

DEATH ON THE PITCH: RUGBY VIOLENCE AND CRIMINAL LAW IN CANADA

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Abstract

On May 9, 2007, a 15-year-old named Manny Castillo was driven head first into the ground during a high school rugby match in Canada. Castillo suffered severe head, neck, and spinal cord injuries that led to his death in the days that followed the match. The opposing player, unnamed under the Canadian Youth Criminal Justice Act, was charged with and convicted of manslaughter for his deadly act on the pitch. This paper explores: (i) the events on the pitch that led to Castillo's death, (ii) the legal issues that prosecutors faced in gaining a successful conviction in the rugby death, (iii) a comparison to other cases internationally where rugby players have died on the pitch, and (iv) prevention strategies to ensure a safer playing field. The data used in this study include existing literature on rugby violence and the law, media articles, and legal case files.

Key words: Rugby; Sports violence; Death in sport; Criminal law

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INTRODUCTION

Few sports combine the speed, person-on-person collisions, and minimal protective equipment that are featured in the sport of rugby. Established norms and rules are in place to ensure safety on the pitch; however, injuries are frequent and occasionally players die during play from various causes. In this paper, rugby deaths will be explored in detail. The focus of the paper is on one case in particular involving the death of 15-year old rugby player Manny Castillo in 2007 that resulted in a manslaughter conviction. Through an unobtrusive analysis,

the case is compared to other cases internationally to examine how rugby deaths occur on the pitch, the difficulties prosecutors face in securing convictions in cases involving extreme violence in rugby, as well as the unique circumstances that led to a conviction in the death of Manny Castillo. The paper concludes with recommendations to reduce and prevent the occurrence of player deaths on the pitch.

Many researchers have previously explored various aspects of violence in rugby internationally. Topics of research on rugby violence have included the possibility of civil liability (Miller, 1986; Ryan, 2003), the role of the criminal courts (Anderson, 1998, 2001), the legal issue of consent (Fafinski, 2005; Livings, 2006; McCutcheon, 1994; Pendlebury, 2006), the emergence of sports law (David, 1992; Gardiner & Felix, 1994), the organization of league disciplinary proceedings (Dobinson & Thorpe, 2009), referee duty of care (Cornelius, 2004), institutional liability (Heywood & Charlish, 2007), approaches to making the sport safer (McLoughlin, 2009; Silver, 1988), as well as the occurrence and prevalence of catastrophic injuries at different levels of play (Gissane et al., 1998; King et al., 2011). This research makes novel contributions to this vast literature by exploring the application of criminal law to the occurrence of death during play, as well as through an examination of extreme violence in youth rugby in Canada.

The methodological approach of this paper is informed by unobtrusive, or what is sometimes termed non-reactive, measures (Webb et al., 2000). This process entails the use of data that (a) involve no human contact, and (b) were not created for the direct purpose of academic study. The data used in this study consist of media articles and legal case files pertaining to rugby deaths and extreme rugby violence in Canada and internationally. The study sample is purposive in that we aimed to collect as many cases as we could find readily through online searches of various media and legal databases. The sample is not exhaustive by any means, and thus we avoid any claims on prevalence or rates of occurrence.

1. A BRIEF OVERVIEW OF R. V. C. C. (2009)

Precise accounts of the events of May 9, 2007 that led to the death of Manny Castillo while playing rugby have varied. Many facts of the incident are, however, largely irrefutable. The rugby match being played was at the high school level, taking place in the City of Mississauga in Ontario, Canada. Both the deceased and the defendant were 15 years of age. The teams were meeting for the first time in the season, and the game was in the final seconds when an altercation occurred between the defendant and the deceased¹. Witnesses have provided conflicting accounts of the altercation, but the final result was the defendant throwing the deceased, Manny Castillo, to the ground causing him serious injury that led to his death shortly thereafter.

