COURT OF APPEALS
DECISION
DATED AND FILED

July 17, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-2948-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TIMOTHY S. HEADRICK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: J. D. McKAY, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Timothy Headrick appeals a judgment convicting him of armed robbery. He argues that the trial court should have suppressed his confession because it was involuntary and it was given after he invoked his right to counsel. We reject these arguments and affirm the judgment.

¶2 Whether the confession was voluntary and whether Headrick invoked his right to counsel are questions of constitutional fact that we decide without deference to the trial court. *See* ***State v. Moats***, 156 Wis. 2d 74, 94, 457 N.W.2d 299 (1990). The historical facts relied on by the trial court, however, will not be overturned unless they are clearly erroneous. *See* ***State v. Turner***, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987). Because the trial court did not make specific findings of fact, this court must assume that the trial court's assessment of the witnesses' credibility and its findings would support its ultimate decision. *See* ***State Echols***, 175 Wis. 2d 653, 673, 499 N.W.2d 631 (1993); ***State v. Long***, 190 Wis. 2d 386, 398, 526 N.W.2d 826 (Ct. App. 1994).

¶3 The State bears the burden of proving the voluntariness of a defendant's statements by the preponderance of the evidence. *See* ***State v. Agnello***, 226 Wis. 2d 164, 179-82, 593 N.W.2d 427 (1999). A finding that a confession was involuntary requires proof that the police engaged in coercive conduct. *See* ***State v. Owen***, 202 Wis. 2d 620, 641-42, 551 N.W.2d 50 (Ct. App. 1996). Unless there is proof of actual coercive or improper pressures to compel a statement, the voluntariness inquiry ends. ***Id.***

¶4 Headrick offers two reasons for finding his confession involuntary: (1) the officers made threats regarding what would happen to his children if his wife was also implicated in the robbery; and (2) the officers questioned him knowing that he had "mental health issues" for which he was taking medication and that he had not received his medication during the four and one-half hours he spent in the officers' presence until they began writing out his confession. The officers administered ***Miranda*** warnings and denied making any threats and the trial court implicitly believed their testimony. The officers testified that Headrick appeared alert, his answers seemed to make sense, that he exhibited no difficulty

concentrating and did not tell them he needed any medication. None of the statements the officers admitted making constitute an improper threat that would render the confession involuntary. The record does not establish any coercive or improper pressure by the police to obtain the confession.

¶5 Finally, Headrick did not unambiguously invoke his right to counsel. He mentioned counsel on three occasions, twice asking the officers whether they believed he needed counsel and another time agreeing to undergo a lie detector test if counsel was present. Headrick acknowledged that he did not expect to take a lie detector test that day. Requesting counsel for a lie detector test that has not yet been scheduled does not constitute an unambiguous request for counsel at the ongoing interrogation session. Likewise, asking the officers whether they thought he needed counsel did not constitute a request for an attorney. Headrick admitted that he never specifically requested the presence of counsel for the interview even though he knew, by virtue of his experience as a military policeman, that all he had to do was ask. Because Headrick did not unequivocally invoke his right to counsel, the police were free to ignore these references to counsel and continue the interrogation. *See* ***State v. Jones***, 192 Wis. 2d 78, 94-96, 532 N.W.2d 79 (1995).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).