

In the Court of Appeal for the Northwest Territories

Citation: *R v Lafferty*, 2026 NWTCA 3

Date: 2026 03 06
Docket: A-1-AP-2025-000007
Registry: Yellowknife, N.W.T.

Between:

His Majesty the King

Respondent

- and -

Hannah Lafferty

Appellant

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice Jane Fagnan
The Honourable Justice Mark Mossey**

**Memorandum of Judgment of the Honourable Justice Antonio
and the Honourable Justice Fagnan**

Dissenting Memorandum of Judgment of the Honourable Justice Mossey

Appeal from the Conviction by
The Honourable Justice E. A. Hughes
Convicted on the 25th day of April, 2025
(2025 NWTSC 25; Docket: S-1-CR-2023-000-026)

Memorandum of Judgment

The Majority:

[1] The appellant Hannah Lafferty was convicted of dangerous driving causing death: *R v Lafferty*, 2025 NWTSC 25 [*Trial Decision*]. She appeals that conviction, arguing the trial judge erred in assessing *mens rea*, self-defence, and the burden of proof. The appeal is dismissed.

[2] On the offence date, the appellant's friend, Mr. Moore, wanted to go to the home of his ex-girlfriend, Ms. Ikeda Lafferty. (We will refer to her as Ikeda, not out of disrespect, but to prevent confusion with the appellant.) The appellant drove him to Ikeda's apartment building and parked some distance away from the door, hoping to remain unobserved. Although the appellant and Ikeda had not previously spoken, they knew of each other, and Ikeda had sent the appellant a Snapchat message asking her why she was spending time with Mr. Moore.

[3] The appellant stayed in her truck with the engine on while Mr. Moore went into the building. A short time later, the appellant saw Mr. Moore gesturing to her to go. She saw Ikeda crossing in front of the truck. Ikeda approached the truck and opened the driver's side door. The appellant put the truck into drive. Ikeda got on the running board of the truck and held onto the interior handle above the driver's side door as the appellant accelerated away, swerving in an attempt to shake Ikeda off the truck.

[4] Germaine Mantla was on the other side of the gravel-covered road, up the hill in the direction the appellant was travelling. The appellant braked but the truck's open door struck him. He succumbed to his injuries four months later.

[5] There was little dispute that the appellant's driving put the public at risk, satisfying the *actus reus* for dangerous driving. The bulk of the trial judge's reasons was devoted to *mens rea* and the defences of self-defence and necessity. The appellant now alleges the trial judge erred in her analysis of those points, by improperly framing the *mens rea* test, improperly rejecting self-defence, and failing to apply the test from *R v W(D)*, [1991] 1 SCR 742, 1991 CanLII 93 (SCC) [*W(D)*].

[6] To begin, it is important to understand how *mens rea* applies in the case of dangerous driving. The core question is whether the driving amounted to a marked departure from the standard of care a reasonable person would observe in the same circumstances: *R v Beatty*, 2008 SCC 5 at para 48 [*Beatty*]; *R v Roy*, 2012 SCC 26 at para 36 [*Roy*]. Often, this takes the form of a modified objective assessment.

[7] Importantly, however, the modified objective standard represents the *minimum* fault requirement that can ground culpability for dangerous driving. Subjective intent remains relevant and can also ground culpability: *Roy* at para 38. As the Supreme Court explained in *Beatty* at para 47:

... if proof is made that a driver purposely drove into the path of an oncoming vehicle in an intentionally dangerous manner for the purpose of scaring the passengers of that vehicle or impressing someone in his own vehicle with his bravado, the requirement of *mens rea* will easily be met. One way of looking at it is to say that the subjective *mens rea* of intentionally creating a danger for other users of the highway ... constitutes a “marked departure” from the standard expected of a reasonably prudent driver.

Here, the appellant chose to accelerate and swerve for the purpose of throwing Ikeda from the truck, with the obvious potential to expose Ikeda to danger. This was sufficient to establish *mens rea*, as was the case in *R v Griffith*, 2019 BCCA 37.

[8] Self-defence could have operated to negate this subjective *mens rea*. The trial judge found the defence failed for two reasons. First, while she accepted the appellant believed Ikeda would hurt her, she found that belief was not reasonably grounded for the purposes of section 34(1)(a) of the *Criminal Code*, RSC 1985, c C-46. Second, she found the driving pattern was not proportionate to any perceived threat for the purposes of section 34(1)(c): *Trial Decision* at paras 35-43.

