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If police ask, do you have to give out your name?

By Martin E. Comas, Orlando Sentinel

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Janet Lovett's troubles started last April when she took her 7-year-old son to the Tavares Splash Park.

She kicked off her shoes and jumped in to play with her boy. But after her T-shirt and bra became soaked, some parents complained to a park employee that the somewhat transparent shirt was "offensive." Police were called and an officer asked Lovett for identification. Lovett said she didn't have it. When the officer asked Lovett for her name two more times, she became upset and eventually gave only her first name.

The officer warned she would be arrested for not giving her full name. Lovett questioned why she needed to give out that information if she didn't commit a crime. The officer then slapped handcuffs on Lovett and drove her to the Lake County Jail, where she was booked for obstructing an officer without violence.

The State Attorney's Office declined to file charges against Lovett. Still, her arrest raises the issue of when a person is required to give his name at the request of a law officer. It depends, legal experts say, on why or when an officer is asking for it and on whether the person is being detained, arrested or simply having a casual conversation with an officer. Motor-vehicle drivers are required by Florida law to show a drivers license, regardless.

"The important question is if you're free to leave," said Jay Rorty, director of the American Civil Liberties Union Criminal Law Reform Project in Santa Cruz, Calif. "People have to know — and they are free to ask — whether they are being detained or whether they have the right to leave."

'Delicate dance'

Generally, if a person is being detained or arrested he would have to give up his name. However, each state has laws on the issue — called "stop and identify" statutes. In Florida, a police officer would have cause to arrest someone for refusing to identify himself when investigating a loitering or prowling incident, according to state law.

Even so, a police officer may approach someone in public and ask questions, either engaged in friendly conversation or to gather information on a possible crime. And an officer is usually not required to tell a person the reason for the request.

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Police can also detain and search someone on the street, including asking for the person's name, if they have a reasonable suspicion that a crime has been or is being committed. That's based on the 1968 Supreme Court decision in *Terry v. Ohio*.

"The thing to understand is that police are trained to be inquisitive and ask questions...and that sometimes blurs the distinction between the consensual conversation and detention," said Tim Lynch, an attorney and director of the Cato Institute's project on criminal justice in Washington D.C. "It's a delicate dance.... What started out as consensual could on a dime turn into something else."

Ask if you're not sure, Lynch said.

"The onus is on the citizen to assert themselves," he said.

'Why else would an officer ask for it?'

In 2004, the U.S. Supreme Court upheld that states can enact laws requiring individuals to identify themselves and that that would not violate the U.S. Constitution's Fourth Amendment right to privacy or the Fifth Amendment's protection against self-incrimination.

In the Nevada case, a deputy sheriff answered a call that a man was hitting a woman inside a red and silver pickup. When the deputy arrived, he saw Larry Hiibel standing by a similar truck on the shoulder with a woman inside. The deputy asked Hiibel 11 times for his name. Hiibel repeatedly refused, saying he had not done anything wrong. Hiibel even taunted the officer by placing his hands behind his back and telling him to take him to jail.

Hiibel later argued that Nevada's law that allows police to detain individuals for up to an hour to compel them to give up their name violated his Fourth and Fifth Amendment constitutional rights.

In a 5-to-4 landmark decision, Supreme Court justices ruled that someone's name is usually not incriminating and Hiibel had no reason to believe his name would be used against him. However, in a dissenting opinion, Justice John Paul Stevens wrote that the Fifth Amendment protects individuals from making incriminating statements about themselves and that could include giving out their name.

"But why else would an officer ask for it?" Stevens wrote.

'Absolute right to walk away'

In the case regarding Lovett and her trip to the Tavares Splash Park, the 36-year-old Eustis homemaker recently filed a notice with the city that she intends to sue the city for malicious prosecution, false arrest, battery and violation of her civil rights.

Her attorney, Howard Marks of Winter Park, said an individual has the "absolute right to walk away and refuse any communication" during a casual conversation with an officer. An officer would have to have a reason to detain someone and ask for identification. And Lovett never broke any laws, he said.

"They have to have some reasonable suspicion that a crime has been committed or is being committed," Marks said. "And there was none of that here, because she [Lovett] never committed nor was there any belief she had even committed a crime."

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