COURT OF APPEALS
DECISION
DATED AND FILED

April 3, 2007

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2005AP1570-CR **Cir. Ct. No. 2003CF5279**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RENALDO E. HERRON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed*.

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Renaldo E. Herron appeals from an amended judgment of conviction for second-degree reckless homicide, and from that part of a postconviction order affirming the trial court's pre-trial denial of Herron's suppression motion. The issue is whether the police's failure to disclose to Herron

that a criminal complaint had been issued, charging him with the homicide for which they were questioning him, invalidated his waiver of his Fifth and Sixth Amendment rights, when Herron knew, prior to waiving those rights, that police had issued an arrest warrant against him for that same offense.[1] We conclude that Herron's knowledge of the arrest warrant issued against him for this offense, coupled with his being read his ***Miranda*** rights, was constitutionally adequate to allow him to validly waive his Fifth and Sixth Amendment rights. Therefore, we affirm.

¶2 Herron was involved in a drive-by shooting in Milwaukee. A witness identified Herron as the shooter. The following day, police apprehended Herron for questioning. At that time, they told Herron that they arrested him because he had been identified as the shooter. Police read Herron his ***Miranda*** rights, which he waived. Herron denied his involvement in the shooting, and was released. Nevertheless, a criminal complaint was issued several weeks later, charging Herron with first-degree reckless homicide while armed. A felony warrant was also issued for Herron's arrest. Several months later, police located Herron in LaCrosse, arrested him and returned him to Milwaukee. Police told Herron that a warrant had been issued for his arrest for this offense, but did not tell him that he had been charged in a criminal complaint. Police then read Herron his ***Miranda*** rights, with which Herron was familiar because he had been read those rights "when he talked to [police] in the past." Herron then waived his ***Miranda***

[1] The Fifth Amendment protects the accused against self-incrimination. *See* U.S. CONST. amend. V. The Sixth Amendment entitles the accused to the assistance of counsel. *See* U.S. CONST. amend. VI. The accused is advised of these constitutional ("***Miranda***") rights at the outset of a custodial interrogation. *See* ***Miranda v. Arizona***, 384 U.S. 436, 444-46 (1966).

rights. After about six hours of interrogation, Herron finally admitted his involvement in the drive-by shooting.

¶3 Herron moved to suppress his statements, claiming that his ***Miranda*** waiver was invalid because police failed to disclose to him, prior to their questioning him the second time, that he had been charged with first-degree reckless homicide while armed for this offense. Following an evidentiary hearing at which two officers testified, the trial court denied the motion, ruling that it was not necessary that Herron know that formal charges had been issued against him because he already knew that "the adversarial process ha[d] begun."

¶4 The issue is strictly a question of law: does the police's failure to tell Herron that criminal charges had been issued against him for his involvement in this incident invalidate an otherwise valid waiver of his ***Miranda*** rights. We rejected this proposition in ***State v. Anson***, 2002 WI App 270, ¶19, 258 Wis. 2d 433, 654 N.W.2d 48, when we explained:

> At the onset of post-charge pretrial police interrogations, *the accused must be made aware that the adversarial process has begun and that he or she can request the assistance of counsel at the onset of post-charge pretrial police interrogations.* This can be accomplished by informing the accused that he or she has been formally charged with a crime, by reading to the accused the ***Miranda*** warnings, or by anything else that would inform the accused that the adversarial process has begun. By giving ***Miranda*** warnings … an individual is told that he or she has the right to an attorney and any statement he or she makes can be used in subsequent criminal proceedings. *Or, by telling the accused* that a complaint has been filed or *that an arrest warrant has been issued, a reasonable layperson would comprehend that the government has committed itself to prosecute and the positions of the adversaries have solidified.*

Id., ¶19 (citation omitted; emphasis added).

¶5 Herron knew that a warrant had been issued for his arrest. He was advised of his ***Miranda*** rights, notifying him that he was entitled to legal representation, and warning him that any statements he made to police could be used against him. He admitted his familiarity with those warnings. Contrary to Herron's contention, ***Anson*** requires only that the accused know that the adversarial process had begun. *See* ***id.***, 258 Wis. 2d 433 ¶19. ***Anson*** does not require that the accused know that a complaint had been issued against him or her; in fact, we explained that an example of knowing that the adversarial process had begun was by the accused knowing that "an arrest warrant has been issued." ***Id.*** ***Anson***'s example is precisely what happened here. Knowing that an arrest warrant had been issued against him, Herron knew that the adversarial process had begun. Therefore, his ***Miranda*** waiver of his Fifth and Sixth Amendment rights was valid, and the trial court correctly denied Herron's suppression motion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).