

## 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<br>(AGE IF KNOWN)                         | OFFENCE   | PLEA | SENTENCE                      | APPEAL                 | WEAPON        | RECORD  | FACTS   |
|----|--|---|------|-------------------------------|------------------------|---------------|---|---|
| 1. | <b>Mitchell</b><br>(34)<br>NSWCCA<br>1.6.1994  | s.33B(b) threaten injury to prevent investigation                           | VG   | MT 18m<br>AT 12m<br>(+9m PSC) | AD                     | car           | long record                                       | After police chase drove car at police officer three times.   |
| 2. | <b>Stone</b><br>(21)<br>(1996) 84 A Crim R 218 | s.33B(a) use off weapon to prevent lawful app<br><br>Sched:<br>5 offences   | PG   | MT 3y<br>AT 1y                | AA<br>MT 18m<br>AT 18m | broken bottle | minor record for violence and offensive behaviour | Ringleader of group 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><br>NSWCCA<br>29.10.1997          | 2 x s.33B(a) use off weapon to prevent detention<br><br>Sched<br>3 offences | PG   | MT 3y<br>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<br>Tragic and miserable childhood - drug addiction - raped previously in prison - on protection   |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|    | NAME<br>(AGE IF KNOWN)  | OFFENCE  | PLEA        | SENTENCE           | APPEAL                       | WEAPON            | RECORD   | FACTS  |
|----|---|--|-------------|--------------------|------------------------------|-------------------|--|--|
| 4. | <b>King</b><br><a href="#">[1999] NSWCCA 16</a>               | s.33B(a) use off weapon to prevent lawful app  | VG          | MT 6m<br>AT 6m     | Crown AA<br>MT 12m<br>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<br>Hard life - crippling amputation |
| 5. | <b>Hutchison</b><br>(33)<br><a href="#">[2000] NSWCCA 113</a> | s.33B(a) use off weapon to prevent lawful app<br><br>Sched:<br>4 offences  | PG          | MT 2y 6m<br>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><br><a href="#">[2000] NSWCCA 167</a>             | s.33B(a) possess off weapon with intent to commit offence<br><br>2 x s.33B(a) use off instrument with intent to commit offence | VG          | MT 6y<br>AT 2y     | AA<br>MT 4y<br>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<br>Serious alcohol addiction – totality   |
| 7. | <b>Paris</b><br>(39)<br><a href="#">[2001] NSWCCA 83</a>      | s.33B(a) threaten to use off weapon to prevent investigation<br><br>Sched:<br>2 x assault                                      | PG          | 2y GBB             | Crown AA<br>2y<br>suspended  | knife and wood    | old convictions  | Threatened police and ambulance officers called to investigate apparent suicide - siege developed for 24 hours.<br>Violent, unhappy and neglected childhood - 3 weeks custody - excellent community work and record as volunteer fire fighter.   |
| 8. | <b>Greene</b><br>(51)<br><a href="#">[2001] NSWCCA 258</a>    | s.33B(a) use off weapon with intent to commit offence  | PG          | 5y<br>NPP 2y       | AD                           | cigarette lighter | nil  | Argued with de facto wife - poured turpentine on her and tried to set her alight<br>Subsequently married - long term alcoholic   |
| 9. | <b>Reed</b><br><a href="#">[2001] NSWCCA 364</a>              | s.33B(a) possess off weapon with intent to commit offence<br><br>Sched:<br>4 x firearm offences                                | PG<br>(25%) | 4y 6m<br>NPP 2y 8m | AA<br>4y<br>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<br>Mental disorder - depressive illness since death of mother                             |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(AGE IF KNOWN)   | OFFENCE  | PLEA        | SENTENCE  | APPEAL             | WEAPON               | RECORD  | FACTS  |
|-----|--|--|-------------|---|--------------------|----------------------|---|--|
| 10. | <b>Milojevic</b><br>(28)<br><a href="#">[2001] NSWCCA 461</a>                            | s.33B(a) threaten to use off weapon to prevent lawful app<br><br>Sched:<br>7 related offences  | PG          | 5y 5m 15d<br>NPP 3y 5m 15d<br>(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<br>Genuine remorse  |
| 11. | <b>Haddad</b><br>(27)<br><a href="#">[2002] NSWCCA 176</a>                               | 3 x s.33B(a) use offensive weapon to commit offence  | PG<br>(20%) | 8y<br>NPP 5y                                      | AA<br>8y<br>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<br>Genuine contrition - good character - married with two young children   |
| 12. | <b>Kumar</b><br>(19)<br><a href="#">[2003] NSWCCA 254</a>                                | s.33B(a) use offensive weapon with intent to commit offence<br><br>s.33B(a) use offensive weapon with intent to commit offence                             | PG          | 20m<br>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<br>Motivated by jealousy and anger - 3 year delay in prosecution<br>On appeal – inadequate but lengthy delay   |
