

THE DEATH OF WALTER C. BURKS
An Analysis of Police Actions
By Communities United Against Police Brutality
April 12, 2004

NOTE: The following case analysis is derived from Hennepin County Sheriff's Department investigation documents, witness statements, police officer statements, 911 recordings and other materials obtained through Minnesota Data Practices Act requests.

Introduction

In August 2003 two African American men died at the hands of Minneapolis police officers after the use "less lethal technologies." Walter Burks, 36, and Anthony M. Williams, 28, died after use of Freeze Plus-P, a combination of pepper spray and tear gas known for causing temporary pain, tearing in the eyes and--more significantly--difficulty breathing. Mr. Burks was also Tasered during his encounter with police. A third man, Raymond L. Siegler, died February 2, 2004--less than a week after an encounter with police during a mental health crisis. He suffered a massive heart attack after being Tasered and never recovered.

At least two of the deaths involved police officers trained as Crisis Intervention Specialists, and all three involved use of so-called "less lethal" weapons during mental or medical crisis situations. We offer the following analysis of the Walter Burks case in the hopes that through an in-depth examination of a crisis-related death will bring forth new and better intervention methods that will reduce or even eliminate deaths of individuals who interact with Minneapolis police during a crisis.

Burks Incident Chronology

On August 6, 2003 at almost midnight a man entered the SuperAmerica convenience store on West Grant Street in downtown Minneapolis. Walter Curtis Burks, 36 years old, African American, was shirtless and sweating when he asked the store clerks for help.

A witness (JCM) stated that Burks entered the store "looking frightened" and that he told a store clerk "help me, help me, I need help." The store clerk (Jackie) told him he needed to leave. Burks went behind the counter of the SuperAmerica, into the employee area and grabbed Jackie on the shoulders, telling her "please help me" and "someone is trying to hurt me." A customer jumped behind the counter and tackled Burks. JCM, another customer, joined in holding Burks down on the ground. Jackie then called 911. The first customer eventually left and another store clerk (Veronica) took over his position of holding down the upper portion of Burks' body. While they were on the ground with Burks, he told Veronica that his mother had recently passed away and that he also was going to die. According to JCM, Burks then told them, "I want to say something before I die." Veronica told Burks, "you ain't gonna die" while JCM said, "say whatever you want, we will listen to you." At that point, Burks calmed down.¹

Dispatch records show that Minneapolis Police Department squad car 111 received the call of an "assaultive male" at the SuperAmerica at 0002 hours (12:02 a.m.).² Time of arrival of squad 111 is not noted in the event record. Officers Michael Morales and John Hokanson were in squad 111.

Upon arrival, Officers Morales and Hokanson entered the SuperAmerica and confronted Burks. At that time, he was face down on the floor, left arm and hand extended, right arm under his torso. According to Morales, one of the store clerks was kneeling on Burks' back.³

Morales is a trained crisis intervention specialist. Although Burks showed signs of being ill and disoriented, the officers subdued Burks much as they would any other criminal suspect.

Morales cuffed Burks' left arm and attempted to pull his right arm from under his torso. However, Morales notes that Burks' arm was "sweating profusely"⁴ and he had difficulty gripping it. Hokanson also notes that a most remarkable feature of Burks' appearance was that "he was sweating profusely."⁵ Morales states that as he gave verbal commands, Burks "made incoherent sounds"⁶ and was seemingly unable to understand or follow commands. Morales later claimed that this was an indication of resistance because Burks had, "physically refused to move his right arm from underneath his torso." Morales also claimed Burks rolled slightly onto his right side.

To get Burks to release his right arm from under his torso, Hokanson sprayed "a short burst of Mace near the face of the suspect."⁷ The chemical irritant actually used was Freeze Plus-P.⁸

After handcuffing him, Morales told Burks to stand up but he remained on the floor. Morales and Hokanson then pulled him to his feet. Morales claims that Burks was "using his weight to remain on the ground."⁹ Hokanson stated that Burks resisted "by refusing to use his legs and also by shifting his weight."¹⁰ Morales and Hokanson both indicated that they considered this a form of resistance rather than attributable to possible incapacitation on the part of Burks.

