

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ALLEN WILLIAM MILLER,

Defendant-Appellee.

UNPUBLISHED

February 2, 1999

No. 210283

Oakland Circuit Court

LC No. 96-006566 AR

Before: Murphy, P.J., and Fitzgerald and Gage, JJ.

FITZGERALD, J. (dissenting.)

I respectfully dissent from the majority's determination that the officers had probable cause to stop defendant's vehicle.

A police officer acting independently outside his jurisdiction acts as a private citizen, *People v Meyer*, 424 Mich 143, 154; 379 NW2d 59 (1985); *People v Davis*, 133 Mich App 707, 714-715; 350 NW2d 796 (1984), and therefore must have probable cause to make an investigative stop. See *United States v Foster*, 566 F Supp 1403 (DC 1983). Probable cause exists "if the facts available to the officer would justify a fair minded-person of average intelligence to believe that the suspected person has committed a felony." *People v Thomas*, 191 Mich App 576, 579; 478 NW2d 712 (1991). The circumstances of this case do not give rise to probable cause. There is no suggestion that defendant committed a crime before the officers began surveillance of defendant's vehicle. Although the officers subsequently observed defendant exchanging something under suspicious circumstances, the officers conceded that they could not make out the details of what appeared to be a curbside transaction and that they did not see what was exchanged. Under these circumstances, a fair minded person of average intelligence simply did not have enough information to justify forming a belief that defendant committed a felony. *Thomas, supra*. Consequently, the investigative stop and resulting arrest were invalid. I would affirm.

/s/ E. Thomas Fitzgerald