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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0935**

State of Minnesota,
Respondent,

vs

Zachariah Daniel Wilson,
Appellant.

**Filed June 3, 2019
Affirmed
Bratvold, Judge**

Scott County District Court
File No. 70-CR-17-22310

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

In this direct appeal from the judgment of conviction for fifth-degree
controlled-substance possession and giving a peace officer a false name, appellant argues

that law enforcement lacked reasonable and articulable suspicion to detain him. Because appellant forfeited this issue by not raising it at the omnibus hearing, and because the record is not sufficiently developed for appellate review, we decline to address the issue and affirm appellant's conviction.

FACTS

On December 14, 2017, just after 2:00 a.m., Officer Hendricks of the Shakopee Police Department was on patrol, driving down a county highway, when he conducted a random license-plate check of a Buick that was also travelling on the same highway. The license plates were registered to a Subaru. Hendricks testified that, in his experience, a mismatched license plate is often indicative of criminal activity, such as an invalid driver's license, active warrants, or a stolen car. Hendricks radioed other officers for backup before activating his emergency lights; the Buick pulled over.

As he walked over to speak with the driver, Hendricks saw five occupants (a driver, a front passenger, and three backseat passengers). Appellant Zachariah Daniel Wilson was sitting in the backseat, directly behind the front passenger. The other two backseat passengers kept "moving around" and Hendricks repeatedly told the middle backseat passenger to stop moving. Hendricks noticed that none of the backseat passengers were wearing seatbelts.

The driver appeared "very nervous" and admitted that she did not have her driver's license. The front passenger said that they were headed to Mystic Lake Casino. Hendricks asked everyone for identification, which the driver, front passenger, and middle backseat passenger were able to provide. Wilson told Hendricks he did not have any identification;

Wilson said his name was “Thomas Wilson” and his birthdate was January 13, 1977. The third backseat passenger gave Hendricks what later turned out to be a false name and birthdate. Hendricks noted the Buick’s vehicle identification number (VIN) and returned to his squad car while two backup officers remained with the Buick and its occupants.

Hendricks ran a computer check of the VIN, which revealed the Buick was stolen. Hendricks contacted dispatch to report the stolen car; a fourth officer reported as additional backup. Hendricks then returned to the Buick where he and the other officers detained all five occupants by handcuffing each of them and placing most of them in different vehicles.

After handcuffing Wilson, Hendricks conducted a pat-down search, which did not turn up any weapons. Hendricks also asked Wilson if he would consent to having his pockets searched and Wilson refused. Hendricks honored Wilson’s refusal and seated him in the backseat of a squad car.

Hendricks next checked the name and birthdate that Wilson had provided, which did not return any results on any database. Hendricks testified that in his experience, no results for a name and birthdate “leads [him] to believe that they’re giving false information,” probably due to active warrants.

Hendricks then asked Wilson if he had provided false information, which Wilson denied. Wilson gave Hendricks a middle name (Thomas Lester Wilson), explained that he had never had a Minnesota driver’s license, and that he did not know his social security number. Hendricks attempted to identify Wilson using the additional information provided, but again received no results. Hendricks also spoke to the driver, who identified Wilson as “Zach.”

Hendricks arrested Wilson for providing false information to a peace officer and riding in a car without the owner's consent. Hendricks searched Wilson and found "several plastic bags containing a white crystalline substance inside of them," which field-tested positive for methamphetamine. Hendricks and the other officers then searched the Buick and found drug paraphernalia near where Wilson and the middle backseat passenger had been seated. The other four individuals in the Buick were also arrested for various offenses.

Wilson was identified as Zachariah Daniel Wilson after he was fingerprinted at the jail. Wilson had at least one active arrest warrant. The state charged Wilson with fifth-degree controlled-substance possession (count I), in violation of Minn. Stat. § 152.025, subd. 2(1) (2016); motor vehicle tampering (count II), in violation of Minn. Stat. § 609.546(1) (2016); and giving a peace officer a false name (count III), in violation of Minn. Stat. § 609.506, subd. 1 (2016).

