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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**A CRITICAL ANALYSIS OF VIOLENCE IN SPORTS AND PROBLEMS ASSOCIATED WITH CRIMINAL PROSECUTION IN UNITED STATES AND CANADA**- Tanusmita Debnath<sup>1</sup>**ABSTRACT**

Athletes often use excessive force while playing characteristically violent sports such as football, rugby, basketball, hockey, etc. The matter of violent acts of the athletes that takes place on the playing field is completely different when they are not on the field. This paper aims to critically analyse the utilization of criminal law to regulate the conduct of the athletes while playing on the sports ground. In this paper, there are five sections; first section contains an introduction to violence in sports. The second section provides information regarding the feasibility of criminal prosecution against sports violence, mainly in the US and Canada. The possibility of enforcement of criminal sanctions for acts of excessive force on the sports ground also has some obstacles. The third section is a study about the potential legal defences and impediments for the criminal prosecution. The fourth section contains information concerning the various evidentiary problems associated with the criminal prosecution. And lastly, the fifth section is a review of the judicial precedents regarding criminal prosecution against athletes who were involved in sports violence. Overall, this paper involves a study of the collision of the criminal code with violence in sports.

**KEYWORDS:** violence, legal, criminal, defence, prosecution

**AN OVERVIEW OF VIOLENCE IN SPORTS:**

Sports has become an integral part of our culture today and over the years, violence in sports has also become a major element in many contact sports such as soccer, basketball, hockey,

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rugby, volleyball etc. Violence in sports is utmost observable in the form of on- field violence. For instance, <sup>2</sup>during an NHL game in 1975, the Minnesota North Stars player, Henry Boucha, and Dave Forbes, of the Boston Bruins had been sent to the penalty box for excessive violence while playing on the sports ground. This was also the first case in the United States, in which a player was criminally prosecuted for on-field violence. Various psychologists, sociologists, and lawyers have conducted researches on the causes of violence in sports as well as the effect of that repetitive violence on the balance of the society, especially on young sports aspirants. Many coaches and managers often teach young aspirants that violent conduct is an acceptable method of obtaining a competitive advantage during a game. However, the apprehension of the serious consequences, both in terms of injuries as well as economic loss, due to violent play has raised public concern in this age of sports revolution.

The proper identification of the varying degrees of unacceptable and acceptable conduct of the players while playing on the sports ground is significant for the study of violence in sports. <sup>3</sup>Players are often conditioned to violent behaviours within limits for various contact sports. However, even under normally aggressive standards, a player's conduct would run so far afield of what is considered acceptable occasionally and this type of conduct invokes further violent retaliation. There are two principal reasons as to why sports violence is unacceptable. Firstly, the costs of on-field violent conduct of the players severely over-shadows the competitive advantages gained from a violent play. The risk of personal injury and economic loss is the cost of sports violence to the individual player. The risk of personal injury of the players is documented widely. Sports violence also shows that players who have sold their services to team owners have less incentive to safeguard their services by abusing them.<sup>4</sup> The economic loss in the manner of the value of the resources incurred by an individual athlete is the loss that lasts longer than the time of injury payment allowed under a player contract. Secondly, the intricate collection of "pressures" within the sports community ensures adherence to the prevalent mode of conduct. The "pressures" to maintain the currently accepted levels of violence on-field are closely tied to the conceptions of how the professional sports are played efficiently. On-field violence has been controlled internally in the form of penalties, fines, suspensions, etc, traditionally. The argument regarding the individual sport's administrators knowing better than anyone what conduct is reasonable and what risks the players for on-field

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<sup>2</sup> Walter Kuhlmann, 'Violence in Professional Sports' (1975) 1975 Wis L Rev 771.

<sup>3</sup> Ronald A DiNicola and Scott Mendeloff, "Controlling Violence in Professional Sports: Rule Reform and the Federal Professional Sports Violence Commission" (1983) 21 Duq L Rev 843.

<sup>4</sup> Jiri Kindl, 'Sports Law: The Issues of on-Field Sports Violence' (2003) 4 Common L Rev 37.

violence is often argued by the supporters of internal control argue.<sup>5</sup> However, according to a study between 1933 to 1976, organized football had claimed the lives of approximately 1,198 participants. Such incidents of extreme and unnecessary violence in sports certainly were not limited only to football and also continue well into the modern era. Hence, it is clear from the various violent incidents of sports violence that the internal controls have failed to deal efficiently with on-field violence in sports.

