[Cite as *State v. Scandreth*, 2009-Ohio-5768.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-T-0039**
- vs -	:	
EDWARD D. SCANDRETH,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Eastern District, Case No. 2008 CDC 0004.

Judgment: Affirmed

Dennis Watkins, Trumbull County Prosecutor, and *Sean J. O'Brien*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Michael J. McGee and *Matthew G. Vansuch*, Harrington, Hoppe & Mitchell, Ltd., 108 Main Avenue, S.W., #500, P.O. Box 1510, Warren, OH 44482 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Edward D. Scandreth, appeals his conviction of Using Weapons While Intoxicated, following a jury trial in Trumbull County Eastern District Court. Edward was sentenced to 180 days in jail, with 180 days suspended,

fined $1,000, with $750 suspended, and ordered to pay $792 in court costs. For the following reasons, we affirm the decision of the court below.

{¶2} On June 1, 2008, Edward was charged by way of Summons in Lieu of Arrest without Warrant, and Complaint upon such Summons with Using Weapons While Intoxicated, a misdemeanor of the first degree in violation of R.C. 2923.15, and with Obstructing Official Business, a misdemeanor of the second degree in violation of R.C. 2921.31. Edward pled not guilty to both charges before the Trumbull County Central District Court.

{¶3} On July 1, 2008, Edward filed a Motion to Suppress and/or Issue an Order in Limine to Bar the Introduction of Evidence, seeking to have his statements confessing to the crime suppressed on the grounds that they "were involuntary statements obtained by the police in violation of the Defendant's *Miranda* rights."

{¶4} On August 13, 2008, the case was transferred to the Trumbull County Eastern District Court.

{¶5} On December 4, 2008, a suppression hearing was held and the following testimony was presented.

{¶6} Patrolmen Charles Lohry and Jed Oakman, of the Fowler Township Police Department, testified that on the morning of June 1, 2008, they were on duty. At 1:10 a.m., they received a 9-1-1 dispatch reporting a loud party and gunshots on Milear Road. The patrolmen stopped in front of the residence at 3358 Milear Road, owned by Edward's parents. They observed a bonfire burning, a crowd of people, and multiple vehicles parked in the backyard. The people were drinking and hollering. As the

patrolmen approached, someone yelled that the police were there and several persons ran off to the woods.

{¶7} The patrolmen began to interview the persons present. Patrolman Oakman took the following written statement from Andrew Winans:

{¶8} I Andrew Winans was just showing up at Eddie and Robby Scandreth['s]. We were attending a get together when two buddies got into it; a little scruffle [sic]. My buddy Eddie fired his gun into the air to tell everyone that was getting rowdy to calm down. There was no intention of hurting anyone.

{¶9} Patrolman Oakman also spoke with Edward. Edward initially denied firing a gun and later stated that they had thrown some batteries into the fire, which exploded. Eventually, Edward admitted to firing a gun. Patrolman Oakman read Edward his Miranda rights. Patrolman Lohry testified that Patrolman Oakman handcuffed Edward, although Patrolman Oakman did not recall doing so.

{¶10} Patrolman Oakman delivered Edward to Patrolman Lohry to write out a statement, about an hour and a half after their arrival. Patrolman Lohry had Edward sit in the back of the patrol car. When Edward said he had to urinate, Patrolman Lohry removed the handcuffs and allowed him to do so. Thereupon, Edward wrote the following statement:

{¶11} I Eddie shot a 25 off to get some people off my property because they were starting fights with every one [sic] and said they had guns (one with the fuck[ed]-up hair cut). Whent [sic] back to bed. Cops came. Do not know where the gun is[;] in woulds or corn filds [sic].

{¶12} What did you do with the gun after you shot it? [Patrolman's handwriting.]

{¶13} Told someone to hid[e] it.

{¶14} How many rounds did you shoot? [Patrolman's handwriting.]

{¶15} 2.

{¶16} Where did you get the gun from? [Patrolman's handwriting.]

{¶17} F[o]und it when I was 15 or 16.

{¶18} Were you drinking anything tonight, if yes what? [Patrolman's handwriting.]

