IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28481-6-III**
	)	
Respondent,	)	
	)	
v.	)	**Division Three**
	)	
RYAN PATRICK TINKER,	)	
	)	
Appellant.	)	**UNPUBLISHED OPINION**

Korsmo, J.—Ryan Tinker challenges his convictions for possession of methamphetamine and resisting arrest, arguing that officers did not have the authority to detain him to discover whether he knew anything about a shooting incident. We agree with the trial court that the brief detention, if there even was one, was reasonable under the circumstances and affirm.

FACTS

Several calls to 911 alerted authorities that gunshots had been fired outside a house at 416 Columbia in Omak around 4:00 a.m. on March 14, 2009.[1] Law enforcement officers from three different jurisdictions responded to the scene. Okanogan County Deputy Sheriff Tim Newton arrived at the location at 4:03 a.m., two minutes after being dispatched. He immediately was directed to cover the alley behind the residence.

The deputy took up a position in the shadows near a shed in the alley. It was very dark and no one was in sight. Within eight to ten minutes two shadows appeared. Mr. Tinker was walking arm-in-arm with a woman identified as Lisa Edwards. The two were coming from the direction of the shooting. The deputy stepped out and identified himself. He asked the couple to identify themselves and if they knew anything about the shooting. They replied that they had heard shots but did not know anything about the matter. The deputy patted the pair down. Neither person had identification on them, so the officer wrote down their names and dates of birth and relayed them to dispatch. He also alerted Omak Officer Donnelly Tallant that there were two people in the alley with whom he might want to talk.

Officer Tallant had been at the front of the residence and, with other officers, had

[1] The deputy described the area as a "badder" part of town with lots of drug dealing and parties. Report of Proceedings (RP) at 15.

talked to witnesses at the scene. He also had located shell casings to confirm that shots had been fired. He and the other officers had not yet been able to enter the house. When he received Deputy Newton's radio request, he "made a beeline" across a neighboring yard to the alley. He had to climb over a fence to reach the threesome in the alley. He testified that it took him at least one or two minutes, but less than five, to reach the alley location. The trial court later determined that "a couple of minutes" passed.[2]

When the officer arrived, he heard the deputy tell the pair to keep their hands out of their pockets. Officer Tallant also patted down the outer clothing of the two because the gun used in the shooting had not been located. He was patting down Ms. Edwards when the deputy's radio reported that there was an outstanding felony warrant for Mr. Tinker's arrest. Tinker turned and ran with the two officers in pursuit. They apprehended him a short distance away and formally arrested him. A search incident to the arrest revealed that Mr. Tinker had a small amount of methamphetamine in his pocket.

He was charged in the Okanogan County Superior Court with possessing the controlled substance and resisting arrest. The case proceeded to a combined CrR 3.5 and 3.6 hearing. Deputy Newton and Officer Tallant both testified, as did Mr. Tinker's father. The parties were unable to locate Ms. Edwards; she did not testify.

[2] RP at 82. The court's oral ruling on this point was not included in the written findings.

The trial court concluded that Mr. Tinker had been reasonably detained subject to an emergency regarding the shooting; he was not the subject of an investigative detention. The court found the decision in *State v. Rice*[3] to be on point and denied the motion to suppress.

Mr. Tinker was subsequently convicted of the charged offenses at a stipulated facts trial. The trial court imposed a first offender sentence. Mr. Tinker then timely appealed to this court.

ANALYSIS

The parties dispute the nature of the detention and whether it was justified. On this record, it is unclear if there even was a detention.

Not every encounter between a law enforcement officer and a citizen "is an intrusion requiring an objective justification." *United States v. Mendenhall*, 446 U.S. 544, 553, 64 L. Ed. 2d 497, 100 S. Ct. 1870 (1980). It is the defendant's burden in a CrR 3.6 hearing to establish that he was seized. *State v. Young*, 135 Wn.2d 498, 510, 957 P.2d 681 (1998); *State v. Thorn*, 129 Wn.2d 347, 354, 917 P.2d 108 (1996), *overruled on other grounds by State v. O'Neill*, 148 Wn.2d 564, 62 P.3d 489 (2003). Once a seizure has been established, it is the State's burden to show that the seizure was justified. *State v. Potter*, 156 Wn.2d 835, 840, 132 P.3d 1089 (2006). In Washington, a seizure occurs

[3] *State v. Rice*, 59 Wn. App. 23, 795 P.2d 739 (1990).

when a person is not free to leave because of physical force or a show of authority. *Young*, 135 Wn.2d at 510.

The parties did not develop the facts concerning the detention at the hearing. Deputy Newton was not asked about if or how he detained the couple, and neither of them testified at the hearing; Officer Tallant was only briefly on the scene before news of the arrest warrant surfaced. The deputy was not asked about how he performed the frisk, whether he sought permission or not, and, most tellingly, no evidence was presented concerning the couple's situation after the frisk. Were they ordered to remain, told they could leave, or just ignored altogether? The parties also did not develop the time frame concerning how long the encounter had lasted before Officer Tallant was summoned.

On this record it is difficult to even find that a seizure occurred, and it is especially difficult to determine if the couple's continued presence in the alley was the result of some command of the deputy's. However, the parties do not dispute the point and the trial court clearly found that there was a seizure, so we are loathe to deny Mr. Tinker's appeal solely on that basis.

Assuming that there actually was a seizure, we agree with the trial court that it was justified under *Rice*. There, as here, an officer responded to a building where there had been a "shots fired" report. *Rice*, 59 Wn. App. at 24. The location was known to the

officer to be a high crime area. *Id*. at 24-25. When he arrived, the only people in sight were some juveniles who started leaving upon seeing the officer. The officer directed Mr. Rice to come talk to him. When the two made contact, the officer frisked Mr. Rice for weapons because the young man kept putting his hands in his pockets. The frisk revealed drugs. *Id*. at 25.

The Court of Appeals ruled that the actions were valid under *State v. Kennedy*, 107 Wn.2d 1, 726 P.2d 445 (1986), and *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). *Rice*, 59 Wn. App. at 26-28. The court assumed that the command for the young man to talk to the officer constituted a seizure. *Id*. at 28. In the context of a shots fired call, it was reasonable to contact those present. "Justification was present, and the intrusion was minimal." *Id*. After finding the seizure lawful, the court also determined that the frisk was justified due to the "shots fired" report and the defendant's repeated placement of his hands at his waist. *Id*. at 28-29.

Rice does support the trial court's ruling. Assuming that the couple's continued presence in the alley was the result of a police command, it was reasonable to confirm their identities. They were near the scene of a shooting in the wee hours of the morning, no later than 10-12 minutes after the crime was committed. Identifying them as either potential witnesses or suspects was reasonable and amounted to a minimal intrusion. The

frisks for weapons, although not producing any evidence, were justified by the knowledge that a gun had been used in the area and the pair kept returning their hands to their pockets while standing in a dark alley. It appears that the detention was brief.[4] In light of the circumstances, the trial court did not err in denying the motion to suppress.

The convictions are affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

____
Korsmo, J.

WE CONCUR:

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Kulik, C.J.

____
Siddoway, J.

[4] At a minimum, we have no basis in the record for overturning the trial court's finding on that point.