### **THE FEASIBILITY OF CRIMINAL PROSECUTION AGAINST VIOLENCE IN SPORTS:**

Any conduct by an athlete that is intended to intentionally injure another athlete and happens outside the limits of the rules and regulations for that particular sport, then it is generally defined as sports violence. In a competitive sport, breaking the specified rules and regulations is almost inevitable.<sup>6</sup> Criminal prosecutions in sports are typically superfluous and undesired due to the availability of internal disciplinary procedures as well as civil claims to resolve such situations. When it comes to sports, there is still a lot of disagreement about whether it is appropriate to use criminal law jurisdictions as a regulatory instrument. However, the function of the criminal justice system in on-field sports violence regulation is worth considering. Most sports, especially contact sports such as football, hockey, and rugby, etc., include some sort of physical aggression. Nevertheless, in many circumstances, such violence would be deemed a criminal offence if it occurred outside of the sports playing field. A jurisprudential perspective holds the key to solving the thorny problem of criminal regulation in the sporting events. However, this tactic restricts implicit permission to the violent acts of the players permitted by the sport's rules and regulations, but it also includes conduct that is clearly not permitted by the rules, but is instead anticipated by them. Rather, the consent doctrine would apply to all action that is covered or foreseen by those rules and regulations. For instance, fighting in hockey is particularly prohibited by the official rules and regulations of the National Hockey League (NHL). Fighting, however, appears to be a major aspect of the game. As a result, the NHL rules

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<sup>5</sup> Jeff Yates and William Gillespie "THE PROBLEM OF SPORTS VIOLENCE AND THE CRIMINAL PROSECUTION SOLUTION" (2005)  
[https://www.researchgate.net/publication/228297427\\_The\\_Problem\\_of\\_Sports\\_Violence\\_and\\_the\\_Criminal\\_Prosecution\\_Solution](https://www.researchgate.net/publication/228297427_The_Problem_of_Sports_Violence_and_the_Criminal_Prosecution_Solution) accessed 22 August, 2021.

<sup>6</sup> Jeffrey Standen, "The Manly Sports: The Problematic Use of Criminal Law to Regulate Sports Violence" (2008-2009) 99 J. Crim. L. & Criminology 619  
<https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7329&context=jclc> accessed 21 August, 2021.

foresee and accommodate for hockey fights while also prohibiting them.

<sup>7</sup>Assault and battery are crimes not only against another person, but also against the society.

<sup>8</sup>Any blow delivered in rage or with the intent or likelihood of causing bodily harm is considered a criminal assault in Canada. The consent of a player to participate in the sport does not change the fact that the act is fundamentally unlawful, because the consent has no bearing on the public's rights, and also the assault was a breach of the peace, the consent of the person struck is irrelevant. Additionally, provocation caused by being called a derogatory name is not a legal reason for an assault in Canada. Canada has made a determined effort to prosecute athletes who engage in extremely violent conduct. Hockey players like Wayne Maki, Ted Green, and others have all faced criminal charges for acts of aggression committed while competing in sporting events. The majority of sports violence judgements in Canada have been handed down orally by trial courts, without the clarity, precision, and organisation of a written appellate decision. The Canadian rules are based on the foundational case <sup>9</sup>*Regina v. Cey*, which dealt with the injuries sustained by an ice hockey player after he was cross-checked from behind by an opponent and his face was slammed into the ice rink rails. In this decision, the court outlined several elements to consider the establishment of the permitted amount of violence in sport, or when to determine the scope of the consent indicated upon participation. These factors include the game's playing conditions, the nature of the act, the degree and danger of injury, and the likelihood of significant harm. The success of Canadian sports violence prosecutions provides heartening evidence that such criminal charges are possible, especially when professional athletes are involved. Although the Canadian courts have yet to reach a consensus on a sports violence theory, they have obtained majority conclusions and developed useful judicial analysis.

Criminal law is not as regularly applied to sports violence in the United States as it is in Canada. Prosecutors in the United States have been hesitant to enforce criminal rules on any level in sports. <sup>10</sup>Former professional baseball player Ronald Mottl of Ohio introduced the bill of Sports Violence Act of 1980. Acts of "excessive physical force" in sports would be deterred and punished under the bill's proposed criminal sanctions. The Canadian experience with sports prosecutions provides useful suggestions for imposing criminal sanctions on violent sports

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<sup>7</sup> Cameron Jay Rains, 'Sports Violence: A Matter of Societal Concern' (1980) 55 Notre Dame Law 796.

