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CAN SUMMER TRAINING CAMP PRACTICES LAND NFL HEAD COACHES IN HOT WATER?

TIMOTHY PATRICK HAYDEN*

I. INTRODUCTION

When a football player dies from heat stroke, Americans watch the news telecast or read about the story. We think about all of the money the school, organization, or coach may have to pay in a wrongful death lawsuit. We feel sorrow for the player, and the player's family, but then we quickly forget about it, and go about our day. However, what if it was your son that died from heat stroke during a football practice? Envision your son telling you how excited he is to be in the National Football League (NFL), and how he is looking forward to the start of a new season. It is a hot summer day in training camp, and your son is hitting, conditioning, and working as hard as he can. The practice is nearing the three-hour mark, and your son is feeling hot, tired, and sore. Now envision the head coach yelling at your son, telling him to never give up, and to push through the pain. As the minutes pass by, your son feels like he cannot go on, but the head coach continues to make the team practice and condition. Your son eventually collapses, and is brought to the hospital, with a core body temperature of 108 degrees Fahrenheit. You rush to the hospital to find your son unconscious, clinging for life. Several hours later, your son is pronounced dead from heat stroke. You were not even given the chance to tell him you love him. As his parent, no amount of money would matter to you. Most likely, you would vow to see that the head coach was put in prison.

When Minnesota Vikings offensive tackle Korey Stringer (Stringer) died from heat stroke after participating in a Vikings summer training camp practice, a civil suit was filed against the Vikings, Vikings trainers and coaches, and several other parties.¹ The absence of a criminal lawsuit was not surprising. In contrast, when Pleasure Ridge Park High School offensive

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1. Stringer v. Nat'l Football League, 705 N.W.2d 746, 748 (Minn. 2005).

lineman Max Gilpin (Gilpen) died from heat stroke after a summer practice, Pleasure Ridge Park High School head football coach David Jason Stinson (Stinson) was arraigned on a criminal reckless homicide charge.² This was possibly the first time in history that a head football coach was criminally charged for the heat-related death of a player.³ This lawsuit has led to widespread debate as to whether criminal charges against a head football coach for the heat-related death of a player are warranted or excessive.

This comment will analyze whether NFL head coaches can face criminal charges for the heat-related death of a player, and the likelihood of being found guilty. In making a judgment whether criminal charges can be brought against an NFL head coach, several aspects will be analyzed, including: (1) the prevalence of heat-related deaths for American citizens and football players; (2) the culture of the NFL; (3) criminal and employment law that govern the relationship between an NFL head coach and player when a heat-related death occurs; (4) the history of criminal charges levied upon head football coaches for the heat-related death of a player; (5) the likelihood that NFL head coaches will face criminally negligent homicide charges and be found guilty for the heat-related death of a player; and (6) the best method NFL head coaches can use to avoid criminal liability and protect football players from heat-related illnesses and death.

II. BACKGROUND AND HISTORY OF HEAT STROKE IN AMERICA

Exposure to heat causes Americans to suffer and die from heat stroke every year, including football players. The combination of NFL culture and summer heat during training camp increases the risk of NFL players dying from heat stroke. While only one NFL player has died from heat stroke, the risk for another heat stroke death in the NFL is present every season.

A. Exposure to Heat Can be Deadly

Every year Americans of all ages die from heat stroke. From 1999 to 2003, 3,442 Americans died from exposure to extreme heat.⁴ For 2,239 of these heat-related deaths, the primary cause of death was exposure to excessive heat.⁵ Of the 3,442 reported deaths, 3,401 of the reports listed the

2. *Kentucky Coach Pleads Not Guilty in Player's Death*, FOXNEWS.COM, Jan. 26, 2009, <http://www.foxnews.com/story/0,2933,483027,00.html>.

3. *Id.*

4. Center for Disease Control & Prevention (CDCP), *Heat-Related Deaths – United States 1999 - 2003*, July 28, 2006, <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5529a2.htm>.

5. *Id.*

age of the decedent.⁶ Approximately seven percent of the decedents were less than fifteen years of age, fifty-three percent were between ages fifteen and sixty-four years of age, and forty percent were sixty-five years of age or older.⁷ Males accounted for sixty-six percent of these deaths.⁸ In addition to individuals with chronic medical conditions, these statistics show that older adults and young children are particularly susceptible to heat-related illnesses and death.⁹

While there are several types of heat-related illnesses, heat stroke is the only heat-related illness that can be fatal.¹⁰ Heat stroke occurs when the body fails to control its temperature.¹¹ The body fails to control its temperature because sweating ceases to occur, which prevents the body from cooling down.¹² The body's temperature rises rapidly, often reaching 106 degrees Fahrenheit or higher within ten to fifteen minutes.¹³ Causal factors for heat stroke include high temperature and humidity, exposure to direct sunlight, low air movement, physical exertion, poor physical condition, use of certain medications, and inadequate conditioning for hot temperatures.¹⁴ An individual suffering from heat stroke displays symptoms such as hot dry skin, high body temperature, chills, hallucinations, seizures, convulsions, headache, slurred speech, and loss of consciousness.¹⁵

Despite heat stroke being potentially fatal, heat stroke and other heat-related illnesses can be prevented and treated. Prevention is the most important factor to stop heat-related illnesses and death. Prevention and safety measures include educating individuals about the signs, symptoms, and treatment of heat-related illnesses, avoiding excessive heat when possible, resting regularly, staying well hydrated, wearing clothing that is lightweight, lightly colored, and loose fitting, and avoiding alcohol, caffeine, and heavy meals.¹⁶ If an individual is suffering from heat stroke, emergency treatment is

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. Center for Disease Control & Prevention, *Heat Stress*, CDC.GOV, Oct. 22, 2008, <http://www.cdc.gov/niosh/topics/heatstress>. [hereinafter CDCP].

11. *Id.*

12. *Id.*

13. *Id.*

14. United States Department of Labor, *OSHA Quick Card*, OSHA.GOV, 2005, <http://www.osha.gov/Publications/ osha3154.html> [hereinafter USDL].

