

## Influencing Witnesses and Jurors

### s.323 (NSW) Crimes Act

Commenced 25.11.1990

s.323 Do any act—

- (a) intending to procure, persuade, induce or otherwise cause any person called or to be called as a witness in any judicial proceeding to give false evidence or withhold true evidence or to not attend as a witness or not produce any thing in evidence pursuant to a summons or subpoena, or
- (b) intending, other than by the production of evidence and argument in open court, to influence any person (whether or not a particular person) in the person's conduct as a juror in any judicial proceeding, whether he or she has been sworn as a juror or not,

Maximum Penalty: 7 years.

Maximum Penalty: 14 years (if offence committed intending to procure a conviction or acquittal of any person of a serious indictable offence: s.324)

	Case (age if known)	Offence	Plea	Sentence	Appeal	Record	Facts
1.	<b>Biddle</b> NSWCCA 6.3.1997	s.323(a) [7y]	PG	8m PD  Re-sentenced on breach to FT 9m	AA MT 25w AT 11w	dishonesty	Female offender faced public mischief and driving offences - threatened witness not to give evidence or offender would bring charges against witness' friend and "make things happen." Very difficult background
2.	<b>Waskin</b> (2003) 141 A Crim R 1 <a href="#">[2003] NSWCCA 96</a>	s.323(a) [7y]	VG	Fine \$2000	Crown AA 18m PD	nil	Pharmacist used employee to deliver large quantities of Sudafed — charged with drug offences – put pressure on employee to give misleading evidence to police – Crown did not rely upon greater penalty at trial
3.	<b>Sultan</b> <a href="#">[2005] NSWCCA 461</a>	s.323(b) [7y]	VG	1y 10m NPP 12m	AA 12m NPP 6m		On bail during trial for specially aggravated BES offence – approached husband of jury member working in service station – 'Just ask your wife to listen to the evidence carefully' – no threat or request to do something improper – no evidence juror was influenced On appeal: manifestly excessive in view of nature of comment

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4.	<b>Lenard</b>	s.323(a) [7y]  Demand money with menaces: s.99(1)	VG	1y 11m NPP 1y 5m  2y 9m NPP 1y 2m  <u>Total:</u> 3y 2m NPP 1y 7m	Crown AA 3y NPP 18m  4y NPP 1y 7m  <u>Total:</u> 4y 6m NPP 2y 1m		L's uncle stole goods from victim – both offenders subjected victim to extortion campaign demanding money in return for goods – further demanded victim change police statement in order to exculpate uncle
	<b>Fail</b>  <a href="#">[2006] NSWCCA 345</a>	s.323(a) [7y]  Demand money with menaces: s.99(1)	VG	2y NPP 18m  3y NPP 1y 3m  <u>Total:</u> 3y 6m NPP 1y 9m	3y NPP 18m  4y NPP 1y 9m  <u>Total:</u> 4y 6m NPP 2y 3m		
5.	<b>Warby</b> (2007) 171 A Crim R 575 <a href="#">[2007] NSWCCA 173</a>	s.323(a) [7y]	PG (10%)	2y NPP 18m	AA 1y 4m NPP 1y	Assault, sexual assault, driving – breached bond	Facing charges of larceny in Local Court – approached witness and said “just tell the cop I wasn't involved ...” SJ erroneously sentenced for aggravated offence under s.324
6.	<b>Black</b> (19) <a href="#">[2008] NSWCCA 337</a>	s.323(a) [7y]	PG (20%)	5y NPP 3y	AA 3y NPP 18m	Mal wound; car theft	From gaol sent witness threatening letters Substance abuse – difficult background – youth.

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7.	<b>Burton</b> <a href="#">[2008] NSWCCA 128</a>	s.323(a) [7y]  3 x Common assault  2 x AOABH  Detain with intent obtain advantage	PG (25%)	3y GBB  FT 3m / 9m 2y GBB  FT 6m / 18m  2y 6m NPP 18m  <u>Total</u> 2y 9m NPP 1y 9m	Crown AA 3y NPP 2y  FT 6m / 9m / 14m  FT 9m / 18m  3y NPP 2y 6m  <u>Total</u> 4y 6m NPP 3y	On parole.	Subjected partner to domestic violence – while in custody made number of persistent telephone calls to partner attempting to influence her to withdraw charges
8.	<b>Asplund</b> (62) <a href="#">[2014] NSWCCA 237</a>	s.323(a) [14y]  Possess child pornography	PG	4y NPP 1y 6m  FT 9m  <u>Total:</u> 4y 9m NPP 2y 3m	AD		Charged with offences relating to sexually explicit communication and grooming of 13y child – had 17y son write statement to police taking responsibility for communications – also had son obtain supporting statements from two friends – extended period of offending – found in possession of child pornography on computer