{¶19} Yes, beer.

{¶20} Patrolman Lohry testified that Edward wrote the statement willingly and without complaint. Patrolman Oakman testified that he did not threaten or coerce Edward into providing a statement. Patrolman Oakman testified that Edward did not appear to be or complain that he was in pain and did not ask to have the handcuffs removed, except when he wanted to urinate.

{¶21} Winans testified that Patrolman Oakman coerced him into making a statement. Winans testified that Patrolman Oakman knew about charges pending against him and said that he "could make it a lot worse." Contrary to his written statement, Winans denied that Edward possessed or fired a gun that morning.

{¶22} Edward testified that he had been at his mother's house that evening and arrived at 3358 Milear Road "a little before midnight."[1] After arriving, Edward testified he went to sleep and was awakened after the police arrived. Patrolman Oakman asked Edward if he had been shooting a gun. When he denied doing so, Patrolman Oakman handcuffed him with his hands behind his back. Edward testified this caused him great pain on account of surgery he had undergone a couple of years earlier for lymphatic cancer. Edward asked the patrolmen if he could be handcuffed with his hands in front on account of the pain but the patrolmen refused. Patrolman Oakman tightened the handcuffs so that they left marks about his wrists. Edward then testified the patrolmen wanted him to admit to firing a gun that evening, threatening to take him to jail if he did not do so.

{¶23} Edward testified that he was not allowed to speak with his mother when she called and that the patrolmen refused to speak with her themselves.

1. According to the testimony provided, Edward's parents are divorced although the residence at 3358 Milear Road remains titled in both their names. Edward's mother resides at 616 Cedar Drive in Cortland.

{¶24} Edward testified that the patrolmen handcuffed him sometime between 2:15 and 2:30 a.m., and that he was not released until 5:30 a.m. During this time, he complained to the patrolmen between five and ten times about the pain. After a while, the pain began to aggravate Edward's asthma and he felt an attack would occur if he remained handcuffed. Edward testified he "was almost passing out from the pain" when he agreed to make a statement for the patrolmen. At that point, the handcuffs were removed and the patrolmen told Edward to "make up" something about a gun.

{¶25} Doctor Mark E. Davis, Edward's physician, testified that he suffers from asthma and underwent surgery for lymphatic cancer.

{¶26} Norma J. Scandreth-Halladay, Edward's mother, testified that at about 4:00 a.m., she attempted to speak with the patrolmen by cell phone. She further testified that Edward has a learning disability and submits readily to authority figures.

{¶27} Robert Scandreth, Edward's brother, testified that, at one point in the morning, he was detained in the patrol car with Edward. Robert, however, did not notice anything about Edward's condition.

{¶28} Edward D. Scandreth, Sr., Edward's father, testified that he arrived at the house between 4:00 and 4:30 a.m., and observed Edward handcuffed in the patrol car. Edward, Sr. testified that his son "looked like he might have been short of breath."

{¶29} On January 29, 2009, the trial court denied the Motion to Suppress without issuing a written opinion. On the State's motion, the court also dismissed the Obstructing Official Business charge.

{¶30} On February 3 and 4, 2009, a jury trial was held. The following additional testimony was provided at trial.

{¶31} Gary Holbrook lives at 3303 Milear Road. He testified that he called 9-1-1 on the morning of June 1, 2008, because of noise from a party and the sound of gunshots coming from the direction of the Scandreth residence. Holbrook, who "was raised with guns from the age of about fourteen," testified that he was "a hundred percent sure" that he heard gunshots. After hearing the gunshots, the party became quiet.

{¶32} Patrolmen Lohry and Oakman testified there was a keg of beer, several cases of beer in cans, and an empty bottle of Jägermeister in the Scandreths' backyard. Both Edward and Robert appeared highly intoxicated. According to Patrolman Lohry, Edward's eyes were red, his speech was slurred, he was stumbling, and there was a strong odor of alcohol about him. Patrolman Oakman similarly testified about Edward's condition, also noting that he was belligerent, ordering the patrolmen to leave the property. Patrolman Oakman testified that Edward was handcuffed for approximately fifteen minutes. The patrolmen searched the property for the gun without success.