15. CDCP, *supra* note 10; USDL, *supra* note 14.

16. USDL, *supra* note 14.

necessary to prevent permanent injury or death.¹⁷ Emergency treatment includes calling 9-1-1, notifying superiors (manager, supervisor, etc.), moving the individual to a cool area, providing cool drinking water, removing heavy clothing, soaking their clothes and body in water, and fanning their body.¹⁸

B. Football Players and Heat Stroke

Heat stroke has hit the sport of football particularly hard. Football players are affected by heat stroke every year. The 2008 heat stroke death of fifteen year-old Max Gilpin, a high school football player from Pleasure Park High School in Kentucky, has brought heat-related deaths of football players to the forefront of the public eye.¹⁹ However, professional and amateur football players dying from heat stroke is not a recent phenomenon. From 1960 through 2008, 120 football players died from heat stroke.²⁰ Since 1995, heat stroke caused the death of thirty-nine football players.²¹ Furthermore, in 2008, six football players died from heat stroke.²² It is important to note that out of the 120 football players to die from heat stroke, only one was an NFL football player.²³

C. NFL Culture and Summer Heat

While heat stroke poses a risk to all Americans, football players, especially in the NFL, are at an increased risk of suffering from heat stroke. Mottos such as “no pain, no gain” and “winning is everything” have permeated the NFL creating a culture that has a combination of causal factors that significantly increase a player’s risk of suffering, and possibly dying, from heat stroke.²⁴ First, NFL players get bigger, faster, and stronger each year. Between 1920 and 1984, there were no more than eight players weighing 300 pounds or more at any given time during the season.²⁵ However, in 2006

17. CDCP, *supra* note 10.

18. CDCP, *supra* note 10; USDL, *supra* note 14.

19. *Kentucky Coach Pleads Not Guilty in Player’s Death*, *supra* note 2; Rick O’Brien, *Heat Deaths and Football Coaches*, PHILA. INQUIRER, Feb. 1, 2009, at E12.

20. FREDERICK O. MUELLER & BOB COLGATE, ANNUAL SURVEY OF FOOTBALL INJURY RESEARCH 8 (2008).

21. *Id.*

22. *Id.*

23. *Vikings Star Korey Stringer Dies From Heat Stroke*, FOXNEWS.COM, Aug. 1, 2001, <http://www.foxnews.com/story/0,2933,31059,00.html>.

24. Michael Landis, *The Team Physician: An Analysis of the Causes of Action, Conflicts, Defenses and Improvements*, 1 DEPAUL J. SPORTS L. CONTEMP. PROBS. 139, 150 (2003).

25. Carlos Frias & William M. Hartnett, *Heavy Pressure: NFL Players Struggle With Weight*

there were 570 players weighing 300 pounds or more, accounting for almost twenty percent of all players.²⁶ While this figure accounts for most linemen in the NFL, the increase in size has translated to all positions. Since the NFL-AFL merger in 1970, all players are approximately twenty-five pounds heavier.²⁷ For example, offensive linemen average sixty-two pounds heavier, defensive linemen average thirty-four pounds heavier, running backs average seventeen pounds heavier, and quarterbacks average twenty-six pounds heavier.²⁸ These gains in size and strength are a combination of year round training, better nutrition, legal supplements, and illegal substances.²⁹

In addition to larger players, the “warrior” mindset engrained in coaches has increased the risk of heat stroke. Football coaches and traditionalists staunchly adhere to the proposition that football players must maintain peak physical condition to perform at the rigorous level that the game demands.³⁰ The reward for this great physical toll and risk of injury is the generous financial compensation given to each player.³¹ To get players to compete at their highest level, coaches employ techniques “that could be deemed wanton or grossly negligent by legal standards.”³² When referring to mandatory NFL training camps, Gene Upshaw, the recently deceased Executive Director of the NFL Players Association, stated, “[i]t seems that these men were forced to endure an unbelievably demanding regimen that would have literally killed lesser men.”³³ Upshaw also stated that players participating in training camps sustained damaged joints, broken bones, muscle tears, and extensive bruising.³⁴ Even when team activities are deemed voluntary, coaches still expect all players to participate and give maximum effort; coaches remind players that they “better volunteer to be there” and “making the team is also voluntary.”³⁵ Despite using harsh coaching methods, coaches are celebrated in society for getting the most out of their players because sports reflect the

Game, PALM BEACH POST, Oct. 29, 2006, available at [http://www.palmbeachpost.com/sports/content/sports/epaper/2006/10/29/a1b_nflweight_1029.html](http://www.palmbeachpost.com/sports/http://www.palmbeachpost.com/sports/content/sports/epaper/2006/10/29/a1b_nflweight_1029.html).

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. Kelly Basinger Charnley, *Is the Football Culture Out of Bounds? Finding Liability for Korey Stringer's Death*, 12 VILL. SPORTS & ENT. L.J. 53, 81-82 (2005).

31. *Id.*

32. *Id.*

33. *Outside the Lines: Training Athletes to Death*, ESPN.COM, Aug. 5, 2001, <http://espn.go.com/page2/tvlistings/show71transcript.html>.

34. *Id.*

35. JOHN FEINSTEIN, NEXT MAN UP 97-98 (2005).

American value system of hard work, perseverance, and character building.³⁶

The “warrior” mindset has been absorbed by the players as well. Players gain each other’s respect by playing through pain because they feel it shows unity and the desire to win.³⁷ This leads players to compete despite knowing they are seriously injured, even if they know playing may lead to long-term health problems.³⁸ Players also push their bodies to the limits because they feel that not doing so will result in them not making the team.³⁹ Players will pressure doctors to clear them to play, or will simply hide the injury from other players, coaches, and doctors.⁴⁰ If a player is unwilling to play through the pain, other teams may be reluctant to sign the player.⁴¹

Harsh coaching methods and players pushing through mental and physical pain occur in every NFL training camp. Training camp is a series of summer practices, often composed of two practices per day for three weeks, which are used to get players into football shape. The playbook is introduced, fundamentals are practiced to perfection, and players are conditioned for the rigors of the NFL season in the hottest days of summer. Because training camp summer practices have existed since the inception of professional football approximately ninety years ago, training camp is considered an annual right to make an NFL roster.⁴²

D. Korey Stringer

In 2001, the combination of larger players, NFL culture, and summer heat led to the first and only heat stroke death of an NFL player.⁴³ Before the start of Minnesota Vikings (Vikings) training camp, the Vikings head athletic trainer spoke at a team meeting about heat and proper hydration, but did not give players any written material concerning heat-related illnesses.⁴⁴ On July 29, 2001, the Vikings opened training camp with two practice sessions.⁴⁵

36. Charnley, *supra* note 30, at 83.

37. *Id.* at 85.

