withdrawn.

years on the arson charge, and five years on the fraudulent insurance charge. The sentences were to be served concurrently.

III. IMPARTIALITY OF THE DISTRICT COURT. Patricia's sole issue on appeal is that the district court was not impartial. Patricia does not claim that this issue was raised at trial and the State contends that error was not preserved. *See* Iowa R. App. P. 6.14(1)(*f*) (requiring an appellant to state in his or her brief how each issue was preserved for review, "with references to the places in the record where the issue was raised and decided."). Patricia has offered no reason on appeal as to why she did not have to preserve error on this issue. Therefore, we would generally consider this issue waived. *State v. Rodriquez*, 636 N.W.2d 234, 246 (Iowa 2001); *Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 866 (Iowa 2001).

Saying this, we recognize that in *State v. Larmond*, 244 N.W.2d 233, 237 (Iowa 1976), the court carved out a very limited exception to error preservation where the actions of a trial judge are questioned. There, the court concluded from the transcript, the oppressiveness of the trial judge deterred an attorney with limited experience from making a proper record, and by the time the attorney could have been expected to react and make a proper objection and record, the judge's conduct had irretrievably demolished any chance of a fair trial and the issue of recusal was addressed. *Larmond*, 244 N.W.2d at 237. Any alleged challenges here pale by comparison to the facts in *Larmond*. *See id.* at 235-37.

While Patricia relates in her statement of the case that the court ruled against her on a number of matters, she does not argue that the rulings were in

error. While she argues that apparently at some point the district court was no longer impartial, her argument is based primarily on our holding in an unpublished case where we addressed certain actions of the same judge that presided in this case, and concluded "there was a manifest necessity for the judge to declare a mistrial because his own actions and remarks sullied any appearance of judicial neutrality and made reversal on appeal a certainty." *State v. Brooks*, No. 07-1057 (Iowa Ct. App. Feb. 27, 2008). While there is an exchange between the judge and Patricia where the State concedes that the court could have spoken more gently, the court in this case did not engage in the exchanges criticized in *Brooks*. Nor does the fact the court was criticized in *Brooks* support Patricia's position here. Error was not preserved.

AFFIRMED.