[9] The appellant asserts the former conclusion was not reasonable because there was evidence supporting her belief that Ikeda would hurt her. The trial judge’s conclusion on the objective threat level in the circumstances was one of mixed fact and law. Reasonableness is ultimately a matter of judgment: *R v Khill*, 2021 SCC 37 at para 58 [*Khill*]. Even supposing a conclusion more favourable to the appellant was available on the evidence, the fact remains that the trial judge’s conclusion is grounded in the evidence and does not reveal palpable and overriding error.

[10] Our colleague says the trial judge construed the meaning of “force” in section 34(1)(a) too narrowly. In his view, a belief in a different type of force, namely that Ikeda was trying to take “control of the vehicle’s ability to drive”, was reasonably grounded. However, section 34(1)(a) assesses the reasonableness of “the accused’s actual belief”: *Khill* at paras 53, 66. The appellant testified she believed Ikeda “wanted to hurt” her. The trial judge accepted and assessed that belief, writing, “Ms Lafferty testified that she knew Ikeda wanted to hurt her when Ikeda came towards the truck but a reasonable person would not have perceived this” [emphasis added]: *Trial Decision* at para 39. The trial judge did not err in focusing her analysis on the threat actually perceived by the appellant – that she would be “hurt” – as opposed to something different.

[11] Our colleague also takes issue with the trial judge’s description of the appellant as having been “overly fearful”, saying that is not the proper threshold for assessing reasonableness. The trial judge properly assessed what a reasonable person would perceive in the circumstances. Based on the history between the women, the fact that Ikeda had no weapon, the absence of threatening comments or gestures by Ikeda as she approached the truck, and the lack of conversation prior to

the incident, the trial judge concluded “a reasonable person would not have perceived” a threat of force: *Trial Decision* at paras 39, 40. She also described the appellant as “overly fearful”, but the addition of that phrase does not undermine the trial judge’s legally correct analysis.

[12] Regarding the proportionality of the appellant’s response to any threat for the purposes of section 34(1)(c), the appellant argues the trial judge focused on the outcome of the driving – Mr. Mantla’s death – rather than the risk created by the driving. The trial judge’s reasons cannot fairly be read as the appellant suggests. The trial judge explained why she found “[the appellant’s] driving, the act in issue” was not a proportionate response (*Trial Decision* at para 42), showing that her focus was in the right place. Her reference to the killing of an innocent bystander was not essential to her chain of reasoning regarding proportionality.

[13] Our colleague takes the view the trial judge erred because, although she addressed “most of the criteria” under section 34(2), she failed to address section 34(2)(e), being the “the size, age, gender and physical capabilities of the parties to the incident”. In particular, he points to evidence that the appellant’s clavicle was injured in the months prior to the incident. This issue was argued before the trial judge. We are not prepared to find she was not aware of, or that she forgot, the evidence and argument regarding the appellant’s injury. The omission of an express mention is understandable in light of the record, the submissions, and the whole of the trial judge’s reasons. As the trial judge noted to counsel, the appellant “was two months past the date of the injury” and was “back working in the daycare”. Deference is owed to the trial judge’s assessment of the evidence.

[14] Further, our colleague suggests both the appellant and Ikeda believed their only options were fight or flight. Neither framed their beliefs in those terms. Even if the appellant had subjectively believed her choices were limited to fight or flight, that belief would not have been relevant to the reasonableness of her response for purposes of section 34(1)(c). In any event, a binary fight-or-flight framework would not be consistent with the multifactorial and circumstance-sensitive analysis imposed by section 34(2).

[15] The appellant argues the trial judge erred by confining her analysis of *mens rea* to the elements of self-defence, when she should have taken account of all the circumstances in applying the modified objective standard. First, we underscore that given her finding of intentionally dangerous driving, the trial judge’s comments pertaining to the modified objective standard were technically *obiter*, presumably offered to be responsive to the parties’ arguments. Second, the trial judge returned to the *mens rea* question after discussing self-defence (*Trial Decision* at para 44), showing that her analysis of *mens rea* was not exhausted by her analysis of self-defence. Finally, the facts were the facts, regardless of the legal question applied to them. By the time she returned to the *mens rea* analysis, it is not clear there was anything the trial judge had not already considered.

