IN THE SUPREME COURT OF THE STATE OF NEVADA

BARBARA MAE GARRETT,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36587

FILED

OCT 30 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of driving under the influence with two or more prior convictions. The district court sentenced appellant to a prison term of 12 to 40 months, and further ordered appellant to pay a fine in the amount of $2,000.00.

Appellant's sole contention is that the district court erred by denying her motion to suppress evidence.[1] Specifically, appellant argues that she was illegally seized when a highway patrol trooper pulled in behind appellant's car and turned on his overhead lights.

Not every contact by police constitutes a seizure. "'Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a "seizure" has occurred.'" Florida v. Bostick, 501 U.S. 429, 434 (1991)(quoting Terry v. Ohio, 392 U.S. 1, 19 n.16 (1968)). Appellant's argument is that the activation of overhead lights by the trooper constituted a "seizure." Under the United States Supreme Court's Fourth

[1]As part of the plea agreement, appellant preserved this issue for appeal.

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Amendment analysis, there is no seizure until there is a show of authority and an individual submits to that authority.

In the instant case, there is no evidence that appellant submitted to the show of authority. Appellant was already stopped when the trooper pulled up behind her car to inquire whether she was having mechanical problems. Appellant has failed even to allege that she was aware that the trooper was there prior to the time that the trooper contacted her. When the trooper contacted appellant, he detected the odor of an alcoholic beverage. At that point, the trooper had reasonable suspicion of criminal activity and was therefore allowed to detain appellant pursuant to Terry. See Walker v. State, 113 Nev. 853, 865, 944 P.2d 762, 770 (1997).

We therefore conclude that there was no illegal seizure, and that the district court did not err by denying the motion to suppress. Having considered appellant's contention and concluded it is without merit, the judgment of conviction is affirmed.

It is so ORDERED.

Young, J.

Maupin, J.

Becker, J.

cc: Hon. Jack B. Ames, District Judge
Attorney General
Elko County District Attorney
Elko County Public Defender
Elko County Clerk

(O)-4892