38. Justin P. Caldarone, *Professional Team Doctors: Money, Prestige, and Ethical Dilemmas*, 9 SPORTS LAW. J. 131, 142 (2002).

39. See BILL BATES & BILL BUTTERWORTH, SHOOT FOR THE STAR 111 (1994); Caldarone, *supra* note 38, at 143.

40. Caldarone, *supra* note 38, at 147; BATES & BUTTERWORTH, *supra* note 39, at 111.

41. Caldarone, *supra* note 38, at 143.

42. Thomas R. Hurst & James N. Knight, *Coaches' Liability for Athletes' Injuries and Deaths*, 13 SETON HALL J. SPORTS L. 27, 28 (2003).

43. *Vikings Star Korey Stringer Dies From Heat Stroke*, *supra* note 23.

44. *Stringer*, 705 N.W.2d at 749.

45. *Id.* at 748.

During the morning session, which was conducted with players not in full gear, Stringer, a six-foot-four-inch, three hundred thirty-five pound offensive tackle, complained of an upset stomach and received an antacid.⁴⁶ Before the afternoon practice, Stringer received an electrolyte supplement to help combat heat-related problems he had encountered in previous camps.⁴⁷ Approximately forty-five minutes into the afternoon practice, with a heat index of 109 degrees, Stringer vomited three times and was instructed by offensive line coach Mike Tice to leave practice.⁴⁸ Later that night, Tice called Stringer a “big baby” for struggling with the heat, and mocked him with a newspaper photo of Stringer doubled over during practice.⁴⁹

On July 31, the Vikings began their second day of training camp with a morning practice.⁵⁰ Before the morning practice, teammates and other members of the organization teased Stringer with the photo of him doubled over during practice on Monday.⁵¹ Stringer, embarrassed by the teasing and having to leave the first day early, was determined to finish practice on Tuesday and set a better example for his teammates.⁵² The morning practice started at 8:45 a.m., with the heat index hovering around 90 degrees.⁵³ Stringer struggled with the heat during the morning practice, vomiting once, sweating profusely, and falling to his knees several times.⁵⁴ At the conclusion of the morning practice at 11:10 a.m., Stringer fell to the ground and lay on his back, sweating heavily.⁵⁵ After spending time in the Viking’s air-conditioned trailer, Stringer was taken by ambulance to Immanuel St. Joseph’s Hospital at 12:24 p.m.⁵⁶ Upon admission, Stringer had a temperature of 108.8 degrees Fahrenheit, was unconscious, and had a heartbeat of 148 beats per minute.⁵⁷ After the second day of training camp was complete, eleven Vikings players were treated for heat-related illnesses.⁵⁸ At 1:50 a.m. the next morning,

46. *Id.* at 749.

47. *Id.*

48. *Id.*

49. Charnley, *supra* note 30, at 56.

50. *Stringer*, 705 N.W.2d at 750.

51. Donald T. Meier, Note, *Primary Assumption of Risk and Duty In Football Indirect Injury Cases: A Legal Workout From the Tragedies on the Training Ground for American Values*, 2 VA. SPORTS & ENT. L.J. 80, 98 (2002).

52. *Id.* at 97-98.

53. *Stringer*, 705 N.W.2d at 750.

54. *Id.*

55. *Id.*; *Vikings Star Korey Stringer Dies From Heat Stroke*, *supra* note 23.

56. *Stringer*, 705 N.W.2d at 753.

57. *Id.* at 753.

58. *Id.* at 750 n. 6.

Stringer died from heat stroke.⁵⁹ After Stringer's death, his wife filed a civil suit against the Vikings, Vikings trainers and coaches, and several other parties.⁶⁰ No criminal charges were ever filed.

III. CRIMINAL AND EMPLOYMENT LAW

Both criminal law and employment law govern the situation when an employee dies while at work. If the employee's death is inadvertent, employers and supervisors facing criminal penalties are typically charged with criminally negligent homicide.⁶¹ Additionally, if an employee dies from exposure to excessive heat, employment law duties can result in employers and supervisors facing criminally negligent homicide charges.⁶²

A. *Criminally Negligent Homicide*

Criminally negligent homicide is commonly the lowest grade of homicide.⁶³ Criminally negligent homicide primarily seeks to punish inadvertent homicide.⁶⁴ To find an individual guilty of criminally negligent homicide, two elements must be proven: (1) that the individual acted with criminal negligence; and (2) that the individual caused the death of another person.⁶⁵ A person acts with criminal negligence to a material element of an offense when:

he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.⁶⁶

An individual acting with criminal negligence acts with such a blatant breach

59. *Id.* at 753.

60. *Id.* at 748.

61. MODEL PENAL CODE § 210.4 (1962).

62. United States Department of Labor, *Acceptable Methods to Reduce Heat Stress Hazards in the Workplace*, May 28, 2004, available at http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=24008 [hereinafter USDL].

63. CRIMINAL LAW DESKBOOK 3.02(8)(a) (2008).

64. MODEL PENAL CODE § 210.4.

65. CRIMINAL LAW DESKBOOK, *supra* note 63.

66. MODEL PENAL CODE § 2.02 (1962).

of duty that courts can assume the criminal defendant acted with intent to injure.⁶⁷ The act lacks proper regard for human life to such a degree that “judicial conscience does not revolt at labeling it criminal.”⁶⁸ Thus, criminal liability requires a much higher degree of negligence than tort liability.