At the omnibus hearing, Wilson contested the probable cause for his arrest and the legality of the search incident to arrest; his counsel expressly waived all other issues. The district court, in a written memorandum, concluded that law enforcement had probable cause to arrest Wilson for providing a false name to a peace officer, but dismissed count II (motor vehicle tampering) after finding that Hendricks "did not have sufficient probable cause to arrest [Wilson] on [c]ount II due to the lack of evidence that [Wilson] knew he was riding in a stolen vehicle." Wilson proceeded to a jury trial on the remaining two counts, and was found guilty on both counts.

In May 2018, Wilson was sentenced on count I to 365 days in jail, which was stayed while Wilson was on supervised probation for five years. Wilson was sentenced to 90 days on count II, which was satisfied by time already served. Wilson appeals.

DECISION

Wilson argues that law enforcement lacked reasonable, articulable suspicion that would justify detaining him in the backseat of the squad car. This is the only issue Wilson raises in his brief to this court. He acknowledges that the issue was not raised in the district court. Wilson contends that this court should address the legality of the expansion of the traffic stop because his argument “effectively challenges the legality of his arrest,” which is an issue he raised in district court. Alternatively, Wilson argues that we should address the issue “on its merits in the interest of justice.”

Appellate courts ordinarily do not address issues for the first time on appeal, even issues that involve constitutional questions. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). An appellate court “may deviate from this rule when the interests of justice require consideration of such issues and doing so would not unfairly surprise a party to the appeal.” *Id.* The Minnesota Supreme Court has previously concluded that the “interests of justice do not require us to address [an] issue, where [a defendant] consented to and actively encouraged” the forfeiture of an issue which was then raised for the first time on appeal. *State v. Wembley*, 728 N.W.2d 243, 245-46 (Minn. 2007).

Appellate courts consider several factors to determine whether to address an issue in the interests of justice. *State v. Johnson*, 851 N.W.2d 60, 64 (Minn. 2014). One factor is whether the issue poses a legal or factual question. *See id.* If the issue is factual in nature,

we consider whether the record is sufficiently developed for appellate review of the new issue. *See id.* Second, appellate courts consider whether an appellant had the opportunity to raise the issue in the district court. *See id.* Third, we may decline to address an issue raised for the first time on an appeal if it works an unfair surprise on the opposing party. *State v. Henderson*, 706 N.W.2d 758, 759 (Minn. 2005).

At the omnibus hearing, the district court asked defense counsel whether Wilson was “waiving all other omnibus issues other than the arrest and search,” to which defense counsel responded, “That’s correct, your Honor.” Similarly, Wilson’s post-hearing memorandum addressed only whether the officer had probable cause to arrest Wilson. In its written order, the district court identified, and addressed, whether Hendricks had probable cause to arrest Wilson and the legality of the search of Wilson’s person incident to arrest. The district court made no findings of fact or conclusions of law with regard to Wilson’s detention in the backseat of the squad car.

Wilson argues that, while the issue raised in his brief to this court was not raised below, he is “effectively” challenging the legality of his arrest by challenging the initial detention. We disagree. At the omnibus hearing, Wilson only challenged whether probable cause existed for his arrest and the legality of the search of his person subsequent to arrest. Wilson explicitly forfeited all other issues. The district court did not make findings regarding law enforcement’s reasonable and articulable suspicion to expand the traffic stop and detain Wilson in the back of a squad car. Moreover, because Wilson only challenged whether probable cause existed for his arrest and the subsequent search of his person, the state had no opportunity to develop a factual record on the legality of Wilson’s initial

detention. Thus, this court lacks the required record and factual findings to review the issue now raised for the first time on appeal. If we were to address the legality of Wilson's initial detention, it would, therefore, work an unfair surprise on the state. *See State v. Gauster*, 752 N.W.2d 496, 508-09 (Minn. 2008) (holding that the state could not raise the automobile exception to the warrant requirement because the issue was not raised at the district court, the record was insufficiently developed on relevant facts, and the district court made no findings of fact on that issue).

Because we conclude that Wilson forfeited the issue he now raises for the first time on appeal, we decline to address it and affirm Wilson's conviction.

Affirmed.