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9.	<b>Chidiac</b> (34) <a href="#">[2015] NSWCCA 241</a>	s.323(a) [7y]  Knowingly take part in manufact proh drug  Knowingly take part in supply proh drug  Poss unauth firearm  s.166 Certificate: Poss ammunition  Sched: Supply	PG (10%)	<u>Indicative:</u> 3y 6m  4y 6m  4y  3y  1m  <u>Aggregate:</u> 7y 2m NPP 5y 5m	AD	Two minor possession offences	Allowed premises to be used for manufacture of methylamphetamine – pills found at premises constituted 175.57g methylamphetamine and 9.78g ecstasy – .22 calibre revolver found at premises s.323 offence: abusive texts to former wife asking her not to give evidence – breached bail – trial aborted – separate criminality – mid range Long term drug user On appeal: indicative and aggregate sentences not excessive
10.	<b>Cross</b> (32) <a href="#">[2016] NSWCCA 214</a>	s.323(a) [14y]	PG (25%)	5y NPP 3y	AA 3y 6m NPP 2y	On bond.	On remand for AOABH and reckless wounding against female ex-partner – made numerous phone calls to persuade victim to give false evidence, withhold true evidence and not attend as prosecution witness Good rehabilitation. On appeal - manifestly excessive - phone calls not accompanied by threats of violence
11.	<b>Evans</b> (30) <a href="#">[2017] NSWCCA 281</a>	s.323(a) [7y]  Indecent assault: s.61L  s.166 Certificate Assault  Sched: 4 offences	PG (20%)	<u>Indicative:</u> 3y 2m  3y  9m  <u>Aggregate:</u> 5y 6m NPP 3y 6m	AA <u>Indicative:</u> 1y  3y  8m  <u>Aggregate:</u> 3y 6m NPP 2y	Record for assault offences – no gaol	Offences committed against female partner on separate occasions – physical assaults – indecently assaulted victim by vigorously touching and rubbing exposed vaginal area – spontaneous offence done in anger – mid-range - texted victim multiple times asking her to withdraw charges – repetitive and emotionally manipulative – breached bail conditions On appeal: sentence for s.323 offence manifestly excessive – no threats of violence – well below mid-range

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12.	<b>Agnew</b> (a pseudonym) <a href="#">[2018] NSWCCA 128</a>	s.323(a) [7y]	PG (combined – 1/3 <sup>rd</sup> on appeal)	1y 9m NPP 1y	AA 1y 4m NPP 11m		Little factual information – offered victim a Mercedes car if he dropped charges against offender – repeated offer over phone – declined by victim Error made in relation to assessment of assistance
13.	<b>Majzoub</b> (31-33) <a href="#">[2019] NSWCCA 94</a>	2 x s.323(a): [14y]  s.323(a): [14y]  Threaten witness: 322 [14y]  Assault  2 x AOABH  Possess offensive weapon: s.33B(1)(a)  Agg detain for advantage: s.86(2)(b)  Reckless wounding: s.35(4)  Detain for advantage: s.86(1)(b)	PG (12%)  PG (20%)  PG (20%)  PG (20%)  VG  VG  VG  VG	<u>Indicative:</u> 3y 6m  3y 2m  4y  6m 2w  2y 6m  4y  4y  3y NPP 2y 3m  3y  <u>Aggregate:</u> 12y NPP 9y	AD	Extensive – breached conditional liberty	Pattern of serious domestic violence against female partner – violence included striking victim's head with baseball bat, punching victim causing nose fracture and stabbing in leg – detained victim in unit over several days Public justice offences: threatened family of victim – sought to persuade victim not to give evidence through sister and brother of offender Exposed to violence during childhood – moderate prospects of rehabilitation On appeal: suggested errors of accumulation and manifest excess rejected

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14.	AK (56) <a href="#">[2020] NSWCCA 194</a>	2 x Detain for advantage: s.86(1)(b)  s.323(a) [14y]  Sexual assault: s.611  s.166 Certificate: 4 related offences  Sched: s.111(1)	PG	<u>Indicative:</u> 6y / 5y  5y  5y NPP 3y 8m  10m / 12m  <u>Aggregate:</u> 10y NPP 7y	AD	Domestic violence offences	Offences committed against female partner and in breach of AVO – approached home of victim and detained her and children in house over several hours – forced penile / vaginal intercourse knowing victim not consenting – asked victim not to give evidence in upcoming domestic violence matter making threats – s.323 offence mid-range Mental health issues would make custody harder

Last updated: April 2023