{¶33} Harry Rodgers is the owner of Bud's Towing Service and was called to 3358 Milear Road by the police to remove the vehicles. Rodgers testified that Edward was intoxicated. He could smell alcohol on Edward, who was uncooperative with the patrolmen and wobbled as he walked. Rodgers did not observe Edward complain about being in pain or short of breath and noted that he did not appear to be in any type of duress.

{¶34} Fowler Township Police Chief, Michael Currington, testified that the Police Department does not have the means to independently test for gunshot residue.

{¶35} Winans, Dr. Davis, and Scandreth-Halladay testified at trial. The substance of their testimony was similar to their testimony at the suppression hearing.

{¶36} Michael Joseph Price was at the party that evening and testified that he did not see Edward with a gun or drinking.

{¶37} Mark and Nicole Kidwell live across the street from the Scandreth residence. Mark testified that he was at the party and did not hear a gunshot, but some persons were throwing batteries in the fire. Nicole was not at the party, but testified she was able to observe Edward handcuffed for about an hour, while the patrolmen were interviewing people.

{¶38} Edward testified that he was not drinking that evening. In other respects, his trial testimony was similar to his suppression hearing testimony.

{¶39} Following the close of the State's case, and again after the defense rested, Edward moved the trial court for an acquittal on the grounds of insufficient evidence, pursuant to Crim.R. 29(A). The court denied the motion on both occasions.

{¶40} The jury returned a verdict finding Edward guilty of Using Weapons While Intoxicated.

{¶41} On February 18, 2009, Edward filed a Motion for New Trial based on purported juror misconduct.

{¶42} On April 2, 2009, the trial court heard argument regarding the Motion for New Trial. Thereupon, the court denied the motion. The court then sentenced Edward to 180 days in jail, with 180 days suspended, fined him $1,000, with $750 suspended, and ordered him to pay $792 in court costs.

{¶43} On April 20, 2009, Edward filed his Notice of Appeal. On appeal, Edward raises the following assignments of error:

{¶44} "[1.] The trial court erred to the prejudice of appellant in denying his motion to suppress his statement to the police officers."

{¶45} "[2.] The trial court erred to the prejudice of appellant in admitting his confession into evidence."

{¶46} "[3.] The trial court erred to the prejudice of defendant-appellant in denying his motion for a new trial."

{¶47} In his first assignment of error, Edward argues the trial court erred in denying his Motion to Suppress, inasmuch as his confession was the involuntary result of police coercion.

{¶48} "The trial court acts as trier of fact at a suppression hearing and must weigh the evidence and judge the credibility of the witnesses." *State v. Morgan*, 11th Dist. No. 2008-P-0098, 2009-Ohio-2795, at ¶13 (citations omitted). "The trial court is best able to decide facts and evaluate the credibility of witnesses. Its findings of fact are to be accepted if they are supported by competent, credible evidence." *State v. Mayl*, 106 Ohio St.3d 207, 2005-Ohio-4629, at ¶41. "Once the appellate court accepts the trial court's factual determinations, the appellate court conducts a de novo review of the trial court's application of the law to these facts." *Morgan*, 2009-Ohio-2795, at ¶10 (citation omitted); *Mayl*, 2005-Ohio-4629, at ¶41 ("we are to independently determine whether [the trial court's factual findings] satisfy the applicable legal standard") (citation omitted).

{¶49} In the present case, however, the trial court issued no written opinion in conjunction with the denial of Edward's Motion. "Where factual issues are involved in determining a motion, the court shall state its essential findings on the record." Crim.R.12(F). The Ohio Supreme Court has interpreted this Rule so that "for a court to have a duty to issue findings of fact, there must be a request from the defendant." *State v. Brown,* 64 Ohio St.3d 476, 481, 1992-Ohio-96. "[A] trial court's failure to place o[n] record the findings of fact essential to its disposition of a motion will not provide a basis for reversal on appeal in the absence of a timely request for such findings." Id. citing *State v. Benner* (1988), 40 Ohio St.3d 301, 317-318, and *Bryan v. Knapp* (1986), 21 Ohio St.3d 64, 65; Crim.R. 12(H) ("[f]ailure by the defendant to raise defenses or objections or to make requests *** shall constitute waiver of the defenses or objections").

