IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	**ID#: 0003016874**
	)	
MILTON TAYLOR,	)	
	)	
Defendant.	)	

Submitted: March 2, 2001
Decided: March 20, 2001

OPINION and ORDER

Upon Taylor's Motion to Suppress–*DENIED*

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SILVERMAN, J.

Taylor's trial for first degree murder begins in a few days. Now,

the Court must decide Taylor's Motion to Suppress an incriminating paper found on his person when the police arrested him, and a loose comment Taylor made to a "turnkey" after he had invoked his right to remain silent.

I. A.

The important facts are not in dispute. On March 25, 2000 Taylor was wanted for a probation violation and he was a suspect in this murder case. Acting on a tip, police officers in a marked police car spotted Taylor using a public telephone, on a city street corner. A police officer ordered Taylor to hang up the telephone. Taylor complied and he calmly walked over to the police car. The police stepped out of the police car, frisked Taylor and asked him his name. Taylor gave them a false one. They asked him again. Taylor still did not identify himself. Instead, he said, "Listen, you know what this is about. Just cuff me up." The police obliged. As he was being handcuffed, Taylor confirmed his actual name.

After he was arrested and placed in the police car, Taylor was driven to police headquarters where he was searched. The police discovered a folded piece of paper in the front pocket of Taylor's sweatshirt. The police seized the paper, unfolded it and read it. As mentioned, the paper's contents are incriminating. Initially, Taylor's suppression motion challenges the failure of the police to obtain a search warrant before they seized, unfolded and read the incriminating paper.

I. B.

Not long after Taylor was arrested, the police read the *Miranda* rights to him. Shortly after that, Taylor invoked his right to remain silent and the police took him to the police headquarters' holding cells, the "turnkey area." There, Taylor overheard the turnkey answering another detainee's questions about court procedures. The other detainee was in a different holding cell. Taylor put his hands through the bars of his cell and called to the turnkey: "What about me?" The turnkey replied to Taylor by asking who he was. Taylor responded and the turnkey asked, "What are you here for?" Taylor then stated, "Double homicide." Taylor now claims that the jailer's "What are you here for?" was an unconstitutional interrogation. There is no suggestion, however, that the exchange between the jailer and Taylor was precipitated by a subterfuge. The conversation between the jailer and the other inmate was not staged in order to get around Taylor's previous invocation of his right to remain silent. In fact, the jailer did not intend to speak with Taylor until Taylor asked her about what would happen to him.

II.

Even though the police did not have a search warrant when they seized and read Taylor's incriminating paper, the police behaved reasonably. It is undisputed that Taylor was wanted and that his arrest was lawful. It also is undisputed, under the circumstances, that the police were allowed to conduct an inventory search of Taylor and his effects. In other words, Taylor tacitly concedes that the paper fell into the State's possession lawfully. Taylor, however, challenges the scope of the search and seizure. Taylor's constitutional

challenge arose when the police, without a search warrant, opened and read his paper.

Taylor argues that he was arrested "only" on a capias (bench warrant) for violation of probation. According to Taylor, the police could have obtained a search warrant, if the police had probable cause. Furthermore, Taylor argues that "because the police had no policy whatsoever with regard to the opening and/or reading of personal letters during inventory searches . . . .," the State cannot justify reading the letter.

The Wilmington Police have detailed written policies concerning inventory searches. While the policies call for seizing, cataloging and storing an arrested person's effects, including papers, the policies neither authorize nor prohibit reading a seized letter, specifically. The Court is satisfied, nonetheless, that the police acted properly.

First, Taylor had been arrested and the police were holding him and they did not expect to release him. To the contrary, the police intended that Taylor would never be released, ever. Taylor was in a police building. He was in close proximity to other detainees and police officers. The police were justified in unfolding the letter to make certain that it did not contain contraband, such as drugs or a razor. The police also had an interest in establishing that the paper, itself, was not valuable and that it belonged to Taylor. Furthermore, Taylor initially denied his true identity when the police confronted him on the street corner. Although he later admitted his identity, the police had special reason to look at the letter. It might have shed further

light on Taylor's identity.

In considering whether it was reasonable for the police to seize and read the letter, the Court has considered the implications of requiring a warrant under the circumstances presented here. It simply is unrealistic and impractical to allow the police to seize and catalogue a folded piece of paper, but prohibit them from at least glancing at it without first obtaining a search warrant. Requiring a search warrant under the facts presented by this case would be especially far-fetched.

The Court also is not persuaded by Taylor's argument to the effect that unless the police had a written policy allowing them to read the letter, a search warrant was necessary. The police may not rummage through a suspect's belongings under the pretext of an inventory. Nor may the police, as part of a legitimate inventory, scrutinize voluminous records in order to ferret out evidence. But that is not what happened here.