<sup>8</sup> Criminal code Canada 1985, s. 266.

<sup>9</sup> *Regina v. Cey*, (1989) 48 C.C.C. (3d) 480, [1989] 5 W.W.R. 169, 75 Sask. R. 53.

<sup>10</sup> H.R. 2263, 97th Cong., 1st Sess. 127 Cong. Rec. H760 (1981). See H.R. 7903, 96<sup>th</sup> Cong., 2d Sess. Section 2, 96<sup>th</sup> CONG. REC. 6946 (1980) (the predecessor to H.R. 2263).

participants in the United States. For instance, in the case of <sup>11</sup>*People v. Freer*, the court considered both the <sup>12</sup>Green and <sup>13</sup>Maki Canadian precedents while deciding on the questions of consent and self-defence. Only a few incidents of legal action against athletes for violence against opposing players have been documented in the United States. <sup>14</sup>Dave Forbes of the Boston Bruins was one of the first athletes to face criminal charges as a result of his violent conduct during a sporting event. In the 1976 Illinois case of <sup>15</sup>*People v. Jones*, the defendant was found guilty of violent crimes committed during a high school football game. The defendant tried unsuccessfully to claim self-defence by stating that he predicted that the victim was going to strike him first. The court decided that evidence that the defendant "roughed up" the victim is in violation of the game rules warranted by the jury's orders that the defendant's use of force was improper when he provoked the assault on himself with the goal of using it as a justification for inflicting bodily harm. Thus, these recorded Canadian and American legal precedents shows that criminal prosecution of sports violence is possible and additionally gives useful doctrinal guidelines.

#### **PLAUSIBLE DEFENCES AGAINST THE CRIMINAL PROSECUTION:**

The possibility of inflicting criminal sanctions for the acts of excessive violence while playing on the sports ground does not come without any obstacles. A number of tumbling bricks stand in the path of a successful sports prosecution. The Players who are charged with the violation of criminal statutes for being involved in on-field violence during a sporting event can considerably rely upon numeral defences for their actions. The plausible arguments for attacking the criminal prosecutions of the players engaged in on-field violence seem to lie in four possible defences.

#### **1. THE DOCTRINE OF CONSENT:**

The offence of assault has identical justifications. First, it functions to prohibit the infliction of bodily harm. Secondly, it defends a person's right not to be subjected to bodily intervention

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<sup>11</sup> *People v. Freer* (1976) 381 N.Y.S.2d 976.

<sup>12</sup> *Regina v. Green*, (1970) 2 C.C.C. (2d) 442, [1971] I.O.R. 591, 16 D.L.R. 3d 137 (Prov. Ct. Crim. Div.).

<sup>13</sup> *Regina v. Maki*, (1970) 1 C.C.C. (2d) 333, 10 C.R.N.S. 268, [1970] 3 O.R. 780, 14 D.L.R. (3d) 164 (Prov. Ct. Crim. Div.).

<sup>14</sup> *State v. Forbes*, No. 63280 (Hennepin Co. Minn. Dist. Ct., dismissed Aug. 12, 1975).

<sup>15</sup> *People v. Jones*, 346 N.E.2d 389, 390 (Ill. App. Ct. 1976).

which may be found inconvenient.<sup>16</sup> A victim's consent would always be a perfect defence according to the conduct which is covered by the second justification, since there would be no damage if he had freely consented to the intervention in question. The conduct that would ordinarily comprise at least common assault is definitely part of the game in numerous sports such as soccer, rugby, football and all other contact sports. The consent of the participants in the context of sporting events reduces the application of excessive force on-field and compliance with the rules of the game immunizes the participants from criminal liability. The participants of a sporting event voluntarily submit to such bodily contacts as permitted by its rules. However, determining exactly what kind of behaviour a player could display on the playing ground of a sporting event is very difficult. Therefore, here comes the obvious issue of specifying the limits of consent to violence in Sports as the "reasonably anticipated risks" of concurrent athletic participation define the limits of permission, not the rules of the specific sporting event. Two criminal cases are very useful in assessing the consent standard. Participants offer "implied consent to those assaults which are inherent and reasonably incidental to the normal playing of the sport at this level," according to the court in the case of <sup>17</sup>*Regina v. Leclerc*. The court appeared to allow a certain level of violent conduct outside the official rules of the game as part of the game by referring to it as "regular playing of the sport." The court also emphasised that any interpretation of the issue of consent should be determined with flexibility, taking into account all of the sport's rules. In <sup>18</sup>*Regina v. Cey*, the court established a variety of objective factors for determining consent. The following items were included on the list: the game's setting, whether the game was part of a league and the type of that league, the players' ages, the game's rules, the amount of force used, and the degree of danger and possibility of serious harm occurring.