[16] The appellant also asserts the trial judge erred by failing to advert to *W(D)* and failing to conduct a *W(D)* analysis. It is true the trial judge did not cite or recite *W(D)*, but that omission does not constitute reviewable error. Neither counsel framed this as a credibility case. The trial judge accepted much of the appellant’s evidence, including her subjective belief that Ikeda posed a threat,

and her admission that she chose to drive as she did to throw Ikeda from the truck. We perceive no risk that the trial judge engaged in a credibility contest or convicted because she disbelieved the appellant. Similarly, given express references to the Crown's burden, we see no possibility that the trial judge misapprehended or misapplied the burden of proof.

[17] The appeal is dismissed.

Appeal heard on January 20, 2026

Memorandum filed at Yellowknife, NWT
this 6th day of March, 2026

Antonio J.A.

Fagnan J.A.

Dissenting Memorandum of Judgment

Mossey, J.A. (dissenting):

Introduction

[18] On the evening of April 21, 2022, Hannah Lafferty (the Appellant), sat in the driver's seat of her father's F-150 pickup truck in the parking lot of the Bison apartment building (the "Bison") in Yellowknife, Northwest Territories.

[19] The Appellant had driven to the apartment with her new boyfriend, Austin Moore ("Austin"). Austin was a former resident of the Bison and had asked the Appellant for a ride so that he could pick up his dog from his former partner and mother of his children, Ikeda Lafferty ("Ikeda").

[20] The Appellant was content to stay parked in the truck while Austin went to retrieve his dog. The Appellant had recently suffered a shoulder injury which required the surgical insertion of a plate and screws onto her right clavicle. She was also aware that it was Ikeda's apartment they were visiting and of Austin's complicated relationship with Ikeda. Just weeks before, Ikeda had sent the Appellant a message via SnapChat to ask why the Appellant was spending time with Austin. The Appellant did not respond to the SnapChat.

[21] Sitting in the truck, playing on her phone, the Appellant's attention was suddenly drawn to Austin's figure in the distance of the parking lot. He was waving with his arms gesturing for the Appellant to drive away. The Appellant then noticed an angry looking Ikeda quickly approaching the truck with clenched fists. Within seconds, Ikeda stepped on to the running board of the vehicle, opened the driver's side door, and reached across in an attempt to take the keys of the vehicle out of the ignition to force a confrontation with the Appellant relating to Austin:

"I wanted to know why she (the Appellant) brought Austin to my house multiple times to hurt and harass me and why she was okay with that. I was trying to take the key out of the ignition of her truck so she can go in and get him out, but in so doing, she put the vehicle into gear and just drove.... (direct examination of Ikeda Lafferty, page 227).

[22] In a panicked response to Ikeda's actions, the Appellant stepped on the gas pedal causing her father's truck to accelerate quickly. With Ikeda still holding on to the truck, the Appellant, over approximately the next 100 feet, drove in a snake like pattern in an effort to dislodge Ikeda from the side of her truck.

[23] Within seconds of Ikeda gaining entry into the truck, the front driver's side door, held open by Ikeda, came into contact with 29-year-old Germaine Mantla, an innocent bystander who had been standing off the traveled portion of the roadway. Tragically, and needlessly, Mr. Mantla suffered a fatal injury as a result of being struck by the dangerously moving truck.

[24] The Appellant's decision to drive in a manner intended to throw Ikeda from the truck was sufficient to establish the *mens rea* of dangerous driving. However, for the reasons that follow, I would allow the appeal on the basis that the trial judge made palpable and overriding errors in her analysis of the defence of self-defence and remit this matter back to the Supreme Court of the Northwest Territories for a new trial.

Standard of Review – The Role of the Appellate Court

[25] As the Nunavut Court of Appeal stated in *R v Komoartok*, 2025 NUCA 9 (CanLII) at paragraph 23:

An appellate court's role is not to reweigh the evidence. A trial judge's findings of fact, including inferences and assessments of credibility, are afforded significant deference on appeal and will only be interfered with if a palpable and overriding error is shown – namely, the conviction cannot be reasonably supported by the evidence: *R v Gagnon*, 2006 SCC 17 at para 10, [2006] 1 SCR 621.

