

## Use Offensive Weapon or Threats With Intent

### s.33B (NSW) Crimes Act

s 33B(1) Do either of the following with intent to commit an indictable offence, prevent or hinder lawful apprehension or detention either of himself or herself or any other person or prevent or hinder a police officer from investigating any act or circumstance which reasonably calls for investigation:

(a) use, attempt to use, threaten to use or possess offensive weapon or instrument, or

(b) threaten injury to any person or property,

**Maximum Penalty:** 12 years

s 33B(2) Commit offence under (1) in company

**Maximum Penalty:** 15 years

**Commenced:** 14.12.2001

	NAME (AGE IF KNOWN)	OFFENCE	PLEA	SENTENCE	APPEAL	WEAPON	RECORD	FACTS
1.	<b>Mitchell</b> (34) NSWCCA 1.6.1994	s.33B(b) threaten injury to prevent investigation	VG	MT 18m AT 12m (+9m PSC)	AD	car	long record	After police chase drove car at police officer three times.
2.	<b>Stone</b> (21) (1996) 84 A Crim R 218	s.33B(a) use off weapon to prevent lawful app  Sched: 5 offences	PG	MT 3y AT 1y	AA MT 18m AT 18m	broken bottle	minor record for violence and offensive behaviour	Ringleader of group of aboriginals outside hotel objecting to police detainment of 16y youth for intoxication - used broken bottle to threaten police and avoid arrest - further offences committed during subsequent arrest - misapprehended actions of police - no pre-meditation - no gun or knife - no physical contact between weapon and police - no injuries.
3.	<b>Carter</b> NSWCCA 29.10.1997	2 x s.33B(a) use off weapon to prevent detention  Sched 3 offences	PG	MT 3y AT 3y	AD	syringe	extensive record	When detained for shoplifting jabbed syringe into hand and threatened to infect with AIDS - repeated offence in second shop 7 days later - serious offences Tragic and miserable childhood - drug addiction - raped previously in prison - on protection

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4.	<b>King</b> <a href="#">[1999] NSWCCA 16</a>	s.33B(a) use off weapon to prevent lawful app	VG	MT 6m AT 6m	Crown AA MT 12m AT 18m	metal bar	appalling record of assaults on police while drunk - on recog at time of offence	Police called to premises where offender intoxicated and making threats about using axe - threats increased and included threat to burn down house - used metal bars to ward off police - one officer struck on right hand - very intoxicated - asserting he had been assaulted with a shotgun Hard life - crippling amputation
5.	<b>Hutchison</b> (33) <a href="#">[2000] NSWCCA 113</a>	s.33B(a) use off weapon to prevent lawful app  Sched: 4 offences	PG	MT 2y 6m AT 2y	AD	car	lengthy criminal record - appalling traffic record	During dangerous and lengthy high speed police chase deliberating drove at police cars injuring two police officers.
6.	<b>Watts</b> <a href="#">[2000] NSWCCA 167</a>	s.33B(a) possess off weapon with intent to commit offence  2 x s.33B(a) use off instrument with intent to commit offence	VG	MT 6y AT 2y	AA MT 4y AT 2y	gun and car	lengthy record	Became involved in struggle with people around campfire - returned with gun and made threats - drove car through campsite - air-rifle with safety catch on Serious alcohol addiction – totality
7.	<b>Paris</b> (39) <a href="#">[2001] NSWCCA 83</a>	s.33B(a) threaten to use off weapon to prevent investigation  Sched: 2 x assault	PG	2y GBB	Crown AA 2y suspended	knife and wood	old convictions	Threatened police and ambulance officers called to investigate apparent suicide - siege developed for 24 hours. Violent, unhappy and neglected childhood - 3 weeks custody - excellent community work and record as volunteer fire fighter.
8.	<b>Greene</b> (51) <a href="#">[2001] NSWCCA 258</a>	s.33B(a) use off weapon with intent to commit offence	PG	5y NPP 2y	AD	cigarette lighter	nil	Argued with de facto wife - poured turpentine on her and tried to set her alight Subsequently married - long term alcoholic
9.	<b>Reed</b> <a href="#">[2001] NSWCCA 364</a>	s.33B(a) possess off weapon with intent to commit offence  Sched: 4 x firearm offences	PG (25%)	4y 6m NPP 2y 8m	AA 4y NPP 2y	loaded gun		Seriously assaulted by victim in hotel - argued over victim's conduct towards offender's elderly mother - returned with loaded gun intending to kill - desisted when victim used female as shield - extremely provocative acts of victim Mental disorder - depressive illness since death of mother

