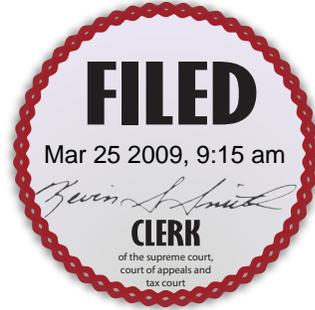


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL WILSON,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A05-0806-CR-329

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Gifford, Judge
Cause No. 49G04-0704-MR-057737

MARCH 25, 2009

PETITION FOR REHEARING - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Michael Wilson has filed a petition for rehearing in which he claims that the trial transcript was materially misstated in our opinion. We grant rehearing for the limited purpose of correcting a misstatement; however, we reject Wilson's claim that the misstatement was material.

In our original opinion, we stated that Wilson signed a waiver of rights form. As Wilson points out, however, he was physically unable to sign the form because his hands were burned and bandaged. Rather, after Wilson was advised of his rights and verified that he understood them, Indianapolis Police Department Sergeant John Breedlove wrote on the waiver of rights form that Wilson was unable to sign because he was injured.

We disagree with Wilson's contention that this injury affected his ability to waive his rights. As we explained in our memorandum decision, the voluntariness of a statement is determined in light of the totality of the circumstances surrounding the interrogation. *Clark v. State*, 808 N.E.2d 1183, 1191 (Ind. 2004). On appeal, the trial court's determination is reviewed the same as other sufficiency matters. *Id.*

Here, Sergeant Breedlove consulted with hospital staff prior to questioning Wilson. Before interviewing Wilson, Sergeant Breedlove advised Wilson of his rights and verified that Wilson understood those rights. During the interview,

Wilson, a college graduate, appeared coherent, understood the questions the sergeant asked him, never became confused, and thought about and provided answers to the questions. Although Wilson delayed answering some of the questions about how the victim became doused with gasoline and set on fire, Sergeant Breedlove interpreted Wilson's responses to be deceitful rather than confused. In addition, Wilson was not subjected to a lengthy interrogation, and he made no allegations of physical abuse or other coercive or deceptive action by the police. Even though Wilson did not physically sign the waiver of rights form, this other evidence is sufficient to establish that his statement was voluntary.

KIRSCH, J., and BARNES, J., concur.