The defendant was charged with manslaughter. Under Canadian Criminal Law, manslaughter can be defined in a basic sense as causing death through an unlawful act or by criminal negligence. It does not require an attempt to kill. The presiding

¹ Under provisions of the Canadian Youth Criminal Justice Act, the name of the defendant cannot be stated.

judge ruled that the force the defendant used in throwing Castillo to the ground went beyond the accepted standards by which the sport of rugby is played, and thus considered it assault. Since Manny Castillo died from the assault, an unlawful act, he was charged with and convicted of manslaughter. His sentence included one year on probation, 100 hours of community service, and anger management counseling.

2. THE OCCURRENCE OF DEATH ON THE PITCH

Manny Castillo is one of many rugby players who have died while playing the sport of rugby. Internationally, we have found media reports of 43 other rugby players who have died under various circumstances during or shortly following competition. The chart below provides some details of these rugby deaths. This chart is by no means an exhaustive list of rugby deaths internationally. The cases were found through preliminary Internet searches of major newspaper databases that are archived online. It is a limited, purposive sample to provide a preliminary inquiry into the types of deaths that are occurring in the sport of rugby.

Table 1
Rugby Deaths

Year	Name	Location	Playing level	Cause of death
2013	Rowan Stringer	Canada	High School	Head trauma
2013	Bongukule Langa	South Africa	High School	Tackle injuries
2013	Geneve Scholtz	New Zealand	Club	Injured in a ruck
2013	Jason Laman	U.K.	Club	Collapsed during play
2012	Gareth Jones	U.K.	Welsh Premier	Injured in a ruck
2012	Undisclosed	South Africa	Under 14 Club	Collapsed during play
2012	Luke Chapman	U.K.	High School	Head trauma
2012	Viliamu Tavalea	New Zealand	Club	Collapsed during play
2012	David Reid	U.K.	Club	Collapsed during play
2012	Aberdeen Shikoyi	Kenya	International	Collision Injuries
2011	Halley Appleby	Australia	Club	Head trauma
2011	Benjamin Robinson	U.K.	High School	Head trauma
2011	Stephanie Flores	U.S.A.	High School	Head trauma
2010	Phillippe Leka	U.S.A.	Division 1	Tackle injuries
2009	Chris Brown	U.K.	Club	Head trauma
2009	Feao Latu	France	Club	Heart attack
2009	Leon Walker	U.K.	Super League	Heart attack
2009	Chris Tickle	U.K.	Club	Injured in scrum
2008	Adam Watene	Cook Islands	Super League	Heart attack
2008	Ian Green	U.K.	Club	Heart attack
2008	Robert Hickland	New Zealand	High School	Tackle injuries
2007	*Manny Castillo	Canada	High School	Tackle injuries

To be continued

Continued

Year	Name	Location	Playing level	Cause of death
2007	Matthew Hammerdorfer	U.S.A.	High School	Cadiac arrest
2007	Daniel James	U.K.	Club	Tackle injuries
2006	*Riaan Loots	South Africa	Club	Tackle injuries
2005	Tino Amato	New Zealand	Club	Head trama
2004	James Radburn	U.K.	Club	Severe asthma
2003	James Harding	U.K.	High School	Head trauma
1996	Ian Tucker	U.K.	University	Head trauma
1994	Ilisoni Namoro	New Zealand	Divisonal team	Injured in scrum
1993	*Seamus Lavelle	U.K.	Club	Head trauma
1992	John Howe	U.K.	Club	Heart condition
1990	Keith Bird	U.K.	Club	Collapsed during play
1986	Richard Cross	U.K.	Club	Tackle injuries
1984	Nick Green	U.K.	Club	Collapsed during play
1984	Ockert Brits	South Africa	Premier League	Heart attack
1982	Simon Allen	U.K.	High School	Collapsed during play
1981	John Armstrong	U.K.	Club	Collision injuries
1978	David Lowe	U.K.	Club	Tackle injuries
1977	Chris Sanderson	U.K.	Super League	Collision injuries
1975	Ian Towns	U.K.	Club	Head trauma
1974	Robert Wright	U.K.	Club	Tackle injuries
1973	David Powell	U.K.	Club	Injured in scrum
1970	Bernard Hinks	U.K.	Club	Head trauma

