

## Investigative Detention: Donahue v. Wihongi

### Description

A case out of the 10<sup>th</sup> Circuit back in January 2020 started as a typical neighborly dispute. This case has a number of twists and turns involving Reasonable Suspicion vs Probable Cause, handcuffing during an Investigative Detention, and the process for releasing a suspect if a determination is made to release the handcuffed suspect without further detention.

Before we begin, a couple of things should be noted; first, the court found that the officers had probable cause to arrest Dr. Donahue for a Utah statute that requires a person to give his name to officers when the officers have probable cause to make an arrest. Second, this case also involves the Utah public intoxication statute. Either of these statutes may or may not be available in your jurisdiction so as always, it is important to check your policies and statutes in regard to this case.

### Facts

On a late April night, Dr. Donahue was walking through his neighborhood when he saw an unknown woman lurking in his neighbor's bushes. The doctor approached the woman and a confrontation ensued. After the doctor called the woman a "piece of s\*\*t", the woman slapped the doctor in the face. The two combatants approached two officers and explained their sides of the story. The doctor first told the officers that he wanted the woman arrested for assaulting him but later changed his mind and the woman was released.

The officers observed that the doctor appeared intoxicated and asked him to provide his name; the doctor refused. The officers then explained the state's public intoxication statute and advised the doctor that they believed he was in violation of the statute. Dr. Donohue agreed that he had been drinking but he still would not provide his name.

The officers then handcuffed the doctor and advised him he was being detained for public intoxication and failing to provide his name. Nonetheless, the doctor continued to refuse to identify himself. The doctor requested that a supervisor be called to the scene. Nineteen minutes later the Sergeant arrived on scene and directed that Dr. Donohue be released. The doctor was released and left the scene three minutes later. The entire incident was chronicled on the officers' BWCs and the court included a timeline of the event as part of their decision.

The plaintiff doctor filed a pro se complaint alleging that the officers lacked probable cause to arrest him, detained him for an excessive period of time, and used excessive force during the detention. The trial court granted the defendant officers summary judgment motion on the grounds that there were no constitutional violations committed by the officers. This appeal followed.

### Tenth Circuit Findings

The appellate court first addressed the plaintiff's detention. The court determined that officers had reasonable suspicion to believe that Dr. Donohue was publicly intoxicated and therefore had the authority to demand the doctor identify himself.

It was reasonable for the officers to suspect Dr. Donohue was intoxicated. In fact, the female told officers that the doctor appeared “drunker than Cooter Brown”. In addition, the officers believed that the doctor’s behavior supported the officers’ belief that the doctor posed a danger to others.

The court then turned to the question of probable cause for violation of the failure to identify statute. Four factors are required to make an arrest under the statute:

1. The officer demands the suspect identify himself.
2. The demand must be reasonably related to the officer’s duties.
3. The disclosure would not present a danger of self- incrimination.
4. The suspect fails to provide his name.

Under the circumstances, officers were authorized to invoke the statute based on their investigation and Donohue’s failure to provide his name, which supported the officers’ arrest.

Finally, the court determined the force used was reasonable under the circumstances. The court agreed with Donohue that the *Graham* factors required “minimal force” since the crimes at issue were minor misdemeanors, Donohue was unarmed and he did not make hostile motions towards the officers, and he did not actively resist the arrest. After review of the BWC footage the court determined that the officers used minimal force and there was no injury experienced by the plaintiff. The court affirmed the trial court’s ruling.

### **Takeaways**

This case brings up some important points worth review. First, there may be times when review of an incident by a supervisor results in the release of a suspect without further detention. Hopefully, your agency directives provide guidance on the steps to take when this occurs. As you can see in this case, the fact that the suspect is released doesn’t necessarily mean that the case is over. Be sure to document all aspects of the stop and retain any video footage just as you would in a complete arrest situation. It is not unusual for these cases to later turn into a civil action.

Second, as we have discussed in past sessions it is a thin line between an investigative detention and an arrest. Be sure to document your actions and the information available to you. The fact that a suspect is handcuffed during a stop based on reasonable suspicion does not necessarily turn a stop into an arrest. Documentation of an event will help the court affirm that your actions were the correct ones and will save you a lot of headache in the long run.

### **Date Created**

08/19/2020