As they attempted to walk him from the area, Morales claims that "the suspect started to push his weight back against us."¹¹ However, one of the store clerks, Veronica, stated that Morales and Hokanson dragged Burks from the store to the squad car.¹²

Upon arriving at the squad car, Burks either fell to the pavement or was put down on the pavement by the officers. According to Morales, "the suspect was attempting to drop his weight to the pavement and when we got past the rear driver's side door, we escorted the suspect to the pavement." Again, Morales referred to this as a form of resistance.¹³

When they attempted to shove the unresponsive Burks into the vehicle, they were only able to lift his upper body onto the car seat and his lower body remained outside of the

car. Both officers were shouting commands at Burks to get up and they continued to characterize his lack of responsiveness to their commands as "resistance."¹⁴

In an effort to gain compliance, Morales administered Taser in the touch stun mode directly to Burks' lower right back, using his department-issued M26 Taser.¹⁵ The Taser computer printout indicated that the Taser was used twice, with 37 seconds between shots.¹⁶ During this short 37 seconds, both officers claim to have done quite a bit to get Burks into the squad. After getting Burks' lower body into the car and closing the driver's side door, Morales was said to have walked from the driver's side to the passenger side of the car. Then both officers stated they tried to push Wally into the squad but his head shot out the door on the other side. Hokanson then walked to the driver's side to grab Burks' legs. Morales administered a second Taser shot and Burks' upper body was shoved back into the squad car and both doors were closed.¹⁷

At this point, Burks was face down on the back seat of the squad car, hands cuffed behind his back, legs bent at the knees with his legs and feet against the driver's side door.¹⁸ Hokanson went back into the SuperAmerica store and spoke to the store clerks.¹⁹

Although Burks was secured in the car by shortly after 11:57 p.m., Squad 111 did not leave for Hennepin County Medical Center until 00:15:05 (12:15 a.m.), some 17 or 18 minutes after he was placed face down, restrained, in the car.²⁰ Morales states that he stayed with Burks during the wait and began questioning him about his identity and what had happened in the store but that "the suspect made some incoherent noises and [he] was unable to get any distinguishable answer."²¹

When Hokanson left the store, he determined that Burks would be taken to the Hennepin County Medical Center's Crisis Intervention Center (CIC). Hokanson stated that he made this decision because "after talking to Jackie [one of the store clerks] and after having dealt with the suspect, it appeared to me that the suspect had mental health issues and that the CIC unit was the most appropriate placement for the subject's wellbeing."²² Squad 111 left the SuperAmerica parking lot at 00:15 hours and arrived at HCMC four to five minutes later.²³

Either enroute or on arrival at HCMC Officers Morales and Hokanson placed a "transportation hold" on Burks. This is not documented in any of the police statements but appears in HCMC security reports.²⁴ This transportation hold required that HCMC Protection Officers (security guards) be summoned to escort Burks into the CIC. Morales and Hokanson told HCMC employees that Burks had been "assaultive"[sic] and "combative in the store and to police officers."²⁵

HCMC Officer Morgan McCann arrived first on the scene to find Officers Morales and Hokanson at the trunk of the car getting rubber gloves. The rear passenger door was open.²⁶ Shortly thereafter, HCMC Officers Denne Nelson and Linda Oliver arrived along with CIC Registered Nurse Loretta Pederson. Pederson looked in briefly at Burks and she determined that he was breathing at the time, though "not moving a lot."²⁷ HCMC

staff discussed how best to transport Burks into the CIC and it was decided that they would use a wheelchair as carts don't fit into the CIC rooms. Nelson left to get a wheelchair.²⁸ He had to go to two areas of the hospital to locate a large-sized chair.²⁹

In his security report, McCann states that he "approached the subject [Burks] and tapped him on the shoulder while asking if he could stand up. He was unresponsive so I shook him by the shoulder and asked him agains if he could stand on his own. Again he was unresponsive. Officers Morales and Hokanson explained that the subject had been that way for some time in their car."³⁰

While waiting for a wheelchair, McCann worked with Morales to get Burks out of the car and into a kneeling position with his torso on the seat and his legs on the pavement.³¹ When Nelson arrived with the wheelchair, McCann, Morales and possibly Nelson hoisted Burks into the chair.³² Hospital security cameras indicate this happened at 00:24 hours and within a minute, Burks was in the CIC room, with Oliver and Pederson in tow. McCann noted in his report that as Burks was being wheeled in, "I noticed the subject was drooling and still unresponsive."³³