[26] In *McPhee v Gwynne-Timothy*, 2005 NSCA 80, Saunders J.A., writing for the Court, explained what is meant by “palpable and overriding error” at paragraph 32:

An error is said to be palpable if it is clear or obvious. An error is overriding if, in the context of the whole case, it is so serious as to be determinative when assessing the balance of probabilities with respect to that particular factual issue. Thus, invoking the “palpable and overriding error” standard recognizes that a high degree of deference is paid on appeal to findings of fact at trial.... Not every misapprehension of the evidence or every error of fact by the trial judge will justify appellate intervention. The error must not only be plainly seen, but “overriding and determinative”.

[27] In *R v Gibbons*, 2021 NUCA 17 (CanLII) at paragraph 21, the Nunavut Court of Appeal explained the standard of review for errors of law and errors of mixed fact and law committed by a trial judge:

Errors of law are to be reviewed on a standard of correctness, while errors of fact or mixed fact and law are assessed for palpable and overriding error: *Housen v Nikolaisen*, 2002 SCC 33 at paras 8, 10, 36, [2002] 2 SCR 235.

[28] On the appeal before us, the trial judge found that the defence of self-defence failed on the first and third prongs as prescribed by Section 34(1) of the *Criminal Code*. The trial judge's finding that the Appellant did not have reasonable grounds to believe, in the circumstances, that force, or a threat of force, was being used against her by Ikeda (first prong of the defence), was one of mixed fact and law requiring a finding of palpable and overriding error in order for this Court to interfere with the trial decision.

[29] Similarly, in regard to the third prong of self-defence, the proper consideration of the factors listed in Section 34(2) is also a question of mixed fact and law, reviewable on the palpable and overriding error standard.

The Defence of Self-Defence

[30] Section 34(1) of the *Criminal Code* sets out the defence of self-defence in Canadian criminal law:

A person is not guilty of an offence if

(a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;

(b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and

(c) the act committed is reasonable in the circumstances. [emphasis added]

[31] The trial judge found that while she accepted the Appellant had the requisite belief under s. 34(1)(a) that force, or the threat of force, was being used against her by Ikeda, the Appellant was "overly fearful" in her belief. This over fearfulness allowed the trial judge to find the Appellant's belief to be unreasonable, and consequently, caused the defence of self-defence to fail:

[39] In this case, we have two young women who knew of each other but had never met, never spoken to each other, and had exchanged one prior text message a few weeks prior to the incident, which cannot be characterized as threatening in any manner. I accept that Ms. Lafferty did not wish to have any conversation or verbal confrontation with Ikeda, in that Ms. Lafferty knew she was dating the father of Ikeda's children. Ms. Lafferty testified that she knew Ikeda wanted to hurt her when Ikeda came towards the truck but a reasonable person would not have perceived this based on the prior history between the two women, and the fact Ikeda had no weapon with her.

.....

[41] The reasonable person as described by *Khill* would have perceived there would be some conversation or verbal confrontation between themselves and Ikeda at the truck, however, without more, a reasonable person would not have perceived that force was going to be used or threatened to be used. Thus, the defence fails.

[32] The Appellant argues on appeal that, in fact, there was more, much more, in the trial evidence that solidified the reasonableness of the Appellant's fear that force, or a threat of force, was being used, or made, against her by Ikeda:

- Ikeda testified that she went outside to ask the Appellant why she had brought Austin to her house multiple times to hurt and harass her and "why she was okay with that";
- Ikeda's feelings towards the Appellant were "pretty negative" when she went to the truck;
- Ikeda was angry;
- Ikeda left the house quickly;
- Ikeda looks intimidating;
- When Ikeda got to the truck, she opened the driver's side door;
- Ikeda "went to take the key out of the ignition";
- It was only at this point that the vehicle began moving "[i]t didn't move until I tried to take the key out of the ignition". (Appellant's Factum, paragraph 45)

[33] The Appellant further argues that while the old self-defence provisions in the *Criminal Code* required an accused who wished to rely on the defence to "show they faced or reasonably perceived an unlawful "assault"", the new s. 34(1)(a) is much broader.

