**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**August 21, 2008**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal No. 2007AP1755-CR** **Cir. Ct. No. 2004CF104**

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

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RONALD P. LANE,**

**DEFENDANT-APPELLANT.**

APPEAL from a judgment and an order of the circuit court for Portage County: JAMES M. MASON, Judge. *Affirmed*.

Before Higginbotham, P.J., Dykman and Bridge, JJ.

¶1 PER CURIAM. Ronald Lane appeals a judgment convicting him of one count of burglary, as a repeater and as a party to a crime, and an order denying his motion for postconviction relief. He argues that the police violated the Fourth

Amendment when they stopped him and that the circuit court erred in conducting a restitution hearing without him. We affirm.

¶2 Lane first argues that the police did not have a reasonable suspicion to stop him. "[A]lthough an investigative stop is technically a 'seizure' under the Fourth Amendment, a police officer may, under the appropriate circumstances, detain a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." ***State v. Waldner***, 206 Wis. 2d 51, 55, 556 N.W.2d 681 (1996). The officer must possess "specific and articulable facts which would warrant a reasonable belief that criminal activity [is] afoot." ***Id.*** "The test is an objective one, focusing on the reasonableness of the officer's intrusion into the defendant's freedom of movement." ***Id.*** at 56 (citation omitted). "The question of what constitutes reasonableness is a common sense test." ***Id.***

¶3 After receiving a report of a burglary at the Kickapoo Inn, a dispatcher for the Vernon County Sheriff's Department sent one deputy to investigate and then asked another deputy and a Viroqua police officer to look around for suspicious activity. Jason Franks, the Viroqua Officer, called the dispatcher about five minutes later and asked the dispatcher to run a check on a car with Illinois license plates because the officer thought it suspicious that the car was leaving the parking lot of a closed restaurant, which had no building lights or outside sign lights on, at approximately 2:00 a.m. The dispatcher ran a criminal history check showing that Lane, who owned the car, had been convicted of burglary twelve times in Illinois. The dispatcher then alerted the officers working in the vicinity that Lane's vehicle should be stopped to investigate potential criminal activity.

¶4 Viewing these facts objectively, we conclude that it was reasonable for the officer to believe that the person leaving the parking lot of a closed and darkened restaurant in the middle of the night, at a location not too distant from a recent middle-of-the-night robbery, might be casing the restaurant for a robbery. After learning the additional fact that the car belonged to a person who had committed twelve gurglaries, it was reasonable for the police to stop Lane to investigate possible criminal activity.[1] We conclude that the investigative stop did not violate the Fourth Amendment.

¶5 Lane next argues that the circuit court should not have held the restitution hearing without him because he was not able to participate. He contends that it was the court's obligation to arrange for him to appear from prison by telephone because he is proceeding pro se, citing ***State ex rel. Christie v. Husz***, 217 Wis. 2d 593, 579 N.W.2d 243 (Ct. App. 1998). We agree that ***Husz*** applies and that it was the court's responsibility to arrange for Lane's participation. However, we conclude that the court met its obligation under ***Husz*** by taking responsibility for making the telephone call and then asking Lane to simply provide the phone number. Despite the circuit court's directions to Lane at the sentencing hearing to provide the phone number and the subsequent written notice to Lane that the hearing was scheduled, Lane failed to provide the court with a phone number where the court could call him as planned. Lane asserts that he had

[1] We do not suggest that, standing alone, a reasonable officer would have a reasonable suspicion to stop a person for investigative purposes after learning that the suspect had been previously convicted of crimes similar to the crime being investigated. Here, we consider the totality of the circumstances, as we must, and conclude that, taken together, knowledge that Lane had been convicted of burglary 12 times along with being observed leaving the parking lot of a closed and darkened restaurant in the middle of the night near the location of a recent late-night robbery provided reasonable suspicion for the police to stop Lane to investigate possible criminal activity.

difficultly obtaining the phone number from the prison officials. Even if that were the case, Lane could have simply informed the court of that fact by letter. Since Lane failed to communicate with the court at all, the court had no way of knowing that anything further might be required on its part. We conclude that Lane by his actions waived his right to be present at the hearing.

*By the Court.*—Judgment and order affirmed.

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