be and the same is set aside, vacated and declared to be without force and effect.

2. That the defendant Samuel has no *dri jerbal* interest in the above named parcels and as to him the restraining order heretofore issued in this case shall remain in effect, but it is and shall be vacated as to defendant Levi and his *bwij*.

3. Plaintiffs are allowed costs in accordance with law.

TRUST TERRITORY OF THE PACIFIC ISLANDS
v.
HILARIO LANZANAS

Criminal Case No. 313
Trial Division of the High Court
Mariana Islands District

April 24, 1973

Prosecution arising from homicide. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that where one man made senseless attack upon defendant, he was entitled to defend himself, but was guilty of manslaughter where, after stabbing assailant, he stabbed two of assailant's companions who were standing by, killing the third man stabbed.

1. Homicide—Voluntary Manslaughter—Particular Cases

Where defendant and a companion entered restaurant, had a beer can thrown at them by one of four men sitting together, none of whom they knew, left the restaurant and were about to leave the area in a truck when each was attacked with fists by one of the four men and objects were thrown at the truck, and the other two men were a few feet away and did not attempt to fight with defendant and his companion, and the two attackers took the truck keys and one attempted to pull defendant's companion from the truck, as a matter of law, the attack was completely senseless and defendant was entitled to defend himself, but where, after stabbing his attacker, he stabbed the two men standing by, killing the third man stabbed, his response was not reasonably necessary for the defense of either him or his companion and exceeded the defense permitted by law and defendant was guilty of manslaughter.

2. Homicide—Self-Defense—Elements

Self-defense is an excuse or justification for homicide only where defendant was in imminent danger of death or great bodily harm or

had reasonable grounds to believe and in good faith did believe he was in such peril that the killing was necessary to avoid the peril.

3. Homicide—Self-Defense—Assault With Fists

An assault with fists may, under some circumstances, be sufficient to provide the necessary reasonable grounds for believing that killing in self-defense is necessary to preserve oneself or another from death or great bodily harm.

4. Homicide—Self-Defense—Elements

Defense of self-defense as justification for homicide loses its validity once the danger of imminent death or great bodily harm ceases, and once the immediate danger is passed, the person attacked is not justified in pursuing and killing his attacker.

Prosecutors: WILLIAM S. AMSBARY and MIGUEL M. SABLAN

Counsel for Defendant: BENJAMIN M. ABRAMS and JOSE A. TENORIO

BURNETT, *Chief Justice*

Defendant has been convicted of voluntary manslaughter; counsel requests the Court's written findings for purposes of appeal.

The deceased, Edward F. Ada, with three companions, Gregorio C. Sablan, Shelby C. Torres, and Ignacio T. Ada, were seated in a restaurant drinking beer when defendant and Ernesto Oriel entered. None of the parties were previously known to each other, and nothing was said prior to an initial, unexplained, attack on defendant and Ernesto, when Gregorio threw a beer can at them, hitting Ernesto.

Defendant and Ernesto left the building and got into their pickup, preparing to leave the area. They were followed by the others, and at some point Ernesto was struck over the eye by another beer can, again thrown by Gregorio, this one cutting his forehead. There were apparently rocks or other objects thrown at the vehicle.

Defendant entered the pickup on the driver's side, and Ernesto occupied the passenger seat. Gregorio followed up

his attack, by trying to pull Ernesto out, still, as he testified, "for no reason." At the same time, defendant was being assaulted on the other side. Someone removed the keys from the pickup; the only evidence, as to who it was, came from the defendant who testified that it was Edward Ada, the deceased, who also assured him that he would not "leave this place alive."

Defendant contended that three persons, Shelby, Ignacio Ada and Edward Ada, were all at the door attacking him. I find, however, that Shelby was alone in the attack on defendant, and that the two Adas were three to four feet away.