## 2. SELF-DEFENCE:

An athlete who defends himself against an illegitimate attack is not charged with assault or battery. Athletes can also use force to defend others. Mutual combat and self-defence are not the same, and in most circumstances of mutual combat, self-defence does not apply because

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<sup>16</sup>John Timmer, Crossing the (Blue) Line: Is the Criminal Justice System the Best Institution to Deal with Violence in Hockey?, 4 Vanderbilt Journal of Entertainment and Technology Law 205 (2020).

<sup>17</sup> *Regina v. Leclerc*, (1991) 7 C.R. (4th) 282, 4 O.R. (3d) 788, 67 C.C.C (3d) 563, 50 O.A.C. 232 (C.A.).

<sup>18</sup>*Cey* (n 6).

each side is guilty of a separate attack and battery on the other. <sup>19</sup>As a result, this defence of self-defence in the criminal prosecution of on-field sports violence is subject to a number of limitations.

- I. An athlete may only respond to force with force if there is an obvious danger to him.
- II. It isn't proper self-defence if the blow is excessively violent and vengeful rather than defensive.
- III. The athlete may only use force if receding or evading the threat is unreasonable.

The most recognised legal policy in most countries is that a person's right to defend another should not ordinarily be greater than that person's right to defend himself. The prosecutors are charged with enforcing the laws in a fair and consistent manner. By failing to control on-field sports violence, the judicial system exposes itself to having to consider difficult problems of criminal liability of the athletes that could have been avoided if the athletes, coaches, and fans had been given enough notice. The twin Canadian <sup>20</sup>Maki and <sup>21</sup>Green cases showed that there is a limit to how much violence a court would be willing to accept as part of the self-defence. In <sup>22</sup>Green's case, the court highlighted that the convictions may be obtained under the right circumstances, even if there was no cloud of self-defence present in the preceding cases.

### 3. PROVOCATION:

Provocation as a defence for criminal actions can be used to justify the aggressive conducts by athletes in a sporting event. <sup>23</sup>The defence of provocation obliges the defendant to be provoked into retaliation. Because many jurisdictions do not accept provocation as a defence to battery in any context, it is rarely employed in sports cases. Provocation can be an effective relevant consideration, but it is not a defence for any charge that might be heard quickly. "Provocation" as a popular claim of defence, especially in the cases of assault, an accused's claim that he was provoked by the victim or the co-accused must only be considered by the court as the context to the offence. For instance, in the case of <sup>24</sup>*Agar v. Canning*, a Canadian court considered

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<sup>19</sup> Jeff Yates and William Gillespie "THE PROBLEM OF SPORTS VIOLENCE AND THE CRIMINAL PROSECUTION SOLUTION" (2005)

[https://www.researchgate.net/publication/228297427\\_The\\_Problem\\_of\\_Sports\\_Violence\\_and\\_the\\_Criminal\\_Prosecution\\_Solution](https://www.researchgate.net/publication/228297427_The_Problem_of_Sports_Violence_and_the_Criminal_Prosecution_Solution) accessed 22 August, 2021.

<sup>20</sup> Maki (n 12).

<sup>21</sup> Green (n 11).

<sup>22</sup> Green (n 11).

<sup>23</sup> William Hechter, 'The Criminal Law and Violence in Sports' (1977) 19 Crim LQ 425.

<sup>24</sup> *Agar v. Canning*, 55 W.W.R., 384.

“provocation” in the context of a retaliatory strike delivered during one hockey game. The defendant was deemed guilty by the court in this case, because his acts in response for being provoked went beyond the hockey player's immunity from criminal liability. Thus, provocation was taken into account while calculating the damages.