Burks was maneuvered onto the bed in room 5 of the CIC but since he was still handcuffed, he was placed prone (face down) on the bed with his head positioned to the side. Despite being nonresponsive, Burks was left in cuffs due to reports of his combativeness.³⁴ Nurse Pederson left the room briefly to obtain vital signs equipment from the hallway. A security video recorded her obtaining the equipment at 00:26 hours.³⁵ She attempted to obtain vital signs on Burks but couldn't get good readings. A handcuff was removed and Pederson tried again unsuccessfully to get vital sign readings. Pederson asked aloud, "Is he still breathing?" At that point, McCann, Nelson, Oliver and Pederson all report hearing a loud gasp or respiration and then no further breaths.³⁶ Burks was rolled to his side and Pederson borrowed a flashlight from one of the security officers and checked for pupillary response. There was none.³⁷ A code was called and the code team arrived 12 seconds later.³⁸ Despite efforts to resuscitate Burks, he was pronounced dead a short while later.³⁹

We were unable to obtain a full report from the medical examiner, since this would require the permission of the next of kin and Mr. Burks appears to have no locatable relatives since his mother passed away. However, the Hennepin County Attorney's Office report cites the medical examiner's report that the cause of death was "cocaine induced delirium and coronary atherosclerosis" in declining to issue a complaint or convene a grand jury.⁴⁰

Analysis

From review of the case materials, there appear to be serious and substantial issues in the way the Walter Burks incident was handled. Some of these issues may have contributed to his death, others serve to confuse the public and deflect responsibility from the Minneapolis Department.

- 1) Although the 911 call came in as "male came ins [sic] and attacked cashier...now customers holding him down,"⁴¹ Officers Morales and Hokanson should have taken a moment to briefly assess the situation, especially in light of the fact that Burks was subdued and that he was, by their own admission, sweating profusely.
- 2) Profuse sweating (known medically as profuse diaphoresis) can be a symptom of various heart and circulatory problems as well as shock, drug/chemical toxicities and other disorders. In combination with Burks' incomprehensible speech, this should have been sufficient information for both officers, who are trained first responders, to recognize that Burks was likely experiencing a serious medical situation. The situation should have been treated as a medical emergency and an ambulance should have been called. Moreover, we understand that it is MPD policy that when a suspect is unable to walk, an ambulance is to be called.⁴²
- 3) Morales has received special training and is a member of the department's Crisis Intervention Team. Yet, he and his partner failed to recognize that Burks was in a medical and/or mental health crisis and treat him accordingly.
- 4) Burks was not provided with any first aid after being sprayed with a chemical irritant, as mandated by MPD policy.⁴³
- 5) After Burks was sprayed with Freeze Plus-P chemical irritant and Tasered twice, he was placed face down in the squad car, hands cuffed behind his back, with his legs up, shins against the car door. Although he was not hobble restrained (hogtied), this position was functionally a hobble restraint. The prone position has a significant possibility of leading to positional asphyxia, especially in a large individual.⁴⁴ Mr. Burks was approximately 5' 10" and weighed between 225 and 250 lbs. Police departments all over the country are recognizing the increased likelihood of death when hobble restraints/prone positioning is combined with the use of a chemical irritant and are prohibiting this practice.⁴⁵ Moreover, Morales and Hokanson should have considered the possibility that Burks' respiration was already somewhat obstructed when they arrived, by the fact that he was lying prone and a large female was kneeling on his back.
- 6) Burks was left in the dangerous prone position for an extended period of time, including 17 to 18 minutes while Officer Hokanson re-entered the SuperAmerica store to speak to employees. This is perhaps the most disturbing aspect of this incident. In reviewing the timeline, from the second Taserung at 23:57:40 hours until Burks was removed from the squad car at HCMC at 00:24 hours, he remained prone for 27 minutes. Hokanson and Morales should have known how inherently dangerous this practice is.
- 7) According to Pederson, CIC personnel were informed of the use of a Taser on Burks but not about the use of a chemical irritant⁴⁶ which has known properties of causing respiratory difficulties, especially in susceptible individuals.