While still seated behind the wheel of the pickup, in defense against the attack of Shelby Torres, defendant stabbed him in the groin. He then left the pickup, stabbed Ignacio Ada twice in the back, and then stabbed Edward F. Ada, inflicting a wound which proved fatal.

[1] I conclude, as a matter of law, that defendant and his companion were subjected to a completely senseless attack, and were entitled to defend themselves against such attack.

I conclude further that defendant's response exceeded that which is permitted by law, in that the stabbing of Ignacio Ada and the deceased, Edward F. Ada, were not reasonably necessary for the defense of either himself or his companion.

The law of self defense was first set forth in the Trust Territory in the following terms:

> ". . . the authorities are in accord that when one is acting in self-defense, he may only exert such force as he has reasonable grounds for believing necessary for protecting himself from injury. One may not use any means of self-defense which is likely to cause injury or harm in excess of that necessary or reasonably believed to be necessary for one's own protection. In determining whether the particular means used is or is not excessive, the amount of force exerted, the means or instrument by which it is applied, the

manner or method of applying it, and the circumstances under which it is applied are factors to be considered."

Yaoch v. Trust Territory of the Pacific Islands, 1 T.T.R. 192 (Palau District 1954).

[2] This is in full accord with the general rule that the excuse for killing in self-defense is grounded upon necessity. "In order successfully to assert self-defense as an excuse or justification for a homicide, the defendant must have been in imminent danger of death or great bodily harm at the time of committing the homicidal act, or must have had reasonable grounds for believing and did in good faith believe that he was in such peril and that the killing was necessary to avert such peril." 40 Am.Jur.2d, Homicide, Sec. 151, p. 439.

And, in Sec. 153: ". . . the accused must not only have entertained the belief, but there must have been reasonable grounds for his belief, that he was in imminent danger of loss of life, or of suffering great bodily harm, at the hands of the person killed."

What are "reasonable grounds" and what constitutes justifiable defensive action will, of course, vary with the circumstances found in a particular situation.

It has long been the rule that killing in self-defense is permitted only when it is necessary to preserve oneself or another from death or great bodily harm. The necessity need not really exist, but the defendant must at least have had reasonable grounds for believing that it did. *Acers v. United States*, 164 U.S. 338, 41 L.Ed. 481, 17 S.Ct. 91 (1896). *Addington v. United States*, 165 U.S. 184, 41 L.Ed. 679, 17 S.Ct. 288 (1897).

[3, 4] In some circumstances an assault with fists, as in the present case, may be sufficient to provide the necessary grounds for such a belief. *Lujan v. United States*, 209 F.2d 190, 193 (10th Cir. 1953). However, the assertion of self-

defense loses its validity once the danger of imminent death or great bodily harm has ceased. 40 Am.Jur.2d, Sec. 151. In defining this aspect of the law, a California court has, for example, stated that if the trier of fact:

> "should find that the infliction of one blow or more was all the force appearing to the defendant as a reasonable person to be necessary successfully to resist the assault . . . then the infliction of any other blow would not be justified by the law of self-defense . . .". *People v. Moody,* 62 Cal.App.2d 18, 143 P.2d 978, 980 (2d Dist. 1943).

Once the immediate danger is passed, a defendant is not justified in pursuing an attacker and killing him. *People v. Keys,* 62 Cal.App.2d 903, 916, 145 P.2d 589, 596 (1944).

Here, defendant warded off his immediate assailant with a knife wound in the groin, and, after leaving the pickup, injured the second with knife wounds in the back. Had he stopped with the first, there would be little doubt that he acted properly in self-defense. To go further, and inflict a fatal wound on the third, was, in my view, excessive, and not warranted by any reasonable appearance of a continuing danger.

I find this case doubly tragic, since there can be no doubt that the events of the evening which led to the death of Edward F. Ada began with a completely senseless act by his friend. Nevertheless, defendant reacted with deadly force in excess of that reasonably necessary for his defense, and in so doing, is guilty of manslaughter.