#### 4. INVOLUNTARY REFLEX:

Reflex actions and involuntary reactions have both been used to defend athletes against assault charges in criminal prosecutions. When a defendant strikes a blow as a result of an involuntary reflex and does not have the required *mens rea*, then, he is not guilty of battery<sup>25</sup>. There are three elements that establish the defence of involuntary reflex.

- I. The defendant's reflex was completely involuntary.
- II. The involuntary reflex was the result of an external trigger or cause.
- III. The defendant did not induce their own automatism.

The defence of involuntary reflex was used in the <sup>26</sup>Dave Forbes trial, where it was stated that sports violence begins at a young age and that the emotive nature of sports frequently causes the players to lose control. The "heat of the game" has always been a form of a significant defence in sports, acting as an involuntary reflex to justify bad manners and irrational conducts of the athletes on-field.

#### EVIDENTIARY PROBLEMS ASSOCIATED WITH THE CRIMINAL PROSECUTION:

Criminal law has failed to fulfil its governing function with regards to sports and the various problems associated with criminal prosecution in cases of sports violence have contributed to the difficulty. Assault and physical harm are the most common types of offences that occurs in sports. The Court have to prove both the *actus reus* of the crime and the state of mind of the perpetrator at the time of the crime in such circumstances. The Courts have to show that the defendant behaved with a "culpable state of mind", on purpose, in assault proceedings. In the cases of physical harm, the court have to prove that the accused must have acted deliberately or, at the very least, with a reckless and unlawful disregard for another's safety. Moreover, coaches are frequently involved in on-field violence perpetrated by their players. However, proving that a player behaved at the request or on the directions of the coach is far from simple. As a result,

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<sup>25</sup> “Defence of Non-Insane Automatism in Criminal Law” (e-lawresources.co.uk) <https://www.e-lawresources.co.uk/Non-insane-automatism.php> accessed on 21 August 2021.

<sup>26</sup> Forbes (n 13).

the greatest challenge the court faces in the criminal prosecution of sports violence is proving the involvement of the instructors, leaders, as well as the owners.<sup>27</sup>The various evidentiary problems associated with the criminal prosecutions with regards to violence in sports are as follows:

### **1. ADVANTAGES, DANGERS, AND CONDITIONS OF ADMISSIBILITY OF THE VIDEO RECORD:**

The video record of a sporting event such as UEFA Europa League, IIHF World Championship, MLB season, NFL season, and so on, might be used as evidence in cases of on field violence in sports. These are mainly used to support the internal disciplinary consequences, or where the involvement of criminal law is warranted, and, also it could be further used to demonstrate the material elements of the crime and the wrongdoer's purpose. The weight of evidence should be considered while determining the accuracy of the film record. On the basis of vague uncertainties, the utilization of slow-motion version of a film record shouldn't be prohibited unduly. For instance,<sup>28</sup>In the United States, evidences in the form of videotape / film record had been admitted in the criminal cases. The prosecution may present a video record / film of an accused's confession to the police as evidence in the American courtrooms. Further, the video record also establishes the voluntariness of the confession as well as the legality of the police tactics. In criminal cases, however, the video recordings must be used with greater caution because the accused's rights, particularly the Right to Liberty, are at stake. The video recording could be manipulated or fabricated very easily. Therefore, the benefits of the video record in the form of evidence exceed its disadvantages. Video recording evidence is certainly of significant interest in the sphere of sports violence since it serves as an objective witness to the reality and enables for the demonstration and analysis of the commission of an offence.

The video record, however, need to pass legal admissibility standard<sup>29</sup>. The Videotape evidence, for instance, photographic evidence, must be relevant, valid, and exact in order to be accepted in the court, and its adverse effects couldn't outweigh its probative value. The imprecision and inaccuracies of a video record would influence the probative value of that form of material evidence, just as the lack of precision, hesitancy, and inaccuracy of a witness's

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<sup>27</sup> Letourneau, Gilles and Manganas, Antoine. "Violence in Sports: Evidentiary Problems in Criminal Prosecutions." *Osgoode Hall Law Journal* 16.3 (1978): 577-600.  
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol16/iss3/2> accessed 21 August 2021.

<sup>28</sup> MEMORANDUM OF LAW ON ADMISSIBILITY OF TAPES AND TRANSCRIPTS (The United States Department of Justice, 15 February, 1994) <https://www.justice.gov/atr/case-document/memorandum-law-admissibility-tapes-and-transcripts> accessed on 21 August, 2021.