{¶50} In this situation, an appellate court must affirm the decision to deny the Motion to Suppress, "if there is sufficient evidence demonstrating that the trial court's decision was legally justified and supported by the record." *Brown*, 64 Ohio St.3d at 482.

{¶51} "[T]he state carries the burden of proving the voluntariness of a confession by a preponderance of the evidence." *State v. Hill*, 64 Ohio St.3d 313, 318, 1992-Ohio-43. "In deciding whether a defendant's confession is involuntarily induced, the court should consider the totality of the circumstances." *State v. Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008, at ¶82, quoting *State v. Edwards* (1976), 49 Ohio St.2d 31, at paragraph two of the syllabus. "'[P]olice overreaching' is a prerequisite to a finding of involuntariness. Evidence of use by the interrogators of an inherently coercive tactic

(*e.g.,* physical abuse, threats, deprivation of food, medical treatment, or sleep) will trigger the totality of the circumstances analysis." *State v. Clark*, 38 Ohio St.3d 252, 261, quoting *Colorado v. Connelly* (1986), 479 U.S. 157, 161.

{¶52} Edward cites to the following as evidence of inherently coercive tactics employed by members of the Fowler Township Police Department: he was handcuffed in a position causing him great pain, a situation the patrolmen were indifferent to when he tried to bring it to their attention; he was detained in this position for several hours; and the patrolmen only agreed to release him in exchange for a written confession.

{¶53} These circumstances, if accepted as true, would render Edward's confession involuntary. However, this testimony is contradicted by other credible testimony in the record. Patrolmen Lohry and Oakman both denied that Edward was handcuffed for an excessive period of time, complained of being in great pain, appeared to be under physical duress, or was coerced into giving a statement.

{¶54} There is further evidence supporting the patrolmen's version of events. Edward's brother was detained in the patrol car with him, but did not notice anything about Edward's condition suggesting physical duress. Edward's father observed him in the patrol car, but only testified that he might be short of breath. Rodgers of Bud's Towing observed Edward that morning but did not notice anything indicating that he was in pain. Finally, Edward went to visit Dr. Davis a few days after the incident, but did not complain about any injury or mistreatment at the hands of the police.

{¶55} Since there is sufficient evidence to justify the trial court's denial of the Motion to Suppress, we must affirm that decision.

{¶56} The first assignment of error is without merit.

{¶57} In his second assignment of error, Edward argues that the admission of his confession was prohibited under the corpus delicti rule.

{¶58} "The *corpus delicti* of a crime is the body or substance of the crime, included in which are usually two elements: (1) the act and (2) the criminal agency of the act." *Edwards*, 49 Ohio St.2d 31, at paragraph 1a of the syllabus. "There must be some evidence in addition to a confession tending to establish the *corpus delicti*, before such confession is admissible." Id. at paragraph 1b of the syllabus. "The *quantum* or weight of such additional or extraneous evidence is not of itself required to be equal to proof beyond a reasonable doubt, nor even enough to make a *prima facie* case." Id. at paragraph 1c of the syllabus. See, also *State v. Maranda* (1916), 94 Ohio St. 364, at paragraphs one and two of the syllabus.

{¶59} Edward claims that the State presented no evidence that he carried or used a firearm while intoxicated apart from his coerced confession. We disagree.