[34] The section now asks only whether the accused "reasonably apprehended "force" of any kind, including force that is the product of negligence." As stated in *R v Khill*, 2021 SCC 37 at para. 40:

First, the new self-defence provisions are "broader in compass" (Paciocco (2014), at pp. 275-76). For instance, under former s. 34(1) and (2), the accused had to show they faced or reasonably perceived an unlawful "assault". Under the new law, what is relevant is reasonably apprehended "force" **of any kind**, including force that is the product of negligence. The accused's response under the new law is also no longer limited to defensive use of force. It can apply to other classes of offences, including acts that tread upon the rights of innocent third parties, such as theft, breaking and entering or dangerous driving. Replacing "assault" with "force" also clarifies that imminence is not a strict requirement, consistent with jurisprudence interpreting the old provisions since *Lavallee*...The accused need not believe that the victim had the *present* ability to effect a threat of physical force, as is required in order to establish an assault under s. 265(1)(b) of the *Criminal Code*. [Emphasis added]

[35] Following the Supreme Court's guidance in *Khill*, the Appellant's argument that the threat of force was clearly made out under the new Section 34(1)(a), through the Crown's own trial evidence, is persuasive.

[36] Ikeda testified that she purposely reached into the Appellant's vehicle to "take the key out of the ignition" in order to have the Appellant answer her questions and then to have the Appellant leave the vehicle in order to retrieve Austin from Ikeda's apartment.

[37] To compel the Appellant to talk, Ikeda stepped onto the Appellant's vehicle, opened the door, and encroached into the vehicle to obtain the key. By Ikeda's own evidence, she was attempting to physically compel the Appellant to have a confrontation by taking control of the vehicle's ability to drive. Such physical compulsion clearly establishes that Ikeda used force on the Appellant prior to, or simultaneously with, the Appellant's fatal decision to flee the situation.

[38] The trial judge found that Ikeda went to the Appellant's truck to have a verbal confrontation with the Appellant who did not want to speak to her. At paragraph 41 of her decision, the trial judge found that the reasonable person would have assumed "there would be some conversation or verbal confrontation" between Ikeda and the Appellant. This finding followed shortly after the trial judge's finding at paragraph 39 that the Appellant "did not wish to have any conversation or verbal confrontation with Ikeda, in that Ms. Lafferty knew she was dating the father of Ikeda's children".

[39] The trial judge's findings lead to two important conclusions in relation to the question of whether force was present in the situation at the truck sufficient for the Appellant to pass the first prong of the test: 1) Ikeda was approaching the Appellant's vehicle to confront the Appellant; and 2) the Appellant did not want to have a confrontation with Ikeda.

[40] That Ikeda testified she reached for the key to effect the confrontation, evidences the force she thought was necessary to have the Appellant engage with her, and consequently, satisfies the first prong of 34(1) for the Appellant.

[41] Impeding the trial judge's decision on the s. 34(1)(a) analysis may have been the absence of a definition of the term "force" in the *Criminal Code*. This lack of a definition was discussed in *R v Tress*, 2018 ABPC 235 at paragraph 18:

.... That term (force) is not defined in the *Criminal Code* and bears a variety of meanings. In *R v Matheson*, 1999 CanLII 3719 (ONCA), [1999] O.J. No. 1320 the Court of Appeal judicially noted the following definition (at para 73):

In the Concise Oxford Dictionary, 6th Edition, the definition of force there refers to strength exerted on a person by coercion or compulsion. It refers to mental or moral strength, influence, controlling power, efficacy, and power to convince. The definition

as a verb is to constrain, compel a person to act prematurely or adopt a policy unwillingly.

[42] The approach to referencing the dictionary definition of “force” in *Mathewson*, which I would adopt in these reasons, serves a utilitarian purpose. It establishes that what Parliament was safeguarding in the new s. 34(1)(a) was an individual’s right to be apprehensive when some sort of action is being made, or threatened, against them.

[43] Using the dictionary definition of force allows for someone who feels they are being compelled to do something against their will, even if physical contact is not involved, to guard themselves against potential harm and move on to a determination of what act may be reasonable in the circumstances to defend against the threat should it persist.

[44] Section 34(1)(a) is the gateway to self-defence. It simply allows for an individual to perceive or recognize a potential threat and start the preparations to defend themselves should such defence become necessary.

[45] Of course, as is discussed in *Khill*, and as will be further addressed below, there is a requirement under s. 34(1)(a) that the fear of the threat be reasonable. The Supreme Court stressed such reasonableness in paragraph 56 when it prevented individuals who are “overly fearful, intoxicated, abnormally vigilant or members of criminal subcultures” from relying on s. 34(1)(a) to ground their defence of self-defence.