<sup>29</sup> FEDERAL RULES OF EVIDENCE 2020, Rule 1001.

words would affect the probative value of that kind of material evidence. When the existing law is applied to sports violence, an adverse effect that could result from a distortion of objective reality and could deprive the accused of his right to a fair trial in court. For instance, in the case of <sup>30</sup>*Regina v. Maloney*, one of the two video recordings presented to the Court showed that the victim, Brian Glennie, body-checking one of the accused, Daniel Charles Maloney's teammates, partially in slow motion and partly at normal speed. The incident occurred before Maloney assaulted the victim. However, after being edited for broadcast on American television, video recording displayed Maloney's attacking Glennie immediately following the body-check. The ruling judge refused to accept the video recording as evidence during a *voir dire* because it had been edited; featured sequences split in time, and showed parts of the occurrence at different speeds.

## 2. THE WEAKNESS OF TESTIMONY:

In criminal prosecutions, testimonial witness is frequently utilised to prove the cases. With the exception of some categories of witnesses, testimony of witness in the domain of sports violence is often weak, and even they have been known to deliver inconsistent or contradicting interpretations. There are two categories of testimony in the criminal prosecution of on-field sports violence:

### I. *The testimony from the individuals who directly participated in the game:*

The players who were involved in the violent event, as well as the other players and the referees, can all testify in this category. The testimonies of those who were present during the incident are sometimes inconsistent and greatly conflicting. Given the nature of sport, it's normal for each party to an incident to give his or her own account of his or her own actions and gestures, as well as those of the others. Similarly, players might also support their teammate's acts due to personal bias and team spirit. Further, the testimony of the referees at a sporting event might appear to be more credible, but its significance should not be overstated because a number of circumstances limit the validity of the referee's assessment. <sup>31</sup>However, the testimony of the referees is generally given precedence by the courts.

### II. *The testimony from non-participants:*

The evidence of spectators and various sports specialists falls under the second category of non-

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<sup>30</sup> *Regina v. Maloney*, [1976] 28 C.C.C.2d 323.

<sup>31</sup> Maki (n 12), Green (n 11), Agar (n 23).

participant witness. Spectator's testimony should be treated with extreme caution. Spectators' observation, judgement, and recall abilities are often unequal and insufficient. Some witnesses' testimony is solely based on assumption, and their evidence is thus purely speculative. Others sometimes depict facts as they would like them to be rather than as they are. Furthermore, many spectators are biased witnesses because of their support for one of the teams. As a result, it is unwise to place too much reliance on the testimony of any onlooker.

### **3. THE USAGE OF EVIDENCE OF SIMILAR FACTS:**

The evidence of similar facts refers to the defendant's specific actions that are similar to those for which he is charged. This includes evidence of particular situations or facts that occurred prior to, during, or even after the criminal act alleged to the accused. In criminal prosecutions, the accused is not required to answer for any activities that are not the subject of his trial. Anything less would be unjust due to the element of surprise that such evidence provides, as well as the fact that it is nearly impossible for the accused to refute or show its untruth. As a result, and because evidence of comparable actions might build an ambiance of remorse during the trial, similar acts evidence is usually not admitted. It provides the idea that the accused has a proclivity for activities comparable to those for which he is charged, and that he has most likely committed the acts he denies. The prosecution may, however, use this type of evidence in extraordinary cases. The prosecutor is often authorised to utilise such evidence to prove the identification of the accused, as well as his culpable intentions, and also to rebut the defence arguments claiming error, good faith, accident, etc., depending on the circumstances of the case. A facet of the defendant's personality is often revealed by the evidence of Similar acts. In sports cases, it is self-evident that the player's reputation, like the victim's, might be crucial evidence especially during criminal prosecutions for assault or physical harm. A player who is known for his aggressive temperament is more likely to have initiated a fight than an easy-going player. The similar facts to be used as evidence must be related to the accused and his role in the crime by their significance.

