

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

August 1, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-0259-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DAVID C. HAUBRICH,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: CARL ASHLEY, Judge. *Affirmed.*

¶1 FINE, J. David C. Haubrich appeals from a judgment entered on guilty pleas convicting him of unlawfully possessing cocaine, *see* WIS. STAT. § 961.41(3g)(c), and unlawfully possessing drug paraphernalia, *see* WIS. STAT.

§ 961.573(1). He claims that the trial court erred in not granting his motion to suppress evidence.<sup>1</sup> We affirm.

## I.

¶2 The facts relevant to this appeal are essentially not disputed. At 3:45 a.m. on a Friday morning, a police officer employed by the City of Franklin saw a car pull into a closed and dark business on West Loomis Road in Franklin. Haubrich was the driver. The officer testified at the suppression hearing that he “thought it was suspicious because obviously [the business] was closed.” The officer also told the trial court that the business’s parking lot was set back from the roadway, was “very secluded,” and that “[o]nce you pull into the lot, you can’t really see any autos or subjects from the roadway.” The officer said that he then turned his squad car around so he could “return to the business to check on what the occupants of the vehicle might be up to.” After what the officer estimated to be between fifteen and twenty seconds, during which he could not see the car, he saw the car pull out of the parking lot and go westbound on Loomis Road. He stopped the car. The officer explained to the trial court that he wanted to question the people in the car “just in case there was any damage that occurred at the business.” There was no one in the car other than Haubrich, who claims that the stop was unlawful.

## II.

¶3 Whether an investigatory stop is lawful is a legal matter that we decide *de novo*. See **State v. Krier**, 165 Wis. 2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The seminal case in this area is **Terry v. Ohio**, 392 U.S. 1 (1968), which

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<sup>1</sup> A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. WIS. STAT. § 971.31(10).

recognized that “a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.” *Id.*, 392 U.S. at 22. It is not necessary, however, that the officer suspect that the unlawful activity is a *crime* in the technical sense of that word; it is enough that the officer have “a reasonable suspicion that something unlawful might well be afoot.” *State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681, 685 (1996). Here, as the trial court cogently pointed out, the officer would have been remiss if he did not question the driver of the car to see why he entered a parking lot of a dark, closed business at 3:45 in the morning, especially when the lot is, as the officer testified without contradiction, essentially not visible from the road. The officer lawfully stopped Haubrich. The trial court did not err in denying Haubrich’s suppression motion.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