Criminally negligent homicide requires that the actual cause of death was foreseeable.⁶⁹ This principle was established in *New York v. Roth*⁷⁰ and *New York v. Formica*.⁷¹ In *Roth*, Adam Keator was an employee who was killed in an explosion while he was pressure washing a tank trailer.⁷² James Domermuth (president), David Roth (district manager), and Lance Wilson (operations manager) were corporate employees charged with criminally negligent homicide for Keator’s death.⁷³ The court dismissed the criminal negligence charges against all three individuals because the actual triggering cause of the explosion was not foreseeable.⁷⁴ A fire investigator testified that he thought the triggering cause of the explosion was the use of the pressure washer, which shattered a light leading to a spark and ignition of vapors.⁷⁵ However, the fire investigator said that static electricity, heaters, steel tools, and electrical panels all could have caused the explosion.⁷⁶ Thus, the actual cause of the explosion was speculative, making it non-foreseeable.⁷⁷

Formica adds to the principle that the actual cause of death must be foreseeable by establishing that the totality of the circumstances present can make the direct cause of death foreseeable.⁷⁸ In *Formica*, Kenneth Formica was a partner in the Formica Construction Corporation.⁷⁹ On December 15, 2003, Formica was supervising a work site trench where Lorenzo Pavia was working.⁸⁰ Formica ordered Pavia to enter the trench and connect a sewer pipe.⁸¹ Pavia was killed when the trench collapsed.⁸² With approximately

67. *Id.* § 2.02 n. 21.

68. *Id.*

69. *People v. Roth*, 176 A.D.2d 1186, 1187 (N.Y. App. Div. 1992); *People v. Formica*, 833 N.Y.S.2d 353, 356 (N.Y. Sup. Ct. 2007).

70. *Roth*, 176 A.D.2d 1186, 1187 (N.Y. App. Div. 1992).

71. *Formica*, 833 N.Y.S.2d 353, 356 (N.Y. Sup. Ct. 2007).

72. *Roth*, 176 A.D.2d at 1186.

73. *Id.*

74. *Id.* at 1187.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Formica*, 833 N.Y.S.2d at 356.

79. *Id.* at 354.

80. *Id.* at 354-55.

81. *Id.* at 355.

thirty years experience as a licensed contractor, Formica knew that both city and federal regulations required shoring or sloping of the trench.⁸³ However, the trench walls were vertical and not shored.⁸⁴ Furthermore, the road was not closed to traffic, an excavator was operating at the edge of the trench, and the soil was “pre-disturbed” and wet, all of which increased the likelihood of vibrations collapsing the unstable soil.⁸⁵ The court found that the totality of the circumstances supported the finding that Formica consciously disregarded the risk of a trench collapse, or that he failed to perceive this substantial and unjustifiable risk.⁸⁶ The court also found that the totality of the circumstances made the risk of a trench collapse clear and specific.⁸⁷ Thus, the court upheld the criminally negligent homicide conviction against Formica because the direct cause of death was foreseeable.⁸⁸

B. Criminally Negligent Homicide and OSHA’s General Duty Clause

Violations of the Occupational Safety and Health Act (OSHA) can lead to employers and supervisors facing criminal charges. OSHA was passed by Congress in 1970 for the purpose of protecting the health and safety of all employees.⁸⁹ OSHA applies to every employer.⁹⁰ While OSHA does not have specific regulations regarding heat stress hazards, OSHA’s general duty clause protects employees from being exposed to serious physical harm caused by excessive heat.⁹¹ OSHA has invoked the general duty clause to punish employers that have exposed employees to physical harm caused by excessively hot work environments.⁹² OSHA’s general duty clause states that each employer must “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”⁹³

In certain situations, such as the inadvertent death of an employee, OSHA penalties may be too inadequate to punish and deter employers and supervisors

82. *Id.*

83. *Id.* at 354-355.

84. *Id.* at 355.

85. *Id.*

86. *Id.* at 356.

87. *Id.*

88. *Id.*

89. Occupational Safety and Health Act, 29 U.S.C. § 651(b)(1) (2009).

90. *Id.*

91. USDL, *supra* note 62.

92. *Id.*

93. 29 U.S.C. § 654(a)(1); USDL, *supra* note 62.

from engaging in actions that led to the employee's death. Consequently, some states are encouraging prosecutors and district attorneys to criminally charge mid-level managers that create or refuse to correct unsafe work conditions.⁹⁴ For example, Virginia's Attorney General stated that manslaughter charges will be levied against employers and supervisors that permit unsafe work conditions to exist and which cause the death of an employee.⁹⁵

The prospect of employers and supervisors facing criminal charges for the death of an employee pursuant to OSHA's general duty clause is demonstrated in *Sabine Consolidated v. Tantillo*.⁹⁶ In *Tantillo*, Joseph Tantillo was the president of Sabine Consolidated, and was charged with criminally negligent homicide.⁹⁷ Tantillo was charged with criminally negligent homicide because he failed to shore and slope trench walls, causing the trench to collapse and kill two employees.⁹⁸ The court stated that Tantillo had a duty to shore and slope the trench walls pursuant to OSHA's general duty provision, which requires employers to provide a reasonably safe and healthful work environment, and to use methods and safeguards reasonably necessary to protect the life and safety of employees.⁹⁹

It is important to note that OSHA will not preempt state criminal law.¹⁰⁰ In *Tantillo*, the court addressed the issue of preemption.¹⁰¹ The court stated that Congress' purpose for creating OSHA was "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources."¹⁰² The court stated that the application of criminal laws to conduct in the workplace does not hinder OSHA's purpose of assuring every employee safe and healthful working conditions.¹⁰³ Thus, the court held that OSHA will not preempt state criminal law.¹⁰⁴ Multiple other state courts addressed this issue, and all have held that OSHA does not preempt state criminal laws.¹⁰⁵

94. GIL FRIED & LORI MILLER, *EMPLOYMENT LAW: A GUIDE FOR SPORT, RECREATION, AND FITNESS INDUSTRIES* 301-302 (1998).

95. *Id.*

96. *Sabine Consolidated, Inc. v. Texas*, 806 S.W.2d 553, 555 (Tex. Crim. App. 1991).