These facts, of course, do not have to be identical in every way to the act for which the accused is charged. Further, a similar act does not have to use the same or similar tactics as the accused criminal act. It suffices if the similar act is of an analogous type and the circumstances are comparable. Moreover, a similar act and the act of which the defendant is charged must have occurred within a reasonable amount of time. The evidence of similar acts, which would be recorded in a player's sports file, could be useful in demonstrating the accused's intentions and

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rebutting the defence's claims of error, accident, self-defence, or potential victim consent in sports. The possibility of the criminal prosecution to trial or punishment, prepared with this type of evidence might dissuade those players most inclined to violence. Except on preliminary inquiry, where such evidence would appear to be inadmissible, the Court may anticipate by providing evidence of similar actions. However, it's tough to come up with a good rationale for this exception to the norm. At this point, the defendant may plead accident, alibi, or something else based on his own evidence or the testimony of prosecution witnesses. In order to gain a committal for trial, the Court may wish to oppose such a defence. Furthermore, the accused may refer or describe identical crimes in a confession, and this evidence is unquestionably admissible at this stage of the prosecution proceedings.

#### **4. EVIDENCE OF AN EXPERT WITNESS:**

An expert is someone who has gained exceptional or unusual knowledge of the subject on which he is about to testify through experience. For instance, the referee serves as a judge in hockey. When he witnesses' violations of the game's rules, he has the responsibility of reporting all match penalties to the President on the Official Game Report as soon as possible after the game. He is unquestionably an expert witness due to his qualifications and expertise. A trained expert observer, at any sporting event, appointed in the same way as the referee but perhaps with more credibility, would be an important expert witness as to the facts in dispute as well as the rules of the game and their limits.<sup>32</sup> Given that prosecutors frequently deal with contradictory or unreliable testimony from supporters, the value of such an expert witness should not be overlooked. The importance of various ways for gathering evidence and their disruptive effect on participants can obviously be recognised. <sup>33</sup>If a player knows that his actions are being filmed or witnessed by trained expert observers and that the film might be used as evidence, also, that the testimony of these expert observers would be given significant weight, and that his individual career record might also be utilized to prove his mental state or identity, it is unlikely that he would resort to on-field violence on a regular basis.

#### **5. JUDICIAL PRECEDENTS:**

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<sup>32</sup> Greg Hurley, "The Trouble with Eyewitness Identification Testimony in Criminal Cases" (Trends in States Courts, 2017) <https://www.ncsc.org/trends/monthly-trends-articles/2017/the-trouble-with-eyewitness-identification-testimony-in-criminal-cases> accessed 21 August, 2021.

<sup>33</sup> Letourneau, Gilles and Manganas, Antoine. "Violence in Sports: Evidentiary Problems in Criminal Prosecutions." *Osgoode Hall Law Journal* 16.3 (1978): 577-600.

<sup>34</sup>The interaction of criminal law and sports violence stretches back to the late 1800s. There has always been a contradiction between the criminal law's involvement and non-involvement in sports.<sup>35</sup> It is apparent that criminal prosecutions would only be warranted in the most extreme circumstances. In the case of <sup>36</sup>*State v. Forbes*, Henry Boucha of the Minnesota North Stars and Dave Forbes of the Boston Bruins were both removed from their respective penalty boxes during a time out in an ice-hockey game in Bloomington, Minnesota. Forbes used his fists and stick to attack Boucha. Until other players intervened, Forbes beat him and slammed his head against the ice after Boucha collapsed to the ice. Forbes was charged with aggravated assault by a grand jury in Hennepin County, Minnesota. This was the first criminal prosecution of a professional athlete in the United States for culpable conduct while competing in a professional sporting event. In <sup>37</sup>*Regina v. Bradshaw*, both the defendant and victim were playing football. The defendant kned the victim in the stomach in an ill-advised tackle. This resulted in the victim's death as a result of his injuries. The defendant was charged with manslaughter by criminal act. However, the judge instructed the jury that the victim could have given consent to the risk of harm, making the act legal. This would depend in part on whether the defendant behaved with a "malicious motive or intention," which the jury could infer based on whether or not the defendant followed the rules of the game. The jury released the defendant on this basis. Excessive violent conduct by hockey players has resulted in numerous legal precedents, including multiple criminal verdicts, particularly in Canadian courts. Wayne Maki of the St. Louis Blues and Ted Green of the Boston Bruins were charged with assault in the dual Canadian cases of <sup>38</sup>*Regina v. Maki* and <sup>39</sup>*Regina v. Green*, after each tried to swing their sticks amongst the fans during a game in Ottawa. Maki collided with Green's head, causing the latter's skull to fracture. The court ruled that the use of force was not excessive, and that the players accepted certain risks as part of the game, and their actions were justified by self-defence. In separate cases, the assault allegations against Green and Maki were rejected. However, in *Green*, the court highlighted that sports leagues should not have players exempt from criminal

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<sup>34</sup> The Criminal Law and Sport (Edge Hill University, 18 March, 2020)

<https://www.edgehill.ac.uk/law/research/centre-for-sports-law-research/sports-law-insights-two-faces-sports-law/criminal-law-sport/> accessed 21 August, 2021.