Note. Indicates criminal conviction cases

Total Deaths = 44

Total Convictions = 3

3. PROSECUTION DIFFICULTIES

With a few exceptions, deaths on the pitch do not appear to frequently result in criminal convictions. In the above cases, only three appear to have resulted in convictions. Using numerous legal case files and secondary literature, various issues of prosecuting violence in rugby will be briefly discussed. The various difficulties in prosecuting violence in sport allow rugby to exist in a realm that exists almost outside the law. If many of the actions that occur on the pitch were to occur elsewhere, they would most certainly be considered to be crimes. On the pitch, however, they are not. This section briefly examines why that has typically been the case.

One primary difficulty in prosecuting rugby violence is that in most jurisdictions, including Canada, there are no specific laws that pertain to violence in sport. Instead, lawyers, judges, and law enforcement officials must rely on existing laws related to violence and assault outside of the context of sport. Under common law

tradition, as is adhered to in Canada, lawyers and judges must also work with existing legal precedent. However, rugby cases appear infrequently in the courts and often have very different circumstances.

Second, injuries from rugby collisions and violence are often argued to be voluntarily assumed and consensual. It is argued that players knowingly understand the risks of playing rugby and thus, by stepping on the field they are consenting to these risks. An added complication in cases of rugby violence in Canada involves the notion of honest-but-mistaken belief, which provides the accused with a defence that he or she believed the act was consensual. This is codified in subsection 265(4) of the Canadian Criminal Code as follows:

Where an accused alleges that he believed that the complainant consented to the conduct that is the subject matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused belief, to consider the presence or absence of reasonable grounds for that belief.

Given this provision, it is not sufficient for prosecutors to argue that there was no actual consent to the violent act. Instead, it must be determined that the accused did not believe that his or her violent act was consensual within the sport.

Furthermore, there is a general reluctance by legal officials to become involved in governing sport. Governing bodies of sport appear to be expected to govern themselves and provide appropriate and swift penalties for acts of violence that are considered unacceptable. Many sports law researchers continue to argue that sport should continue to be governed this way, as the courts might not be the most effective venue to undertake disciplinary proceedings in sport (Standen, 2009).

4. A COMPARISON OF CASES

Given these, and other, difficulties in prosecuting cases involved rugby violence a question has arisen during this research is why the death of Manny Castillo has been handled differently and resulted in a successful conviction of manslaughter. One logical possibility is that the consequences of the act were very tragic, resulting in the death of a 15-year old boy. However, as has been shown, many other cases have resulted in deaths without similar convictions. A second factor appears to be the age of the victim. At 15 years old it seems less likely that a judge would agree that one is able to imply consent or voluntarily assume the risk of being pile driven head first into the ground². Likewise, the extreme violence that characterized the act also undoubtedly played a role in the conviction. There was no mistaking the play for inadvertent or accidental contact that occurred during the course of play. Accordingly, the presiding judge stated:

The defendant intentionally applied force that was outside the rules of the game or any standard by which the game is played. Manny did not explicitly consent to that force and I am satisfied beyond any doubt that no such consent can be implied... Accordingly the defendant committed an assault, an unlawful act. That unlawful act caused death. (R v CC, 2009 at 67)

² R. V. TNB (2009) BCPC 117 the judge did, however, acquit a youth rugby player who successfully used the consent defence despite injuring another youth player. As such, the consent defence is still valid in the Youth Justice System in Canada in relation to violence in sport.

Furthermore, the accused appeared to fully intend to cause physical harm to Manny Castillo during the altercation. Many accounts suggested that he boasted about the assault while Manny lay on the ground being attended to by medics. Another difference from many of the other recent rugby deaths is that it occurred in Canada. If we take the sport of hockey as an example, there appears to be less tolerance by the legal system for acts of extreme, injurious violence in sport (for example, McSorley, 2000; Bertuzzi, 2004).

