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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0743**

State of Minnesota,
Respondent,

vs.

Heather Delores Spry,
Appellant.

**Filed March 9, 2020
Affirmed
Johnson, Judge**

Cook County District Court
File No. 16-CR-17-232

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

Molly Hicken, Cook County Attorney, Brittany Kubes, Assistant County Attorney, Grand Marais, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Johnson, Judge; and Segal, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A Cook County sheriff's deputy found methamphetamine, marijuana, and drug paraphernalia in Heather Delores Spry's purse. She was charged with four drug-related

offenses. Before trial, she moved to suppress the evidence. The district court denied the motion. After a court trial, the district court found Spry guilty of all four offenses. On appeal, Spry argues that the district court erred by denying her motion to suppress. We affirm.

FACTS

In the afternoon of September 5, 2017, Deputy Hughes of the Cook County Sheriff's Office was in the city of Grand Marais when he saw a grey Cadillac car drive past him. Based on his prior work experience and the car's license-plate number, Deputy Hughes knew that the car previously had been observed by law-enforcement officers at houses known for drug activity and that the registered owner of the car resided with known drug users. Deputy Hughes waited several minutes and then drove to a nearby house that is known for drug activity. He saw the Cadillac parked in front of the house. Deputy Hughes was aware that a particular person, whose first name begins with the letter M, resided at the house.

Deputy Hughes parked nearby and waited for the Cadillac to drive away. Deputy Hughes then followed the Cadillac on U.S. Highway 61 for approximately four to five miles, without activating his emergency lights. Deputy Hughes saw the Cadillac turn into a thrift-store parking lot. Deputy Hughes made a U-turn and drove into the parking lot. He saw that the Cadillac was parked and unoccupied. He went inside the thrift store and saw Spry standing near the entrance.

Deputy Hughes was aware that Spry previously had been convicted of selling methamphetamine and that her driver's license was revoked. He previously had stopped

Spry while she was driving the Cadillac (though she was not the registered owner) and warned her about driving without a valid driver's license. He also knew that law-enforcement officers recently had executed a search warrant at Spry's residence and found methamphetamine paraphernalia. Deputy Hughes asked Spry if she had been driving the Cadillac. Spry answered in the affirmative. He asked Spry where she had driven the car, and she said that she was coming "from [M.'s] house."

Deputy Hughes asked Spry to step outside with him, and Spry complied. Deputy Hughes asked Spry if she had anything illegal in the vehicle, on her person, or in her purse. Spry answered in the negative. Deputy Hughes asked Spry if he could search her purse. She responded by saying, "Yes," and she then admitted that there was marijuana inside her purse. Spry handed the purse to Deputy Hughes. He found a bag of marijuana and three hypodermic syringes in a side pocket, one of which had a clear liquid inside. Spry confirmed that she did not have a prescription for the needles and was not diabetic. Deputy Hughes continued to search the purse and found a glass pipe and three baggies with white residue.

The state charged Spry with four offenses: (1) fifth-degree possession of a controlled substance, based on her possession of methamphetamine, in violation of Minn. Stat. § 152.025, subd. 2(1) (2016); (2) unlawful possession of a hypodermic syringe, in violation of Minn. Stat. § 151.40, subd. 1 (2016); (3) possession of drug paraphernalia, in violation of Minn. Stat. § 152.092(a) (2016); and (4) possession of more than 1.4 grams of marijuana in a motor vehicle, in violation of Minn. Stat. § 152.027, subd. 3 (2016).

In October 2017, Spry moved to suppress the evidence. The motion was considered at an omnibus hearing in December 2017. At the outset of the hearing, Spry's attorney identified two issues: first, Deputy Hughes's stop of Spry and, second, the subsequent expansion of the stop. The state called one witness, Deputy Hughes, and introduced one exhibit, Deputy Hughes's written report. Spry declined to introduce any evidence. Spry later submitted a memorandum of law in which she argued that the initial stop was unreasonable on the ground that Deputy Hughes did not have a reasonable suspicion of criminal activity and that Deputy Hughes unreasonably expanded the scope of the stop by asking her to step outside the store and by asking for her consent to search her purse. Spry did not argue that her consent was invalid. In response, the state argued that the stop was valid based on a reasonable suspicion that Spry was driving without a valid driver's license and that the stop was lawfully expanded based on a reasonable suspicion that Spry was in possession of drugs or was otherwise engaged in drug-related activity.