- 8) Although Burks was both restrained and unresponsive, MPD officers put a "transportation hold" on him with caused precious time to pass waiting for hospital security guards to come to the area to transport Burks. Despite their seeming concern that Burks might suddenly "wake up" and become combative, Morales and Hokanson were unconcerned enough to open at least one back seat door and leave Burks unsupervised while they got gloves out of the trunk of the squad car.
- 9) Despite continued unresponsiveness and drooling, Burks remained handcuffed and was placed on the exam table in a prone position after entering the CIC, as a result of reports of combativeness by the MPD to CIC staff. The handcuffs appear to have interfered with nursing staff ability to initiate care. Other than attempts to check for vital signs and pupillary response, Burks received no medical care until he had stopped breathing. Clearly, by then, it was too late.
- 10) In the sad aftermath of this incident, MPD spokesman Ron Reier told media that Burks had been "assaultive (sic) toward officers" when they arrived at SuperAmerica.⁴⁷ However, statements from the officers and witnesses do not bear this out. At worst, Burks resisted police. However, in all likelihood, Burks was in the throes of a medical crisis, was weak and disoriented, and had no ability to comprehend or comply with commands. At certain points, he may simply have lost consciousness.
- 11) Reier was also quoted in the Star Tribune as stating that "neither of the officers have been the subject of complaints."⁴⁸ This is simply untrue. Five members of the community have filed complaints with the Civilian Review Authority against Officer Hokanson. Two members of the community have filed complaints with the Civilian Review Authority against Officer Morales.⁴⁹
- 12) Reier stated that Burks died while hospital staff members tended to him.⁵⁰ While this statement is factually correct, because of the delays in getting medical treatment, Burks actually died before any medical care could be rendered. Police prevented him from receiving medical care for nearly 30 minutes from the time they first arrived at the scene - a very long time for a person experiencing a medical emergency.
- 13) The Hennepin County Sheriff's Office appears to have performed a perfunctory investigation of Burks' death, designed to preclude the finding of any wrongdoing on the part of Officers Morales and Hokanson. Interviews with the officers appeared staged. The types of questions asked indicates that the questions were agreed upon in advance. One example: "What do you recall about his hand position?" This question would only make sense if you already knew the answer. Of course, it is possible that the interviews were "cleaned up" before being released.
- 14) One odd detail that remains unexplained concerns the Taser marks seen on Burks' body, as noted by crime lab technician Jeff Schiebel.⁵¹ In his report, Schiebel describes "apparent defects in the victim's skin" in the location where the Taser was

reportedly used. However, the "defects" measured 4.5 cm., while the distance between contacts on the M26 Taser actually measures only 4 cm.

Conclusion

Although Burks' death was ruled by the Hennepin County Medical Examiner's Office to be "sudden, unexpected death associated with cocaine excited delirium,"⁵² we believe a number of factors contributed to his death including poor assessment of the initial incident by the MPD and failure to recognize a medical crisis, prolonged prone positioning, especially after the use of pepper spray, and a delay in the onset of medical treatment.

Since Mr. Burks' death, at least two other men have died under somewhat similar circumstances. It is time for the Minneapolis Police Department to stop being defensive and furtive about these deaths and to start learning from these situations to prevent future deaths.

In particular, MPD officers clearly need better training to recognize medical emergencies and better techniques for acting on these emergencies, as opposed to treating all incidents as criminal apprehensions.

Use of newer "less lethal" weaponry for which there is limited documentation on safety and efficacy remains a concern. More importantly, though, is the need for MPD officers to learn better techniques for assessing and handling medically and mentally ill subjects. For starters, hogtying and/or prone positioning after the use of chemical irritants must be banned by this department.

Walter Burks entered the SuperAmerica store ill and begging for help. Instead of getting that help, his situation was misassessed, he was mishandled, medical care was delayed and he died. Let us use what we have learned through this tragic incident to prevent similar deaths in the future.

¹ Hennepin County Sheriff's Office Investigative Report, Case #03-00-3095, Follow Up Report by Detective Charles Kelly, dictated 8/11/03, p. 1-2 and Follow Up Report by Detective Dave Giguere dictated on 9/12/03, p. 3.

² CAD Event Printout, ESN 30877422, 2003-08-07, 00:02:13 hours to 7:38:59 hours.

³ Statement of Corporal Michael Shane Morales in re: HCSO Case 03-00-3095, taken at 5:15 a.m. on 8/7/03 by Detective Thomas Rainville, p. 2.

⁴ Ibid, p. 3.

⁵ Statement of Officer John Arvid Hokanson in re: HCSO Case 03-00-3095, taken at 7:30 a.m. on 8/7/03 by Detective Jeff Burchett, p. 2.

⁶ Morales statement, op. cit., p. 3.

⁷ Ibid.