CONCLUSION

Rugby holds inherent dangers due to the high speed, minimal safety equipment, and high-contact nature of the sport. But, death and catastrophic injuries can be minimized through prevention strategies. The key areas to any prevention strategy should include proper coaching of safe tackling techniques, full-speed practicing of techniques, officiating adjustments to ensure a safe playing field, and thorough medical examinations of players.

To ensure safety during a match, players must be properly taught the rules and techniques involved during a tackle that are in place specifically for players safety. Learning the proper tackle at an early stage of rugby is very important with regards to the safety of the tackler and the player to be tackled. For example, during an offensive play commonly known as a crash ball, the intention is for one offensive player to take the ball directly towards an opponent with the intention of making contact, which can result in catastrophic injuries if done incorrectly. The crash ball is used to have the ball carrier break a tackle and continue running, or to take a hit in order to set another play. During a crash ball both the tackler and the runner often meet with great force due to the nature of the play. Proper form and technique is very important during these types of high impact plays to avoid injury. The tackler is to get low maintaining a flat back and keeping their head up and lead into the tackle with their shoulder. The tackler is also to make contact with the opposing player below the chest to avoid the high tackle penalty. The tackler is to hold onto the player while they go to the ground. This avoids spear tackles and controls the tackler from throwing an opposing player.

Another necessary safety precaution is to avoid performing what is known as a dump tackle. The dump tackle is the play that was in question regarding the Manny Castillo case. This tackle occurs when the tackler takes the opposing player and spins them over to land on the bridge of their back, shoulder or head. A dump tackle is very dangerous and often results in a yellow card, which would put a team down a player during sin bin time. A red card could also be given leading to a suspension and hearing for many levels of rugby. Appropriate sanctions should be given to players to act as a deterrent for this type of dangerous play.

The player to be hit also has a responsibility for his or her own safety when entering a tackle. The runner should prepare to be hit by getting into a low strong stance, and not run into a tackle standing up. Lowering the stance allows a player to have better control of their own center of gravity when in contact, and more control over how they are hit. Players need to know how to fall properly by hitting the ground as evenly as possible to disperse the point of impact.

Coaching becomes very important when regarding player safety within a tackle. A coach must ensure that each of their players is very well practiced in hitting and being hit at full pace. There must be a lot of practice time, particularly with new players to the game, devoted strictly to practicing tackles. Improper form can be very dangerous for anyone involved in the tackle and the best way to become comfortable and skilled at tackling is to practice at full pace. Perhaps coaching from senior players who have practiced their technique would help to develop the skills of younger players to ensure proper form and ultimately lead to a safer game.

Furthermore, a coach must ensure that each player understands the rules and possible repercussions if a player is to break the rules. Coaches must also take the responsibility to take off a player no matter their skill level or importance to winning the match if that player is acting dangerously. Players must also recognize the rules as well as reasons for the rules to ensure they understand the reason why safety rules are in place and what can happen if the rules are broken.

To improve safety for all involved there should also be some alterations to the officiating. Sideline judges should be trained referees. A sideline judge has a full view of the field of play, while the referee does not. As such, some players will attempt to make dirty plays out of the view of the referee. With only one referee and thirty players there can be a lot of action that goes unnoticed. Manny Castillo was apparently hit behind the play. A sideline judge would have been able to catch the behind the play actions and possibly could have prevented the situation from escalating. There should also be mandatory suspensions for those who dump tackle an opposing player. Due to the danger of a dump tackle if a player knows that a suspension could follow this may deter them from attempting it.

Another essential strategy to the prevention of death on the pitch should be regular and thorough medical examinations of players to ensure that they do not have any health conditions that could add to the high-risk nature of the sport. While this would not likely have prevented Manny Castillo's death, in many of the cases in this study it could likely have prevented deaths where players were believed to have had pre-existing heart conditions, or existing brain trauma from previous concussions that contributed to their deaths. It should be mandatory that all players regularly receive thorough medical exams, and players with pre-existing head trauma conditions should be limited from participation in the sport. Likewise, given the high-risk nature of the sport, emergency medical personnel should be present at all matches, across all playing levels.

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