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10.	<b>Milojevic</b> (28) <a href="#">[2001] NSWCCA 461</a>	s.33B(a) threaten to use off weapon to prevent lawful app  Sched: 7 related offences	PG	5y 5m 15d NPP 3y 5m 15d (from JIRS summary)	AD	knife and accelerant	lengthy including assaults - recog for drug offences and bail for assault	Sustained and serious assault on de facto wife - also assaulted mother and 3y daughter - set fire to house - threatened police with knife and accelerant Genuine remorse
11.	<b>Haddad</b> (27) <a href="#">[2002] NSWCCA 176</a>	3 x s.33B(a) use offensive weapon to commit offence	PG (20%)	8y NPP 5y	AA 8y NPP 4y	car	nil	Following argument with motorcyclist drove car at motor cyclist and two pedestrians - two injured - returned a second time - element of provocation and upset over argument with father Genuine contrition - good character - married with two young children
12.	<b>Kumar</b> (19) <a href="#">[2003] NSWCCA 254</a>	s.33B(a) use offensive weapon with intent to commit offence  s.33B(a) use offensive weapon with intent to commit offence	PG	20m NPP 8m	Crown AD	Car	Nil	After argument with girlfriend struck male companion twice with car – victim walking away – on second occasion mounted footpath and drove 30-35 kph Motivated by jealousy and anger - 3 year delay in prosecution On appeal – inadequate but lengthy delay
13.	<b>Hickling</b> (19)  <b>Avery</b> (19) <a href="#">[2004] NSWCCA 168</a>	s.33B(1)(a) use off weapon to prevent lawful apprehension  s.33B(1)(a) use off weapon to prevent lawful apprehension  Sched: Assault police	PG	18m NPP 9m  18m NPP 9m	Crown AD	Branch	Substantial record – breached parole  Substantial record including offences against police – breached recog	Police officer called to disturbance at hotel caused by intoxicated offenders – officer resisted and attacked with broken tree branch Aboriginals with deprived backgrounds – continue to live in environment of disadvantage, alcohol abuse and violence – close to release date On appeal - sentences inadequate but Court exercised discretion in view of pending release date
14.	<b>Ensby</b> (50s) <a href="#">[2004] NSWCCA 196</a>	s.33B(1)(a) use off weapon with intent to commit offence  Sched: Possess shortened firearm	PG (20%)	5y NPP 3y 9m	AD	Gun	Lengthy record – prior recent conviction for stalking and threatening female partner	Threatened ex de facto with shortened firearm – victim attending house to retrieve property – pursued and threatened to kill – gun not loaded

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15.	<b>McGrath</b> (33) <a href="#">[2004] NSWCCA 440</a>	s.33B(1)(a) use off weapon to prevent lawful apprehension  Sched: 2 x driving offences	PG (15% on appeal)	8y NPP 6y	AA 6y NPP 4y	Screwdriver	Appalling record – breached parole	Attempting to steal car - threatened security guards with screwdriver – escaped in car Intellectual disability
16.	<b>Osborne</b> (37) <a href="#">[2007] NSWCCA 91</a>	s.33B(1)(a) use off weapon to commit offence  s.33B(1)(a) use offensive weapon avoid lawful apprehension  Sched: 6 offences	PG	5y NPP 3y	AD	Motor vehicle	Lengthy	Drove stolen car into door of victim's vehicle whilst victim in vehicle – during police pursuit, reversed car into front of police vehicle causing damage - drug induced psychotic rage Aboriginal – lengthy history of drug abuse – mental illness.
17.	<b>Dunn</b> (30) <a href="#">[2009] NSWCCA 10</a>	s.33B(1)(a) – use off weapon to prevent lawful app  Drive motor vehicle without consent  Dangerous driving  Unlicensed driving  Sched: 2 offences	PG (25% - on appeal)	6y NPP 3y 6m  FT 2y 3m  6m  9m  (all concurrent)	AA 5y 3m NPP 3y  FT 2y 3m  6m  sentence quashed  (all concurrent)	Motor car	Extensive record - breached conditional liberty	While driving stolen vehicle collided with another vehicle – failed to stop – after police pursuit deliberately reversed into police vehicle with two police officers inside