97. *Id.* at 302.

98. *Id.*

99. 29 U.S.C. § 654(a)(1) (2009); *Sabine*, 806 S.W.2d at 555.

100. *Sabine*, 806 S.W.2d at 559.

101. *Id.* at 556-59.

102. *Id.* at 555.

103. *Id.* at 560.

104. *Id.* at 559.

105. *People v. Pymm*, 563 N.E.2d 1 (N.Y. Ct. App. 1990); *People v. Chicago Magnet Wire*

In addition to the general duty clause, OSHA has established numerous acceptable methods to protect employees from heat-related illnesses. Some of the acceptable methods include permitting workers to drink water at liberty, creating a work schedule that decreases exposure to heat, and developing a heat stress program.¹⁰⁶ The heat stress program should include employee training about the effects of heat stress and how heat-related illnesses can be prevented and treated, screening to identify health risks affected by excessive heat, an acclimatization program for employees who have not been subjected to hot working conditions for three or more days, and procedures to follow when a heat-related emergency arises.¹⁰⁷

IV. HISTORY OF CRIMINAL CHARGES FOR HEAD FOOTBALL COACHES

While many cases have charged supervisors and managers with criminally negligent homicide for the inadvertent death of another employee have been decided, it is possible that there is only one case has been decided where a head football coach was criminally charged for the inadvertent heat-related death of a player.¹⁰⁸ On January 22, 2009, Stinson, head football coach of Pleasure Ridge Park High School, was criminally charged for the heat-related death of a player.¹⁰⁹ Stinson was charged with reckless homicide in Kentucky for the heat stroke death of Max Gilpin, a fifteen year-old Pleasure Ridge Park High School lineman.¹¹⁰ On January 26, 2009, Stinson pleaded not guilty to the reckless homicide charge.¹¹¹ Reckless homicide in Kentucky is analogous to criminally negligent homicide in other jurisdictions because "reckless homicide is the lowest level of criminal culpability in Kentucky."¹¹² Furthermore, the mental state required for criminal negligence is almost

Corp., 543 N.E.2d 962 (Ill. 1989); *People v. Hegedus*, 443 N.W.2d 127 (Mich. 1989); *Commonwealth v. Morris*, 575 A.2d 582 (Pa. Super. Ct. 1990); *People v. Brom*, 541 N.E.2d 745 (Ill. 5th Dist. Ct. App. 1989); *State ex rel. Cornellier v. Black*, 425 N.W.2d 21 (Wis. Ct. App. 1988).

106. See United States Department of Labor (USDOL), *Heat Stress: Hazards and Possible Solutions*, Feb. 8, 2008, available at <http://www.osha.gov/SLTC/heatstress/recognition.html>; CDCP, *supra* note 10.

107. USDL, *supra* note 14.

108. See MATTHEW J. MITTEN ET AL., *SPORTS LAW AND REGULATION: CASES, MATERIALS AND PROBLEMS* 885-896 (2nd ed. 2009); GEORGE W. SCHUBERT ET AL., *SPORTS LAW* 281-283 (1986); RAY YASSER ET AL., *SPORTS LAW: CASES AND MATERIALS* 659-682 (6th ed. 2006).

109. *Kentucky Coach Pleads Not Guilty in Player's Death*, *supra* note 2.

110. Brett Barrouquere, *Ky. High School Coach Charged in Player's Death*, ABC NEWS.COM, Jan. 22, 2009, <http://abcnews.go.com/TheLaw/wireStory?id=6709773>.

111. *Kentucky Coach Pleads Not Guilty in Player's Death*, *supra* note 2.

112. Reckless Homicide, KY. REV. STAT. ANN. § 507.050 (2009); *Coach Was Wrong, But Was He Criminal?*, http://www.uslaw.com/library/Criminal_Law/Coach_Wrong_Criminal.php?item=3619 14 (last visited Feb. 14, 2009).

identical to Kentucky's reckless mental state. A person acts recklessly in Kentucky regarding a result or circumstance enumerated by a criminal statute when:

he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.¹¹³

Criminal charges against Stinson stemmed from a summer football practice. After practicing for almost three hours on August 20, 2008, with a heat index of 94 degrees, Stinson concluded practice by requiring his players to run sprints up and down the field until someone quit.¹¹⁴ The team sprinted twelve times before a profusely sweating Gilpin collapsed on the field.¹¹⁵ Gilpin was an offensive lineman that stood six-feet-two-inches and weighed 220 pounds, and had taken the supplement creatine and the stimulant Adderall.¹¹⁶ Approximately fifteen minutes before Gilpin collapsed, another teammate collapsed.¹¹⁷ Eyewitness accounts stated that Stinson denied his players regular water breaks.¹¹⁸ When Gilpin reached the hospital, his body temperature was 107 degrees Fahrenheit.¹¹⁹ Three days later, Gilpin died of heat stroke.¹²⁰

At the conclusion of Stinson's trial, the jury found Stinson not guilty.¹²¹ While the outcome of Stinson's criminal case sheds some light on the possible charges that an NFL head coach could be convicted of for the heat-related death of a player, Stinson's case is not analogous. NFL players and coaches are adults working together in an employment relationship. The only similarity between Stinson's case and a possible case facing an NFL head

113. Definition of Mental States, KY. REV. STAT. ANN. § 501.020(4) (2009).

114. *Kentucky Coach Pleads Not Guilty in Player's Death*, *supra* note 2; *Coach Was Wrong, But Was He Criminal?*, *supra* note 112.

115. *Kentucky Coach Pleads Not Guilty in Player's Death*, *supra* note 2; *Coach Was Wrong, But Was He Criminal?*, *supra* note 112.

116. *Kentucky Coach Pleads Not Guilty in Player's Death*, *supra* note 2.

117. *Coach Was Wrong, But Was He Criminal?*, *supra* note 112.

118. *Coach Was Wrong, But Was He Criminal?*, *supra* note 107; *Kentucky Coach Pleads Not Guilty in Player's Death*, *supra* note 2.

119. *Kentucky Coach Pleads Not Guilty in Player's Death*, *supra* note 2.