<sup>35</sup> Miles Jackson, 'Crime and Sport' (2016) 133 S African LJ 271.

<sup>36</sup> Forbes (n 13).

<sup>37</sup> Regina v. Bradshaw, (1878) 14 Cox CC 83.

<sup>38</sup> Maki (n 12).

<sup>39</sup> Green (n 11).

prosecution. In <sup>40</sup>*Regina v. Ciccarelli*, Dino Ciccarelli of the Minnesota North Stars repeatedly smacked Luke Richardson of Toronto Maple Leafs in the mouth. Ciccarelli was fined \$1,000 and sentenced to one day in jail for the assault. The court sought to convey a message to hockey players and spectators that excessive violence in the sport is unacceptable. This was the first time a professional athlete was sentenced to prison for on-field violence during a sporting event. In the case of <sup>41</sup>*People v. Freer*, a young New York amateur athlete was successfully prosecuted for his conduct on the playing field. During a tackle, John Freer was hit in the throat. Following the game, he punched the party he believed was responsible for the previous blow. The athlete who was punched by Freer sustained a major eye damage that need plastic surgery. Freer was charged with assault and battery, and was found guilty by a judge that determined that his actions were unnecessary and was not in self-defence since he had no reason to fear the injured player continuing to attack him.

In<sup>42</sup> *State v. Floyd*, the defendant was found guilty of assault and filed an appeal, claiming that he was exempted from assault by Iowa's provision for voluntary participants in athletic events. The defendant and two of his victims were not "willing participants in a sport" at the time of the occurrence, according to the court, because the incidents occurred during a timeout and the defendant and two of his victims were on the side lines, not playing. There was simply "no relationship between the defendant's conduct and playing the game of basketball," the court reasoned. While the court's ruling was based on this finding, it also stated in dicta that the defendant's conduct wasn't a reasonably foreseeable occurrence of the sport and posed an unreasonable danger of serious injury or disruption of the peace. Furthermore, a casual basketball game degenerated into a brawl in the Washington state case of <sup>43</sup>*State v. Shelley*, in which one player hit another in the face, breaking his jaw. In addition to the criminal allegations, the court in the civil case used Section 2.11 of the Model Penal Code to determine whether such interaction was reasonably foreseeable. The court upheld the lower court's finding, ruling that, during a basketball game, a participant in such an activity does not implicitly consent to punches being thrown or received.

## CONCLUSION:

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<sup>40</sup> *Regina v. Ciccarelli*, 1989 CanLII 7205 (ON SC), 5 W.C.B.(Ont. Prov. Ct., 1988), 54 C.C.C. (3d) 121 (Ont. Dist. Ct.).

<sup>41</sup> *Freer* (n 8).

<sup>42</sup> *State v. Floyd*, 466 N.W.2d 919 (1990).

<sup>43</sup>*State v. Shelley*, 929 P.2d 489 (Wash. Ct. App. 1997).

Sports violence is still a reality today, as it has been throughout the history. Sports demand an exception to the general rule of violence and the criminal liability that follows. Criminal charges are rarely brought against athletes who engage in aggressive conduct during a live match instead, referees and internal sport's governing organisations deal harshly with such activities in accordance with the laws and regulations of the respective sports. However, an athlete must be held criminally accountable, when he breaches an invisible line and intentionally inflicts injury on another athlete. In general, the State is obligated by the constitutional duty to prosecute criminal violence cases. Just like lawyers who commit fraud may be barred from practising law and prosecuted in criminal court. Negligent doctors may be punished by their peers and prosecuted by the state. Criminal prosecutions of players who commits on-field sports violence can be a powerful tool for sending a message to the society that unnecessary violence by athletes will not be tolerated. Criminal law and Sports law should complement each other. However, the use of criminal law to manage the conduct of athletes in a sporting event has been done with the utmost trepidation. Formal criminal charges against professional athletes are uncommon, and successful prosecutions in professional sports are practically non-existent. Nevertheless, there is a clear tendency in Canada and the United States that criminal justice systems are becoming more inclined to manage on-field sports violence.

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