{¶60} Edward misconstrues the import of the corpus delicti rule. To render Edward's confession admissible, the State need only present "*some* evidence" that a crime has been committed. *Edwards*, 49 Ohio St.2d at 36 (emphasis sic). It is not necessary to link Edward to the crime before rendering his confession admissible.[2] *State v. Hopfer* (1996), 112 Ohio App.3d 521, 561. The Ohio Supreme Court has

2. The origin and import of the rule is described thus: "This doctrine touching *corpus delicti* is of ancient origin and was born out of great caution by the courts, in consideration of certain cases of homicide wherein it had turned out that by reason of a failure of the government to prove the death of the person charged as having been murdered it so happened that such person sometimes survived the person accused as his murderer. Therefore, the rule that there must be some evidence tending to prove the fact that death had actually ensued; which was later followed by an additional requirement of some evidence that that death was brought about by some criminal agency." *Maranda*, 94 Ohio St. at 370. Commenting on the rule sixty years later, the Supreme Court observed: "Considering the revolution in criminal law of the 1960's and the vast number of procedural safeguards protecting the due-process rights of criminal defendants, the *corpus delicti* rule is supported by few practical or social-policy considerations. This court sees little reason to apply the rule with a dogmatic vengeance." *Edwards*, 49 Ohio St.2d at 35-36.

described the foundational requirements imposed by the rule as "minimal." *Edwards*, 49 Ohio St.2d at 36. In *Edwards*, the court concluded the State had established a foundation for the crime of Aggravated Robbery based on the discovery of the decedent's "billfold contain[ing] some credit cards, identification papers and miscellaneous papers of the decedent, but no money." Id. at 35.

{¶61} In the present case, a foundation for the admissibility of Edward's confession was established by Holbrook's testimony that he heard gun shots and a party near his house.

{¶62} The second assignment of error is without merit.

{¶63} In his third assignment of error, Edward raises several arguments.

{¶64} Initially, Edward claims his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence.

{¶65} "'[S]ufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury," i.e. "whether the evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52, quoting Black's Law Dictionary (6 Ed. 1990), 1433. Essentially, "sufficiency is a test of adequacy," that challenges whether the state's evidence has created an issue for the jury to decide regarding each element of the offense. Id.

{¶66} "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d

259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 319. In reviewing the sufficiency of the evidence to support a criminal conviction, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Jenks,* 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶67} Weight of the evidence, in contrast to its sufficiency, involves "the inclination of the *greater amount of credible evidence.*" *Thompkins,* 78 Ohio St.3d at 387 (emphasis sic) (citation omitted). Whereas the "sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support the verdict as a matter of law, *** weight of the evidence addresses the evidence's effect of inducing belief." *State v. Wilson,* 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶25 (citation omitted). "In other words, a reviewing court asks whose evidence is more persuasive -- the state's or the defendant's?" Id.

{¶68} Generally, the weight to be given to the evidence and the credibility of the witnesses is primarily for the trier of fact to determine. *State v. Thomas* (1982), 70 Ohio St.2d 79, at the syllabus. When reviewing a manifest weight challenge, however, the appellate court sits as the "thirteenth juror." *Thompkins,* 78 Ohio St.3d at 387 (citation omitted). The reviewing court must consider all the evidence in the record, the reasonable inferences, and the credibility of the witnesses, to determine whether, "in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the

exceptional case in which the evidence weighs heavily against the conviction." Id., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶69} In order to convict Edward of Using Weapons While Intoxicated, the State had to prove, beyond a reasonable doubt, that Edward, "while under the influence of alcohol ***, *** carrr[ied] or use[d] any firearm." R.C. 2923.15(A). Using Weapons While Intoxicated has been held to be a strict liability offense. *Columbus v. Still*, 10th Dist. Nos. 88AP-314 and 88AP-316, 1989 Ohio App. LEXIS 2625, at *5-*6.

{¶70} With respect to the sufficiency of the evidence, Edward's written confession that he was drinking and discharged a firearm in order to break up a fight is legally sufficient to support his conviction.

{¶71} Edward faults the patrolmen for not conducting field sobriety tests to determine whether he was intoxicated. It is established, however, that the element of being "under the influence of alcohol" may be proven by eye-witness testimony, without recourse to field sobriety or other tests. *State v. Lee*, 9th Dist. No. 07CA009184, 2008-Ohio-343, at ¶22; *State v. Roskovich*, 7th Dist. No. 04 BE 37, 2005-Ohio-2719, at ¶3, ¶¶22-23. In the present case, Patrolmen Lohry and Oakman, and Rodgers of Bud's Towing all testified that Edward was visibly intoxicated.