[46] This is common sense. Such confines would prevent a drunk bar patron from relying on the defence of self defence after attacking an innocent bystander who he incorrectly perceives as posing a threat due to his own drunken state. Similarly, an individual with an irrational fear of clowns could not attack a parade and rely on self-defence believing irrationally that the clowns marching in the parade were posing a threat to him. While perhaps extreme examples, these are the types of situations and individuals the SCC intended to exclude from the defence of self-defence through a modified objective test for s. 34(1)(a). As will be discussed shortly, the Appellant did not come close to fitting into such a category of individuals.

[47] The trial judge erred in focusing on the reasonableness of the Appellant’s belief that she was about to suffer harm at the hands of Ikeda rather than on the reasonableness of the Appellant’s belief that force, or a threat of force, of any kind and of any magnitude, against her was being made.

[48] The trial judge’s conflation of force in 34(1)(a) with a reasonable perception of some type of harm, was an error which incorrectly foreclosed the availability of the defence of self-defence on the first prong. This error was both clear and determinative of the issue, sufficient to warrant Appellate intervention on the palpable and overriding error standard of review.

[49] This technical finding that some measure of force was being used, or threatened, against the Appellant prior to the Appellant's decision to attempt to flee the scene, overly complicates the evidence that was before the trial judge.

[50] The evidence at trial showed that an upset Ikeda angrily approached the parked vehicle of her ex-partner's new girlfriend with clenched fists. The evidence further shows that Austin was concerned enough about the anticipated interaction that he started to wave to the Appellant to drive away. Without saying a word, Ikeda approached the vehicle, stepped onto the running board, opened the driver's side door, and attempted to gain control of its movement by reaching for the key in the ignition.

[51] To find that a reasonable person, placed in the circumstances of the Appellant, would not have perceived, at a minimum, that some sort of force, physical or otherwise, was being threatened against them, is divorced from the objective reality the Appellant found herself in when confronted by Ikeda. Ikeda's intent was to force the Appellant into a confrontation. This is all that was required to satisfy the first prong of 34(1).

Overly Fearful and the Modified Objective Test

[52] Whether the Appellant was "overly fearful" of Ikeda is immaterial in the context of this case. The Appellant, like any individual who sits in their vehicle who is suddenly, and unexpectedly, confronted by another person who opens their car door without saying a word and attempts to reach for the keys without obtaining their consent, was allowed to be as fearful as possible and still have satisfied the first prong analysis. Whether the Appellant's response to the threat of force was reasonable would then be determined under the third prong inquiry.

[53] To find the Appellant was "overly fearful" and unable to satisfy the first prong of s. 34(1), placed an undue burden on the Appellant and on future innocent parties in similar situations to the Appellant. The evidence did not establish that the Appellant was an individual who was "overly fearful, intoxicated, abnormally vigilant or a member of a criminal subculture" as contemplated by the Supreme Court in *Khill* when discussing the modified objective inquiry of s. 34(1)(a).

[54] In *Khill*, the Supreme Court lists these characteristics of unreasonable individuals to juxtapose the ordinary person standard which is "informed by contemporary norms of behaviour, including fundamental values such as the commitment to equality provided for in the *Canadian Charter of Rights and Freedoms*."

[55] The Appellant was not biased against Ikeda. She did not drive to Ikeda's apartment unreasonably apprehensive that Ikeda would confront or hurt her; nor did she carry any animosity toward Ikeda. Instead, the Appellant saw her partner's angry ex-girlfriend coming towards her with clenched fists with Austin waving in the background for her to drive away. Contemporary norms would tell anyone that now would be the time to start getting concerned about what happens next should the individual continue on to the car.

[56] The trial judge erred in a palpable and overriding manner in her analysis of the first prong of s. 34(1), sufficient to allow for appellate interaction.

Third Prong

[57] After finding that self-defence failed on the first prong, the trial judge nevertheless decided to consider the third inquiry as prescribed through Section 34(1)(c). This third inquiry examines whether the act committed by the accused was reasonable in the circumstances.

[58] To determine whether the act committed was reasonable in the circumstances, Section 34(2) prescribes as follows:

(2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act including, but not limited to, the following factors:

- (a) The nature of the force or threat;
- (b) The extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
- (c) The person's role in the incident;
- (d) Whether any party to the incident used or threatened to use a weapon;
- (e) The size, age, gender and physical capabilities of the parties to the incident;
- (f) The nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
 - (f.1) Any history or interaction or communication between the parties to the incident;
- (g) The nature and proportionality of the person's response to the use or threat of force; and
- (h) Whether the act committed was in response to a use or threat of force that the person knew was lawful.