Taylor was arrested on a bench warrant and he was the prime suspect in a murder. He was going to be detained and the likelihood that his belongings would wind up in storage was substantial. The need for a thorough inventory was genuine and important.

The case law on inventory searches' permissible scope is not completely uniform. The great weight of authority, however, allows the police to inventory arrested suspects' personal effects and to read any papers the police find.[1] The limited authority to the contrary is less persuasive.[2] More

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[1] ***See U.S. v. Phillips*, 607 F.2d 808, 809 (8th Cir. 1979) (handwritten note**

importantly, the cases where search warrants have been required are distinguishable on their facts.[3]

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taken from defendant's wallet after arrest was admissible); *Schwindt v. State*, 510 N.W.2d 114, 117-118 (N.D. 1994) ("[Defendant's] constitutional rights were not violated by the officer's inventory search of the folded papers in [defendant's] billfold."); *People v. Hovey*, 749 P.2d 776, 791 (Cal. 1988) ("[W]e reject defendant's contention that the officers should not have *read* the papers discovered in defendant's wallet, after finding no weapons or contraband. A reasonably complete inventory would include identifying the document seized and . . . it was necessary to read the car receipt in order to properly identify and inventory it.").

[2] **Defendant cites *Whren v. U.S.*, 517 U.S. 806 (1996); *U.S. v. Best*, 135 F.3d 1223 (8th Cir. 1998); *U.S. v. Palacios*, 957 F.Supp. 50 (S.D.N.Y. 1997).**

[3] ***See D'Antorio v. State*, 926 P.2d 1158, 1164 (Alaska 1996) (detective not allowed to read through voluminous papers found as part of automobile inventory search). *See also Commonwealth v. Sullo*, 532 N.E.2d 1219, 1221-1222 (Mass. App. Ct. 1989) ("[W]e need not quarrel with an inventory of the contents of a wallet . . . . We can even assume arguendo that the police are not required to blind themselves to information**

appearing on a paper or card that declares its nature to anyone at sight . . . . What the police may not do is hunt for information by sifting and reading materials taken from an arrestee which do not so declare themselves . . . .").

Moreover, Taylor reads too much into the scant authority that superficially appears to require all inventory searches be performed pursuant to explicit, written policies. While the Wilmington Police Department's written, inventory search procedures were not explicit with respect to whether the folded papers should be read, the inventory search of Taylor's personal effects was conducted under the general authority of a written procedural manual. Although the booking officers, by implication, had some discretion over whether they would unfold and read Taylor's paper, the manual did not leave the booking officers without reasonably specific guidelines. The procedural manual was not perfect,[4] but it restricted the booking officers' opportunity to conduct criminal investigations under the guise of inventories.[5] As discussed above, the examination of Taylor's personal effects, including the paper, was undertaken as part of an authentic inventory search.

III.

The Court is satisfied that the turnkey's post-*Miranda* question --

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[4] ***See U.S. v. Wilson*, 938 F.2d 785, 789 (7th Cir. 1991) (containers could be opened during inventory search despite fact that policy did not contain "the buzz words 'closed container'") (citing *Florida v. Wells*, 495 U.S. 1 (1990)). *See also State v. Filkin*, 494 N.W.2d 544 (Neb. 1993) ("[T]here is no constitutional requirement that inventory policies be established in writing.").**

[5] ***Colorado v. Bertine*, 479 U.S. 367, 374 (1987) ("[R]easonable police regulations relating to inventory procedures administered in good faith satisfy the Fourth Amendment, even though courts might as a matter of hindsight be able to devise equally reasonable rules requiring a different procedure.")**

"What are you in for?"-- did not violate Taylor's *Miranda* rights. Taylor voluntarily initiated the exchange between him and the turnkey. Her question was a logical response to Taylor's asking her what was going to happen to him. The turnkey's motives were sincere. No trick, deception or coercion was involved. Taylor has not begun to establish that his expressed desire to remain silent somehow was overcome by police misconduct.

Having concluded that Taylor's statement to the turnkey was not in violation of his *Miranda* rights, the Court nevertheless is concerned that the statement is problematic under Delaware Rule of Evidence 403.[6] At trial, before the State attempts to use Taylor's statement in its case-in-chief, the State will have to create a record establishing a context for Taylor's statement. If the jury can evaluate the remark's value without improper speculation, then it will be admissible

during the State's case-in-chief. Otherwise, Taylor's statement will be usable only if Taylor testifies.[7]

IV.

For the foregoing reasons, Defendant's Motion to Suppress is DENIED.

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[6] **D.R.E. 403 provides: Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.**

[7] ***See State v. Nelson*, Del. Super., Cr. A. No. 9801001490, Silverman, J. (Dec. 23, 1998) (Op. And Order).**

IT IS SO ORDERED.

Date **Judge**

oc: Prothonotary (Criminal)