In February 2018, the district court filed an order in which it denied Spry's motion to suppress. The district court reasoned that Deputy Hughes lawfully stopped Spry based on a reasonable suspicion that she was driving without a valid driver's license. The district court also reasoned that Deputy Hughes lawfully expanded the stop based on a reasonable suspicion of drug-related criminal activity.

In December 2018, the state and Spry agreed to a stipulated-evidence trial. *See* Minn. R. Crim. P. 26.01, subd. 4. In January 2019, the district court filed an order in which it found Spry guilty of all four offenses. The district court imposed a sentence on count 1 of one year and one day in prison but stayed execution of the sentence for three years and

placed Spry on probation. The district court also imposed fines on all four counts. Spry appeals.

D E C I S I O N

Spry argues that the district court erred by denying her motion to suppress evidence. Specifically, she argues that Deputy Hughes's search of her purse is invalid on the ground that he conducted the search without a search warrant, without probable cause, and without a valid exception to the Fourth Amendment's warrant requirement.

We begin by noting the incongruity between the argument that Spry asserts on appeal and the arguments that she made to the district court. At the omnibus hearing, her attorney identified two issues: the initial stop and the subsequent expansion of the stop. Spry later filed a memorandum of law addressing those two issues. At no time in the district court did Spry argue that, if the expansion of the stop was reasonable, Deputy Hughes did not have a lawful basis to search her purse.

On appeal, Spry acknowledges the district court's reasoning that Deputy Hughes reasonably expanded the scope of the stop, but she does not challenge that reasoning. Rather, she argues as follows: "The district court applied the wrong legal test. Assuming for the sake of argument that Deputy Hughes's suspicions were reasonable . . . , [he] needed both probable cause and a warrant to search Spry's purse." Spry did not make such an argument to the district court. Furthermore, her argument ignores the caselaw concerning consent to a search. It is well established that consent to a search is an exception to the Fourth Amendment's requirement of a search warrant supported by probable cause. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26, 93 S. Ct. 2041,

2046-47 (1973); *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011); *State v. Harris*, 590 N.W.2d 90, 102-03 (Minn. 1999).

On appeal, Spry also argues that the district court did not find that she consented to the search of her purse, and she further argues that her consent was invalid. The district court, in describing the relevant facts, stated that “Deputy Hughes requested to search [Spry’s] purse” and that “Defendant consented.” The district court did not analyze the validity of Spry’s consent because she did not argue that the consent was invalid. Rather, the district court analyzed the two issues that Spry raised at the omnibus hearing and argued in her memorandum of law.

If a criminal defendant wishes to assert a Fourth Amendment challenge to the admissibility of the state’s evidence, the defendant must assert an objection at the omnibus hearing. *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 13-14 (Minn. 1965). If a defendant does not raise a particular issue concerning the admissibility of the state’s evidence at the omnibus hearing, the defendant may not do so for the first time on appeal, and the issue is deemed forfeited. *State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989). This general rule applies with special force if the state did not have an opportunity to introduce evidence that would be relevant to the issue that was not disclosed at the omnibus hearing but is argued for the first time on appeal. *See State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996); *State v. Bruner*, 373 N.W.2d 381, 386 (Minn. App. 1985), *review denied* (Minn. Oct. 11, 1985).

Because Spry did not argue to the district court that her consent to the search of her purse was invalid, she has forfeited the issue, and we may not consider it for the first time

on appeal. Thus, the district court did not err by denying Spry's motion to suppress evidence.

Affirmed.