120. *High School Football Coach Charged in Player's Death*, CNN.COM, Jan. 26, 2009, <http://www.cnn.com/2009/CRIME/01/26/football.coach.indicted/>.

121. *Coach Found Not Guilty in Death of Player*, CNN.COM, Sept. 17, 2009, <http://www.cnn.com/2009/CRIME/09/17/kentucky.coach.trial/index.html>.

coach is that criminally negligent homicide can be charged against anyone, regardless of their relationship.

V. LIKELIHOOD OF CRIMINALLY NEGLIGENT HOMICIDE CHARGES FOR NFL HEAD COACHES

NFL head coaches can be charged with criminally negligent homicide for the heat-related death of a player. *Roth*, *Formica*, and *Sabine* demonstrated that presidents, partners, managers, and supervisors can be charged with criminally negligent homicide for the death of an employee.¹²² This is because OSHA applies to all employers, and imposes the general duty that all employers must “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”¹²³ In the NFL, a head coach is the head supervisor of the team. The head coach is in the best position to prevent injury to his players.¹²⁴ Furthermore, professional football is an occupation, which falls under the purview of OSHA, and the general duty clause.¹²⁵

NFL head coaches may also satisfy the elements of criminally negligent homicide. First, if a player dies due to heat stroke during training camp, the argument can be made that in certain circumstances, the head coach acted with criminal negligence. Head coaches are aware of and encourage players to gain strength and size, use legal supplements, and develop a “warrior” mentality. Additionally, while coaches may not encourage the use of illegal substances, they are aware that this takes place.¹²⁶ With these heat illness risk factors present, coaches hold rigorous training camps during the hottest days of summer, with some camps taking place in hotter climates, and some camps having greater intensity and length than that of other camps. Thus, a player dying from heat stroke is foreseeable. In addition, heat stroke is a substantial and unjustifiable risk, and the circumstances formerly listed may involve a gross deviation from the standard of care that a reasonable NFL head coach would use in that situation. For example, some may believe a reasonable head

122. *People v. Roth*, 176 A.D.2d 1186, 1187 (N.Y. App. Div. 1992); *People v. Formica*, 833 N.Y.S.2d 353, 356 (N.Y. Sup. Ct. 2007); *Sabine Consolidated, Inc. v. Texas*, 806 S.W.2d 553, 555 (Tex. Crim. App. 1991).

123. 29 U.S.C. § 654(a)(1); USDL, *supra* note 62.

124. Chamley, *supra* note 30, at 62-63.

125. Daniel Engber, *Does OSHA Keep Tabs on the NFL?*, SLATE, Feb. 3, 2006, <http://www.slate.com/id/2135433/>.

126. MICHAEL S. BAHRKE, PERFORMANCE ENHANCING SUBSTANCES IN SPORT AND EXERCISE 12 (2002).

coach would determine that conducting high intensity three-hour training camp practices in the extreme heat of Arizona during the hottest hours of the day is a gross deviation from the standard of care. In contrast, others may believe that a reasonable head coach would determine that conducting this same type of practice in the much cooler climate of Green Bay, Wisconsin is not a gross deviation from the standard of care. However, all would likely believe that a reasonable head coach would determine that denying players access to water during training camp always involves a gross deviation from the standard of care. Thus, it can be argued that in some instances a coach may engage in criminal negligence and cause the death of a player because the head coach is in direct control of practice length, intensity, and safety measures employed.

Despite possibly fulfilling the elements of criminally negligent homicide, it is unlikely that NFL head coaches would face negligent homicide charges or be found guilty if a player dies from heat stroke. There are four reasons for this conclusion. First, courts have generally recognized that “the law should not place unreasonable burdens on the free and vigorous participation in sports.”¹²⁷ Coaching methods that seem cruel and harsh, which could lead to criminal charges in any other context, are not only tolerated, but encouraged.¹²⁸ For example, if an employer were to scream at employees in extreme heat, making them run until exhaustion, and hit others repeatedly, criminal charges would certainly follow. However, a coach directing his players to engage in this behavior is seen as getting maximum effort out of the players and preparing the team for success. As a result, charging an NFL head coach for the heat stroke death of a player would present a significant departure from comparable scenarios in which criminally negligent homicide charges have been brought.¹²⁹ There is no precedent for charging an NFL head coach with criminally negligent homicide. Thus, an NFL head coach has never been criminally convicted for the heat stroke death of a player.¹³⁰

Second, it would be highly difficult for courts to draw the line between permissible coaching and criminally negligent behavior.¹³¹ For example, are

127. *Nabozny v. Barnhill*, 334 N.E.2d 258, 260 (Ill. App. Ct. 1975).

128. Timothy B. Fitzgerald, Comment, *The “Inherent Risk” Doctrine, Amateur Coaching Negligence, and the Goal of Loss Avoidance*, 99 NW. U. L. REV. 889, 890-91 (2005).

129. Amanda Sherman, *Football Death Leads to Reckless Homicide Charges: Kentucky Embarks on Unprecedented Case*, ALBANY GOV’T L. REV. FIREPLACE, Feb. 23, 2009, available at <http://glrfireplace.albanygovernmentlawreview.org/2009/02/23/football-death-leads-to-reckless-homicide-charges-kentucky-embarks-on-unprecedented-case>.

130. *Kentucky Coach Pleads Not Guilty in Player’s Death*, *supra* note 2.

131. Aaron Stringer, *Coach Charged for Heat Stroke Death of Player*, WILLAMETTE SPORTS L. BLOG, Feb. 19, 2009, http://blog.willamette.edu/wucl/journals/sportslaw/2009/01/coach_charged_for

five 120 yard sprints permissible, but six 120 yard sprints criminally negligent; or is performing five 120 yard sprints in 92 degree heat permissible, but performing five 120 yard sprints in 94 degree heat criminally negligent?

Third, courts follow the first and second approaches above because imposition of criminal liability for ordinary careless conduct while engaged in vigorous participation could ruin the integrity of the game.¹³² Vigorous participation in sports would be significantly reduced if those involved with the game could face criminal charges for ordinary careless conduct.¹³³ If vigorous participation no longer occurred in sports, particularly football, the nature and integrity of the game would be destroyed.