⁸ Hennepin County Sheriff's Office Crime Laboratory Report by Nathan Wasgatt, Technician, 08/07/2003 2:17 a.m.

⁹ Morales statement, op. cit., p. 3.

¹⁰ Hokanson statement, op. cit., p. 3.

¹¹ Morales statement, op. cit., p. 3.

¹² Statement of Veronica Ortiz in re: HCSO Case 03-00-3095, taken 8/7/03 at 5:22 a.m. by Detective Charles Kelly.

¹³ Morales statement, op. cit., p. 4.

¹⁴ Ibid, p. 5.

¹⁵ Ibid.

-
- ¹⁶ MPD Taser Readout P2-008804, printed out by Sgt. Bellendier. Per report, Taser was administered on 8/6/03 at 23:57:03 and again at 23:57:40, a 37 second gap.
- ¹⁷ Morales statement, op. cit., p. 5.
- ¹⁸ Ibid.
- ¹⁹ Ibid.
- ²⁰ CAD Event Printout, op. cit.
- ²¹ Morales statement, op. cit., p. 5.
- ²² Hokanson statement, op. cit., p. 6.
- ²³ Giguere Follow Up Report of 9/12/03, op. cit., p. 4.
- ²⁴ HCMC Security Report, Case 08072003-72500, prepared by Morgan McCann, 8/7/03 at 12:19 a.m., p. 1.
- ²⁵ HCMC Security Supplement #2, prepared by Denne Nelson, 8/7/03, 00:20:17.
- ²⁶ HCMC Security Report, op. cit., p. 1.
- ²⁷ Statement of Loretta Pedersen, in re: HCSO Case 03-00-3095, taken 8/7/03 at 3:16 a.m. by Detective Dave Giguere, p 2.
- ²⁸ Ibid.
- ²⁹ Pedersen statement, op. cit., p 3.
- ³⁰ HCMC Security Report, op. cit., p. 1.
- ³¹ Ibid.
- ³² Ibid.
- ³³ Ibid, p. 2.
- ³⁴ Statement of Morgan McMann, in re: HCSO Case 03-00-3095, taken 8/7/03 at 3:15 a.m. by Detective Dave Giguere.
- ³⁵ Giguere Follow Up Report of 9/12/03, op. cit., p. 5
- ³⁶ McMann statement, op. cit., p.
- ³⁷ Pedersen statement, op. cit., p 4.
- ³⁸ Ibid.
- ³⁹ Giguere Follow Up Report of 9/12/03, op. cit., p. 5.
- ⁴⁰ HCAO Memorandum to Detective David Giguere from Paul Scoggin, dated 12/23/03.
- ⁴¹ CAD Event Printout, op. cit.
- ⁴² We were notified of this policy by a former police officer but have been unable to find the specific policy outlined in the MPD policy and procedure manual posted online, which appears to be an abbreviated version of the full policy and procedure manual.
- ⁴³ Minneapolis Police Department Policy and Procedure Manual, Policy 5-313 (Use of Chemical Aerosols/Agents (10/16/02), <http://www.ci.minneapolis.mn.us/mpdpolicy/5-300/5-300.asp>
- ⁴⁴ Brave, Michael A. and John G. Peters, Jr., Preparing for "Sudden Death!" as published on LAAW International, Inc. website: <http://www.laaw.com/cdsldm.htm>. Article cites several other useful references. See also Brave, Michael A. and John G. Peters, Jr., Liability Constraints on Human Restraints, at <http://www.laaw.com/finalre2.htm>
- ⁴⁵ Pepper Spray Update: More Fatalities, More Questions, ACLU of Southern California, 1995. http://www.aclu-sc.org/attachments/p/Pepper_Spray_New_Questions.pdf
- ⁴⁶ Pedersen statement, op. cit., p 2-3.
- ⁴⁷ Padilla, Howie and David Chanen, Suspect dies after he arrives at Minneapolis crisis center, Star Tribune, 8/8/03.
- ⁴⁸ Ibid.
- ⁴⁹ Minneapolis Civilian Police Review Authority Complaints, 1991-9/26/03.
- ⁵⁰ Padilla, Howie and David Chanen, Suspect dies, op. cit.
- ⁵¹ Hennepin County Sheriff's Office Crime Laboratory Report by Jeff Schiebel, Technician, 08/07/2003, 8:15 a.m.
- ⁵² Public Data Form from Hennepin County Medica Examiner's Office, Garry F. Peterson, M.D., undated.