[59] I limit my analysis under the third prong inquiry to the Appellant's argument that it was an error of law for the trial judge not to consider any relevant factor listed in Section 34(2) of the *Criminal Code*. Specifically, the Appellant argues that the trial judge's assessment of the s. 34(2) factors revealed an error of law as the trial judge failed to weigh a significant factor under s. 34(2)(c): "the [Appellant's] role in the incident."

[60] In *R v Hodgson*, 2024 SCC 25 at paragraph 76, the Supreme Court of Canada held as follows in relation to the proper consideration of s. 34(2) factors:

.... s. 34(1)(c) requires that “the act committed is reasonable in the circumstances”, and s. 34(2) provides a list of nine non-exhaustive factors for the court to consider in making this determination. Parliament expressly structured how a decision maker ought to determine whether an act of self-defence was reasonable in the circumstances. What is called for is an assessment of the overall reasonableness of the accused’s conduct according to the statutory factors. Reasonableness is measured according to “the relevant circumstances of the person, the other parties and the act” (*Criminal Code*, s. 34(2); see also *Khill*, at para 64). **When a factor is relevant it becomes a mandatory consideration, as s. 34(2) provides that the fact finder “shall” consider all factors set out in paras. (a) to (h) that are relevant in the circumstances of the case** (*Khill*, at para 68). This objective determination, with its focus on what a reasonable person would have done in comparable circumstances, strikes the appropriate balance between respecting the security of the person who acts and the security of the person acted upon. It also underscores that the law of self-defence “cannot rest exclusively on the accused’s perception of the need to act” (*Khill*, at para 2; see also paras 62 and 65). [emphasis added]

[61] In *Hodgson*, the SCC replicated the manner in which they found the trial judge successfully discharged her s. 34(2) obligation at paragraph 78:

She separately addressed all factors that the parties argued were relevant, applicable, and worthy of consideration. Under every factor, the trial judge considered and evaluated the material evidence. She tied each relevant factor to the facts as found....

[62] On the appeal before us, the trial judge did not separately address each s. 34(2) criteria. Instead, at paragraph 42 of her decision, the trial judge addressed several, but not all, of the factors in the following three sub-paragraphs:

1. Ikeda used no force against Ms. Lafferty nor did she threaten in any manner that she intended to use any force against Ms. Lafferty. Ikeda had no weapon with her. While the two women knew of each other, they had never met, never socialized together and had never chatted. Ms. Lafferty testified that she had no issue with Ikeda. A perceived threat of force cannot be inferred from the lack of prior history between the two women. In addition, there was no conversation between the two women until after Ms. Lafferty began to drive, and Ikeda told her to stop, from which an inference could be drawn of a threat.
2. There was no imminent use of force by Ikeda against Ms. Lafferty. Further, even if there was, Ms. Lafferty had other means available to her to respond to the potential

use of force. She could have exited the truck by the passenger side door and sought the assistance of Mr. Moore. She had her phone with her, and she could have called 9-1-1. She just could have called Mr. Moore over to the truck.

3. Ms. Lafferty's manner of driving, in essence using the truck as a weapon, was not proportionate to any perceived threat of force by Ikeda. While Ikeda did punch Ms. Lafferty when the driving stopped, that was in relation to the driving; it had nothing to do with Ms. Lafferty dating Mr. Moore. Further, her injuries, assuming they were caused by the punch, were minimal. It is also important to note that the person who was killed, Mr. Mantla, was an innocent bystander. The killing of an innocent bystander on these facts cannot be proportionate, assuming the defence is available in such circumstances.

[63] While most of the criteria were addressed by the trial judge, the Appellant argues on appeal that the trial judge's failure to consider s. 34(2)(c): *the Appellant's role in the incident*, is an error of law. The Appellant states that the Supreme Court has held that "[w]hen a factor is relevant it becomes a mandatory consideration, as s. 34(2) provides that the fact finder "shall" consider all factors set out in paras (a) to (h) that are relevant in the circumstances of the case. (*Hodgson* para 76).