Fourth, training camp and practicing in extreme heat have taken place since the inception of the NFL, with only one NFL player dying from heat stroke.¹³⁴ Training camp exists to prepare football players for the rigors of one of the most physically demanding sports known to man. Head coaches have an obligation to get players in peak condition. Players perform at their best, stay healthy, and protect themselves from opposing players only if they are in excellent shape. Over time, not only have training techniques been perfected to produce the most efficient football players, but safety measures have been honed, and continue to be honed, every year to keep players safe and healthy. These safety measures include protection from heat-related illnesses, such as providing ample water and sports drinks, clothing to combat hot conditions, cooling trailers, taking weight measurements before and after practice to ensure that the player replaced fluids lost, and instructing trainers, players, and coaches on how to prevent, recognize, and treat heat-related illnesses. Application of these safety measures has resulted in Stringer being the only NFL player to die from heat stroke during the approximately ninety-year history of the NFL, making heat stroke deaths almost nonexistent.¹³⁵

While the first three reasons listed above may help to explain why Vikings head coach Dennis Green did not face criminally negligent homicide charges for Stringer's death, the fourth reason listed above is the primary reason it would be difficult to convict Green of criminally negligent homicide. The Vikings use of safety precautions to prevent, recognize, and treat heat-related illnesses were extensive. These safety precautions included providing water and sports drinks, ice wrapped towels, portable water containers with pumps to spray players, keeping a first-aid trailer at 62 degrees on site, and providing

[_heat_stroke.php](#).

132. *Foronda v. Haw. Int'l Boxing Club*, 25 P.3d 826, 840 (Haw. Ct. App. 2001).

133. *Id.*

134. Hurst & Knight, *supra* note 42, at 28.

135. Hurst & Knight, *supra* note 42, at 28.

training to players, coaches, and trainers regarding heat-stress hazards.¹³⁶ In addition, the Vikings practices were not harsher than other typical training camps, Stringer was an NFL veteran and fully understood the rigors he would face at training camp, and Green never acted to intentionally harm Stringer.¹³⁷ Thus, if a criminally negligent homicide charge was brought against Green or any other NFL head coach, these heat-related illness precautions would help the head coach avoid being found guilty.

For an NFL head coach to be found guilty of criminally negligent homicide, the head coach would likely have to engage in egregious behavior. An individual acting with criminal negligence involves such a blatant breach of duty that courts can assume the criminal defendant acted with intent to injure.¹³⁸ This act lacks proper regard for human life to such a degree that “judicial conscience does not revolt at labeling it criminal.”¹³⁹ Thus, criminal charges are rare when a death from a heat-related illness occurs in athletics.¹⁴⁰ To rise to the level of criminal culpability for criminally negligent homicide, NFL head coaches would likely have to deny players access to water, force players to practice until multiple players collapsed or suffered from heat stroke, or eliminate safety measures employed to prevent heat-related illnesses.¹⁴¹ Since these three scenarios have almost no probability of occurring, NFL head coaches will likely never be found guilty of criminally negligent homicide for the heat-related death of a player.

VI. MOST EFFECTIVE METHOD TO AVOID CRIMINAL LIABILITY

Although only one NFL player has died from heat stroke, every year numerous NFL players suffer from heat-related illnesses. Thus, the potential for the NFL to suffer another heat-related death is present every year. If criminal cases similar to Stinson’s proliferate across the amateur sports landscape, NFL head coaches may face criminally negligent homicide charges if a player dies from heat stroke because criminal charges can be brought against anyone, regardless of whether the players are employees or students. Therefore, it is paramount for NFL head coaches to know how to protect

136. Meier, *supra* note 50, at 92; *No Citations: State Officials Won’t Penalize Vikings in Stringer’s Death*, SI.COM, Nov. 1, 2001, http://sportsillustrated.cnn.com/football/news/2001/11/01/vikings_stringer_ap/.

137. Hurst & Knight, *supra* note 42, at 49.

138. MODEL PENAL CODE § 2.02 n. 21.

139. *Id.*

140. Barrouquere, *supra* note 110.

141. *Coach Was Wrong, But Was He Criminal?*, *supra* note 112; *High School Football Coach Charged in Player’s Death*, *supra* note 120.

themselves from criminal liability if a player dies from heat stroke.

The most effective way for NFL head coaches to protect themselves from criminal liability and to protect their players from heat-related illnesses and death is to implement a strong heat-related illness prevention program. The following procedures for the program are an amalgamation of procedures employed by NFL teams and recommendations by the Center for Disease Control and Prevention. This program should include an educational component and operational procedures to be followed at all times. The educational component should begin with distributing concise material to coaches and players to educate them about heat-related illnesses. Material should be concise because material that is too lengthy or complex will likely not be read and understood in its entirety. These materials should be distributed one month before training camp begins. If a coach or player joins the team less than one month before training camp begins, or at any point during the regular season, materials should be distributed immediately. Furthermore, this material should be redistributed yearly to every coach and player.

The materials distributed must include separate sections that address heat stroke, heat exhaustion, and heat syncope.¹⁴² Each section must include a definition of the specific heat-related illness, symptoms, methods of prevention, and first-aid procedures to follow if an individual is suffering from the illness. In addition to distribution of material, the team doctors or trainers must give a presentation to all players and coaches at a team meeting the night before training camp is scheduled to begin. Finally, postings similar to OSHA "quick cards" in prominent areas should be made.¹⁴³ An OSHA "quick card" is an 8½ x 11 inch sheet of paper that contains a definition of a particular illness, symptoms, methods of prevention, and first aid techniques.¹⁴⁴ The postings for the NFL should mainly focus on heat stroke, because heat stroke can be fatal. Each posting should be 8½ x 11 inches, and should have the definition of heat stroke, symptoms, methods of prevention, and first-aid procedures.