{¶72} With respect to the manifest weight of the evidence, the evidence presented at trial does not weigh heavily against the conviction as to render it a miscarriage of justice. Holbrook testified with great certainty to hearing a gunshot. The witnesses for the defense denied hearing any loud noise or testified that batteries thrown into the bonfire were exploding. Contrary to this testimony is the statement of Winans that Edward had fired a gun to breakup a fight and Edward's own admission to

the same. The explanation that Edward fired a gun is at least as credible as the explanations that there was no gun shot or that batteries were exploding.

{¶73} Edward's final arguments are that the trial court erred by overruling his Motion for New Trial on the grounds of juror and witness misconduct.

{¶74} "Application for a new trial shall be made by motion" and "may be granted *** for *** the following causes affecting materially [the defendant's] substantial rights: *** [m]isconduct of the jury, prosecuting attorney, or the witnesses for the state." Crim.R. 33(B) and (A)(2). "No motion for a new trial shall be granted or verdict set aside, nor shall any judgment of conviction be reversed in any court because of *** any *** cause, unless it affirmatively appears from the record that the defendant was prejudiced thereby or was prevented from having a fair trial." Crim.R. 33(E)(5); *State v. Kehn* (1977), 50 Ohio St.2d 11, 19 ("[i]t is a long-standing rule of this court that we will not reverse a judgment because of the misconduct of a juror unless prejudice to the complaining party is shown") (citation omitted).

{¶75} "A motion for new trial pursuant to Crim.R. 33(B) is addressed to the sound discretion of the trial court, and will not be disturbed on appeal absent an abuse of discretion." *State v. Schiebel* (1990), 55 Ohio St.3d 71, at paragraph one of the syllabus.

{¶76} Edward's Motion for New Trial cited three instances of misconduct.

{¶77} It is claimed that one of the jurors failed to respond to a material question on voir dire, specifically whether the juror or any family member ever had a criminal case pending in the trial court. According to the affidavit of Edward's trial counsel: "Following trial ***, it was revealed to me by a court employee that Patricia Roth, one of

the jurors in [this] case, was a relative of and grandmother of David Bell, whose case was previously heard in the Brookfield Court, being Case No. 2007-CRB-357."

{¶78} The trial court rejected the argument, noting that both parties waived having a court reporter present for voir dire. Accordingly, there is no transcript or record of the questions posed to Roth during voir dire. The court did not recall "any specific question asked about [whether the prospective juror] had anybody in their family being a defendant of crime," and, therefore, concluded that Roth was not under a duty to disclose her grandson.

{¶79} In light of the trial court's recollection of voir dire, and in the absence of any allegation of actual prejudice, the court did not abuse its discretion in denying Edward's motion based on Roth's alleged failure to respond to a material question on voir dire. Cf. *State v. Jeffers*, 10th Dist. No. 06AP-358, 2007-Ohio-3213, at ¶14 ("[a] juror's failure to respond to a material question on voir dire entitles a party to a new trial only if the juror's failure to disclose denied that party his right to an impartial jury").

{¶80} Edward also argued a new trial should have been granted because Police Chief Currington, who testified at trial, spoke to a reporter for the Warren Tribune Chronicle during the course of the trial regarding evidence not admitted at trial. Chief Currington's comments appeared in a Tribune Chronicle article on February 4, 2009, the second day of trial. The article, captioned "Gun trial pending in Brookfield court," provided the following: "Fowler police Chief Michael Currington said outside of court that Nathan Riggs, 26, of Burghill, had started a fight at the party, and that Scandreth fired the gun to break it up. Riggs was indicted on a charge of murder in July after police

said he confessed to killing his girlfriend Tricia Wade with a hammer and a crowbar on June 27."

{¶81} Edward maintains that this "highly inflammatory and irrelevant information" prejudiced his opportunity for a fair trial by casting him in a negative light, i.e. by associating him with a murderer. The trial court rejected this argument noting that Chief Currington was within his rights in speaking with the press and that Edward's own attorney did likewise and was quoted in the article.