[64] As the trial judge was first tasked with determining whether a factor is relevant to the 34(2) analysis, the trial judge's error on the third prong would be one of mixed fact and law attracting a palpable and overriding error standard of review.

[65] Despite the more deferential standard, I would allow the appeal on the basis the trial judge made a palpable and overriding error in her s. 34(2) considerations. However, I differ from the Appellant on where the palpable and overriding error arises.

[66] Section 34(2)(e) required the trial judge to consider the *size, age, gender and physical capabilities* of the parties to the incident in determining whether the act taken by the Appellant was reasonable in the circumstances.

[67] At trial, the Appellant testified how, just weeks before the night of the incident, she was in a snow machine accident that required surgery on her right arm with a steel plate and screws being placed on her right clavicle.

[68] The trial judge had an obligation to consider the recent right shoulder injury, surgery, clavicle plate insertion, and possible implications the injury had on the Appellant's physical capabilities on the night of the incident. The injury was clearly relevant to the physical capabilities of the Appellant who perceived that she was facing a threat of force. The trial judge was therefore obligated to consider the injury in her reasonableness analysis under section 34(2)(e).

[69] While the judge found the Appellant could have "exited the truck by the passenger door", to the Appellant's right, in response to the perceived threat posed unexpectedly by Ikeda, no

consideration was given by the trial judge as to what, if any, limitations the right arm/shoulder injury presented to the Appellant at the time she perceived the threat.

[70] The Appellant testified at trial that she was right-handed and for the first “month and a half or something” after the February, 2022 surgery she was unable to even drive due to the injury. The Appellant’s evidence was also that in April, 2022 she was restricted to light duties, was unable to lift any heavy objects, and if she had found herself in a physical confrontation, she would be unable to defend herself as to do so would cause damage or hurt “really, really bad.”

[71] In response to a question from her lawyer on direct examination as to why she decided to put the vehicle in drive when approached by Ikeda, the Appellant answered:

I wanted – I didn’t want to get hurt. I already had a broken arm. My collarbone was broken. My arm was supposed to be in a sling, but it just – it doesn’t – I can’t do much with the sling in my arm, so I just never really wore it that much afterwards.

[72] On cross examination, the Crown’s questioning relating to the arm injury of the Appellant highlighted the materiality of the injury to the Appellant’s state of mind at the time of the confrontation with Ikeda:

Q Because you didn’t want to fight her?

A Yeah. I don’t want to fight, and I’m not capable of fighting right now. I have a broken arm.

[73] The fatally tragic series of events on April 21, 2022, were born of the belief by both Ikeda and the Appellant that fight or flight were their only two options owing to the actions taken by the other at the time Ikeda boarded the truck.

[74] The Appellant testified that the injury to her right arm prevented the Appellant from being able to choose to fight off the perceived threat Ikeda posed. However, the trial judge’s only mention of the shoulder injury was in a brief exchange with defence counsel during submissions where the trial judge minimized the injury by questioning the Appellant’s need to wear a sling two months after the accident.

[75] The trial judge did not consider the surgery, lack of strength, or limitation to light duties that impacted the Appellant on the evening of April 21, 2022. The serious shoulder injury was clearly a relevant consideration to the availability of self-defence based on the trial evidence and was required to be considered by the trial judge.

[76] In the context of this case, the Appellant’s shoulder injury stands out as the defining factor that led to her decision to attempt to flee her threat rather than to stay and fight. The failure to properly consider the magnitude of the injury, and the impact a surgically inserted plate and screws

into the right clavicle played in the Appellant's choice of action, was determinative of the issue of whether the Appellant's decision on April 21 was reasonable in the circumstances.

[77] The trial judge's decision to not conduct a fulsome s. 34(2)(e) analysis relating to the physical capabilities of the Appellant at the material time, was a palpable and overriding error justifying appellate intervention.

[78] I would allow the appeal on the third prong analysis as well and remit back to trial.

Appeal heard on January 20, 2026

Memorandum filed at Yellowknife, NWT
this 6th day of March, 2026

Mossey J.A.

Appearances:

B. MacPherson

N. McFadden

for the Respondent

N. Langille

for the Appellant

IN THE COURT OF APPEAL
FOR THE NORTHWEST TERRITORIES

Between:

His Majesty the King

Respondent

- and -

Hannah Lafferty

Appellant

MEMORANDUM OF JUDGMENT