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18.	<b>Hunter</b> (36) <a href="#">[2010] NSWCCA 54</a>	s.33B(1)(a) use instrument with intent to commit offence  6 x AOABH  Assault  PCA	VG	2y 3m NPP 18m  3-6m  2m  6m  <u>Total:</u> 2y 9m NPP 2y	Crown AA 2y 3m NPP 13m  12-18m  6m  6m  <u>Total:</u> 4y 8m NPP 3y 6m	Motor car	traffic record	Deliberating drove motor vehicle at group of people outside bakery late at night – erroneously believed men in group had assaulted friend – been drinking all evening with friend – one man trapped under wheels – seven person struck by car Out of character – remorse
19.	<b>Wykamp</b> (45) <a href="#">[2012] NSWCCA 145</a>	s.33B(2) threaten to injure with intent to prevent lawful detention in company	PG (25%)	18m NPP 12m	AD		Old violence offence	Demanded police officer release son from police van after arrest for drink driving – surrounded by group of intoxicated men making threats – police officer feared he would be assaulted and seriously injured – police officer forced to release son – was aware release of son meant he would not be subject to breath test – sole police stationed in small country town Good character evidence
20.	<b>Craig</b> <a href="#">[2014] NSWCCA 243</a>	2 x s.33B(1)(b) threaten to injure with intent to prevent lawful apprehension  Enter inclosed lands	PG (15%)	6y NPP 4y 3m  FT 3m (concurrent)	AD	Scissor blade	Old murder offence (1991)	Took 3y and 17m son and daughter from home of Grandmother against court order – walked to bushland – when approached by police held scissor blade to neck and threatened to stab – stand off – no wish to injure children Long standing psychiatric issues

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21.	<b>Cotter</b> (36) <a href="#">[2020] NSWCCA 299</a>	s.33B(1)(a) – use off weapon to prevent lawful app  Drive without consent – s.154A  Drive disqualified  Drive with illicit substance  Sched: GIC	PG (25%)	<u>Indicative:</u> 6y 6m  2y  6m  Nil punishment  <u>Aggregate:</u> 7y NPP 4y 6m	AA <u>Indicative:</u> 4y 6m  1y 9m  4m  Nil punishment  <u>Aggregate:</u> 5y NPP 3y 3m	Motor vehicle	Lengthy record – significant custody	Driving stolen car, disqualified and under influence of ice – while stationary at traffic lights asked by officers in police car to pull over – accelerated into stationary car ahead and reversed into second stationary car behind – when police officer opened door accelerated and reversed again colliding with police car and striking officer with door – apprehended attempting to escape across median strip – unplanned offence – not one isolated act – aggravated by disregard for public safety and fact that victim was police officer – mid range Difficult childhood with abuse, early drug use and limited education – guarded prospects of rehabilitation On appeal – erred in failing to take into account unplanned nature of offence as mitigating factor
22.	<b>Shavali</b> <a href="#">[2022] NSWCCA 178</a>	2 x s.33B(1)(a) – use off weapon with intent to intimidate  Possess proh weapon  Sched: Intimidation	PG (15%)	<u>Indicative</u> 2y 6m  2y 10m  1y 8m NPP 12m  <u>Aggregate</u> 3y ICO	AD	Knife	Reckless wounding - on bail	Approached female victim (former partner) and female victim's new male partner – held knife to male victim's chest – pointed knife toward female victim and threatened to “cut her throat” – told victim he was going to kill them for stealing from him. Operated under mixture of inappropriate medication and mental health issues that had “compromised his ability to exercise control” - disadvantaged background – refugee – drug abuse CCA: Error in not taking pre-sentence custody into account – no other sentence warranted