{¶82} The trial court did not abuse its discretion in rejecting this argument. Chief Currington's statements to the press are grounds for a new trial only to the extent that they influenced the jury's deliberations. Cf. *State v. Wright*, 3rd Dist. No. 3-92-24, 1994 Ohio App. LEXIS 6090, at *26-*27 ("defendant's allegations of prosecutorial misconduct, based upon any contact between the prosecutor and the media during the trial, [were] moot and without merit as a basis for a mistrial or reversal" given "the complete lack of any jury exposure to these radio broadcasts").

{¶83} Edward's last argument in support of a new trial was that the jury foreman, John P. Davis, admitted that he had discussed the Tribune Chronicle article with his wife on the morning of February 4, 2009, i.e. the final day of trial. According to the affidavit of Edward's trial counsel, Davis admitted this during an interview with the prosecutor and defense counsel following the guilty verdict.

{¶84} At the hearing on Edward's Motion for New Trial, the trial judge interviewed Davis in camera. The prosecutor and defense counsel were present, but were not allowed to ask Davis questions directly. If counsel for either party wished to

ask a question, counsel would communicate the question to the judge outside of Davis' hearing and the judge would ask the question.

{¶85} Davis testified that he did not read the article or discuss it with his wife. The article appeared in the February 4, 2009 edition of the Tribune Chronicle, but Davis did not talk to his wife that morning before trial. Davis admitted being aware that an article had been published from a comment made by someone at a store where he buys lottery tickets. The prosecutor did not recall that Davis ever admitted to reading or discussing the article. The court concluded that Davis had heard of the article but did not read it or was aware of its contents.

{¶86} With respect to this argument, Edward asserts the trial court erred by not allowing him to cross-examine Davis. We disagree.

{¶87} In *Remmer v. United States* (1954), 347 U.S. 227, the United States Supreme Court held that, when confronted with evidence of improper communication with the jury, the trial court "should determine the circumstances, the impact thereof upon the juror, and whether or not it was prejudicial, in a hearing with all interested parties permitted to participate." Id. at 230.

{¶88} In interpreting *Remmer*, the federal circuit courts have rejected that argument that all impermissible communications with the jury merit a full evidentiary hearing. "It is now well established that the failure to provide a full evidentiary hearing into possible prejudice resulting from communications with jurors does not, in itself, require a reversal or remand." *United States v. Boscia* (C.A.3, 1978), 573 F.2d 827, 831; *United States v. Frost* (C.A.6, 1997), 125 F.3d 346, 377 ("we generally have required trial courts to conduct *Remmer* hearings only in cases involving claims of

'intentional improper contacts or contacts that had an obvious potential for improperly influencing the jury'") (citations omitted).

{¶89} "[A] court confronted with a colorable claim of juror bias must undertake an investigation of the relevant facts and circumstances. An informal in camera hearing may be adequate for this purpose; due process requires only that all parties be represented, and that the investigation be reasonably calculated to resolve the doubts raised about the juror's impartiality. So long as the fact-finding process is objective and reasonably explores the issues presented, the state trial judge's findings based on that investigation are entitled to a presumption of correctness." *Sims v. Rowland* (C.A.9, 2005), 414 F.3d 1148, 1155-1156 (citation omitted).

{¶90} Likewise, the Ohio Supreme Court has rejected the propositions that *Remmer* requires a full evidentiary hearing in all circumstances or that the accused must be present at the hearing to satisfy due process. *State v. Hessler*, 90 Ohio St.3d 108, 121, 2000-Ohio-30.

{¶91} Given the circumstances of the present case, the trial court did not abuse its discretion by conducting the hearing in the way it did or in its conclusions. Here, the possibility of improper bias resulting from Davis' exposure to the article was slight, as the article did little more than report the prosecution's theory of the case as presented at trial. In any event, Davis denied any knowledge of the article's substance prior to the verdict and demonstrated an acute awareness of his responsibility as a juror to remain free from bias.

{¶92} The third assignment of error is without merit.

{¶93} For the foregoing reasons, the judgment of the Trumbull County Eastern District Court, finding Edward guilty of Using Weapons While Intoxicated and denying his Motion for New Trial, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.