The operational procedures should begin with team doctors and trainers screening players for the potential of suffering from heat-related illnesses.¹⁴⁵ Team doctors and trainers should take height and weight measurements, body fat counts, know the medical history of each player, and what prescriptions and supplements each individual athlete is taking. Screening players will alert

142. CDCP, *supra* note 10.

143. USDL, *supra* note 14.

144. USDL, *supra* note 14.

145. CDCP, *supra* note 10.

team doctors and trainers as to which players are at-risk for suffering from heat-related illnesses. This allows doctors and trainers to monitor at-risk players closely, and to advise these players on individually tailored methods to employ to avoid heat-related illnesses.

Teams, coaches, and trainers must follow operational procedures once practicing in summer heat begins. Before and after practice, players should be weighed. The loss in weight largely indicates a loss in fluids, which must be replaced before the player begins another practice session.¹⁴⁶ Coaches should build up the intensity and length of practices over ten to fourteen days, allowing players to acclimate to the higher temperatures.¹⁴⁷ Practice intensity and duration should be adjusted based on the heat index temperature. Days that have a heat index of 105 degrees Fahrenheit dramatically increase the risk of heat-related illnesses. Thus, on days with a 105 degree Fahrenheit heat index, players should not be in shoulder pads and helmets, and coaches should curtail the length and intensity of practice. In addition, on hot summer days players should drink sixteen ounces of water before practice, and eight ounces every twenty minutes while practicing.¹⁴⁸ Players should also wear lightweight clothing that is lightly colored and breathable.¹⁴⁹ Most importantly, during all practices water and electrolyte sports drinks must be made available to all players at all times. Hydration must never be withheld. Failure to provide water to all players at all times will significantly increase a head coach's risk of being charged and found guilty of negligent homicide if a player dies from heat stroke.¹⁵⁰

On the premises of every football practice site should be cooling locations. These locations should include air conditioned locker rooms or an air-conditioned cooling trailer. At all locations, each team must have cold tubs. These cold tubs must be accompanied by a supply of ice. Players should be encouraged to enter the cold tub after each practice. Furthermore, if a player begins suffering a heat-related illness, the player should be immersed in the cold tub immediately because immersing the body in cold water is the most effective cooling method.¹⁵¹

146. *Preventing Heat-Related Illnesses*, NFL.COM, July 31, 2008, <http://www.nfl.com/training/camp/story?id=09000d5d8008612b&template=with-video&confirm=true>.

147. *Id.* at 66.

148. Charnley, *supra* note 30, at 65.

149. *Id.*

150. *High School Football Coach Charged in Player's Death*, *supra* note 120.

151. Charnley, *supra* note 30, at 65.

VII. CONCLUSION

Heat stroke kills citizens of all ages and from all walks of life, including football players, every year. In the NFL, summer heat during training camp and NFL culture increase the risk of NFL players dying from heat stroke. In typical employment settings, employees in positions of authority have been charged and found guilty of negligent homicide if they ordered other employees to engage in conduct that inadvertently proved fatal.¹⁵² Regarding heat, OSHA's general duty clause can be used to charge an employee with negligent homicide for the heat-related death of another employee.¹⁵³ In the sports setting, for possibly the first time in United States history, a head football coach was brought to trial facing criminal charges for the heat stroke death of a player.

If criminal cases similar to Stinson's proliferate across the amateur sports landscape, NFL head coaches may face criminally negligent homicide charges if a player dies from heat stroke. Although only one NFL player has died from heat stroke, every year numerous NFL players suffer from heat-related illnesses, which makes another heat-related death possible. However, it is unlikely that an NFL head coach will face criminal charges for the heat related death of a player for three main reasons. First, courts have generally recognized that "the law should not place unreasonable burdens on the free and vigorous participation in sports."¹⁵⁴ Second, it would be highly difficult for courts to draw the line where coaching methods go from typical hitting and conditioning drills to criminally negligent behavior.¹⁵⁵ Third, courts follow these two approaches above because the imposition of criminal liability for ordinary careless conduct while engaged in vigorous participation could ruin the integrity of the game.¹⁵⁶

Should an NFL head coach face criminal charges for the heat related death of a player, it is unlikely that he will be found guilty because training camp and practicing in extreme heat have taken place since the inception of the NFL, with only one NFL player dying from heat stroke. During this almost ninety-year span, training techniques and safety measures have been honed every year to keep players safe and healthy.¹⁵⁷ These safety measures include

152. See *People v. Roth*, 176 A.D.2d 1186, 1187 (N.Y. App. Div. 1992); *People v. Formica*, 833 N.Y.S.2d 353, 356 (N.Y. Sup. Ct. 2007); *Sabine Consolidated, Inc. v. Texas*, 806 S.W.2d 553, 555 (Tex. Crim. App. 1991).

153. USDL, *supra* note 62.

154. *Nabozny v. Barnhill*, 334 N.E.2d 258, 260 (Ill. App. Ct. 1975).

155. *Coach Charged for Heat Stroke Death of Player*, *supra* note 126.

156. *Foronda v. Haw. Int'l Boxing Club*, 25 P.3d 826, 840 (Haw. Ct. App. 2001).

157. *Hurst & Knight*, *supra* note 42, at 28.

protection from heat-related illnesses.

If NFL teams and head coaches adopt and adhere to the heat-related illness prevention program enumerated in Section VI, it is highly likely that NFL head coaches will continue to avoid criminally negligent homicide charges if a player dies from heat stroke. By following these educational and operational procedures, an NFL head coach's actions would not amount to criminal negligence because he would be aware of the substantial risk of heat stroke.¹⁵⁸ An NFL head coach's job is to prepare his football players for the rigors of an NFL season. Given the risk factors for heat stroke known to the head coach, his actions would not involve a gross deviation from the standard of care that a reasonable NFL head coach would observe during summer training camp practices if the educational and operational procedures in Section VI were followed.¹⁵⁹

Finally, given what has been analyzed in this comment, if NFL teams implement this heat-related illness prevention program that protects coaches from legal liability and players from heat-related illnesses and death, other professional and amateur sports programs will see the success of the NFL and implement similar policies. Thus, implementation of this program could create a domino effect, resulting in the most desired goal of all: eliminating heat-related deaths from sports.

158. See MODEL PENAL CODE § 2.02.

159. See *id.*