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23.	<b>Courtney</b> (30) <a href="#">[2022] NSWCCA 223</a>	s.33B(1)(a) – use off weapon to prevent lawful app  s.166 Certificate: Drive whilst disq  Sched: Take and drive conveyance	PG (25%)	<u>Indicative</u> 5y  6m  <u>Aggregate</u> 5y 3m NPP 3y 5m	AD	Vehicle	Driving	Police followed offender's vehicle when offender failed to slow at intersection – applicant "rammed" backwards / reversed into police vehicle on four occasions – then drove directly at police vehicle – collision immobilised police vehicle and caused airbags to be deployed. CCA: error in assessing objective seriousness by taking into account offender's vehicle stolen and used to evade arrest – no lesser sentence warranted at law Remorse - prospects of rehabilitation guarded – special circumstances: drug addiction.
24.	<b>Teece</b> (44) <a href="#">[2022] NSWCCA 265</a>	s.33B(2) Possess offensive weapon in company with intent to intimidate  2 x Use carriage service to menace (Cth offence)	VG  PG	5y 6m NPP 4y  1y Released to recog after 8m  <u>Total:</u> 6y NPP 4y 6m	AD	Shotgun	Driving, dishonesty and drugs – breached conditional release order	Attended home of victim with co-offender for purpose of collecting drug debt – co-offender armed with shotgun – pointed at victim and shot at feet – pre-planned – offender instigator and organiser – joint criminal enterprise Little insight – drug abuse – guarded prospects of rehabilitation On appeal: rejected parity ground – not manifestly excessive
25.	<b>Zerefa</b> (26) <a href="#">[2023] NSWCCA 109</a>	s.33B(1) Threaten to use off weapon with intent to intimidate  Unauthorised possess pistol  s.112(3) – Intimidate	PG (25%)	<u>Indicative:</u> 5y 3m  3y NPP 1y 9m  4y 6m NPP 2y 8m  <u>Aggregate:</u> 7y NPP 4y	AD	Gel blaster pistol	Lengthy	Took pistol from friend fearing it would be used against offender – entered yard of house at night and threatened residents including baby inside with pistol before leaving – attended home of friend, broke boards across window and threatened friend in house with pistol – possession offence between bottom and mid-range – other offences mid-range Difficult and deprived childhood - <i>Bugmy</i> considerations applied – substance abuse since 14y – prospects of rehabilitation poor – difficult custodial conditions due to Covid On appeal: sentences not manifestly excessive

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26.	<b>Quarta</b> <a href="#">[2023] NSWCCA 173</a>	s.33B(1) Use off weapon with intent to intimidate  Police pursuit  Drive disqualified	VG  PG (5%)	<u>Indicative:</u> 5y 9m  2y 4m  <u>Aggregate:</u> 6y 9m NPP 4y 6m  FT 11m (concurrent)	AD	Shotgun	Lengthy – breached parole for similar offence	Had heated conversation with male friend by phone while driving – stopped car and fired two shots into car containing friend – no evidence of substantial planning but disregard for public safety – several days later rolled through stop sign – pursued by police over 20km before abandoning car Difficult and abusive childhood – no remorse – prospects of rehabilitation poor to guarded On appeal: no error in application of <u>Bugmy</u> principles – sentence not excessive
27.	<b>Scholte</b> (44) <a href="#">[2023] NSWCCA 318</a>	s.33B(2) Possess offensive weapon in company with intent to intimidate  Possess unauth firearm  Common assault  s.166 – Fail safe keep firearm	VG  PG  PG	<u>Indicative</u> 4y  14m  6m  3m  <u>Aggregate</u> 5y NPP 2y 6m	AA <u>Indicative</u> 4y  15m  4m  6m  <u>Aggregate</u> 4y NPP 2y	Shotgun	Assault resist police, possess implements to enter and drive conveyance, take and drive conveyance, supply drugs.	With co-offenders HS (father) and S (nephew) approached male victim over ownership dispute of vehicle – HS swung pickaxe handle at victim's legs - applicant pointed shotgun at victim (s.33B(2)) - punched victim in mouth (assault) – struggle followed between applicant and victim - victim punched applicant three or four times, causing applicant to fall to ground - HS continued hitting victim; S discharged shotgun and made number of threats. Serious medical issues; cardiac condition. CCA: Aggregate sentence not reconcilable with sentencing judge's stated intentions as to accumulation of indicative sentences – error conceded by Crown.

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