| 13. | <b>Hickling</b><br>(19)<br><br><b>Avery</b><br>(19)<br><a href="#">[2004] NSWCCA 168</a> | s.33B(1)(a) use off weapon to prevent lawful apprehension<br><br>s.33B(1)(a) use off weapon to prevent lawful apprehension<br><br>Sched:<br>Assault police | PG          | 18m<br>NPP 9m<br><br>18m<br>NPP 9m                | Crown AD           | Branch               | Substantial record – breached parole<br><br>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<br>Aboriginal males with deprived backgrounds – continue to live in environment of disadvantage, alcohol abuse and violence – close to release date<br>On appeal - sentences inadequate but Court exercised discretion in view of pending release date |
| 14. | <b>Ensby</b><br>(50s)<br><a href="#">[2004] NSWCCA 196</a>                               | s.33B(1)(a) use off weapon with intent to commit offence<br><br>Sched:<br>Possess shortened firearm  | PG<br>(20%) | 5y<br>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  |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(AGE IF KNOWN)                                      | OFFENCE  | PLEA                    | SENTENCE  | APPEAL  | WEAPON        | RECORD  | FACTS  |
|-----|---|--|-------------------------|---|---|---------------|---|--|
| 15. | <b>McGrath</b><br>(33)<br><a href="#">[2004] NSWCCA 440</a> | s.33B(1)(a) use off weapon to prevent lawful apprehension<br><br>Sched:<br>2 x driving offences  | PG<br>(15% on appeal)   | 8y<br>NPP 6y  | AA<br>6y<br>NPP 4y  | Screwdriver   | Appalling record – breached parole              | Attempting to steal car - threatened security guards with screwdriver – escaped in car<br>Intellectual disability  |
| 16. | <b>Osborne</b><br>(37)<br><a href="#">[2007] NSWCCA 91</a>  | s.33B(1)(a) use off weapon to commit offence<br><br>s.33B(1)(a) use offensive weapon avoid lawful apprehension<br><br>Sched:<br>6 offences                                   | PG                      | 5y<br>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<br>Aboriginal male – lengthy history of drug abuse – mental illness. |
| 17. | <b>Dunn</b><br>(30)<br><a href="#">[2009] NSWCCA 10</a>     | s.33B(1)(a) – use off weapon to prevent lawful app<br><br>Drive motor vehicle without consent<br><br>Dangerous driving<br><br>Unlicensed driving<br><br>Sched:<br>2 offences | PG<br>(25% - on appeal) | 6y<br>NPP 3y 6m<br><br>FT 2y 3m<br><br>6m<br><br>9m<br><br>(all concurrent) | AA<br>5y 3m<br>NPP 3y<br><br>FT 2y 3m<br><br>6m<br><br>sentence quashed<br><br>(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   |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(AGE IF KNOWN)                                     | OFFENCE   | PLEA        | SENTENCE   | APPEAL  | WEAPON        | RECORD                    | FACTS  |
|-----|--|---|-------------|--|---|---------------|---------------------------|--|
| 18. | <b>Hunter</b><br>(36)<br><a href="#">[2010] NSWCCA 54</a>  | s.33B(1)(a) use instrument with intent to commit offence<br><br>6 x AOABH<br><br>Assault<br><br>PCA       | VG          | 2y 3m<br>NPP 18m<br><br>3-6m<br><br>2m<br><br>6m<br><br><u>Total:</u><br>2y 9m<br>NPP 2y | Crown AA<br>2y 3m<br>NPP 13m<br><br>12-18m<br><br>6m<br><br>6m<br><br><u>Total:</u><br>4y 8m<br>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 people struck by car<br>Out of character – remorse  |
| 19. | <b>Wykamp</b><br>(45)<br><a href="#">[2012] NSWCCA 145</a> | s.33B(2) threaten to injure with intent to prevent lawful detention in company                            | PG<br>(25%) | 18m<br>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<br>Good character evidence |
| 20. | <b>Craig</b><br><a href="#">[2014] NSWCCA 243</a>          | 2 x s.33B(1)(b) threaten to injure with intent to prevent lawful apprehension<br><br>Enter inclosed lands | PG<br>(15%) | 6y<br>NPP 4y 3m<br><br>FT 3m<br>(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<br>Long standing psychiatric issues  |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(AGE IF KNOWN)                                     | OFFENCE   | PLEA        | SENTENCE  | APPEAL   | WEAPON        | RECORD                               | FACTS  |
|-----|--|---|-------------|---|--|---------------|--------------------------------------|--|
| 21. | <b>Cotter</b><br>(36)<br><a href="#">[2020] NSWCCA 299</a> | s.33B(1)(a) – use off weapon to prevent lawful app<br><br>Drive without consent – s.154A<br><br>Drive disqualified<br><br>Drive with illicit substance<br><br>Sched:<br>GIC | PG<br>(25%) | <u>Indicative:</u><br>6y 6m<br><br>2y<br><br>6m<br><br>Nil punishment<br><br><u>Aggregate:</u><br>7y<br>NPP 4y 6m | AA<br><u>Indicative:</u><br>4y 6m<br><br>1y 9m<br><br>4m<br><br>Nil punishment<br><br><u>Aggregate:</u><br>5y<br>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<br>Difficult childhood with abuse, early drug use and limited education – guarded prospects of rehabilitation<br>On appeal – erred in failing to take into account unplanned nature of offence as mitigating factor |
| 22. | <b>Shavali</b><br><a href="#">[2022] NSWCCA 178</a>        | 2 x s.33B(1)(a) – use off weapon with intent to intimidate<br><br>Possess proh weapon<br><br>Sched:<br>Intimidation   | PG<br>(15%) | <u>Indicative</u><br>2y 6m<br><br>2y 10m<br><br>1y 8m<br>NPP 12m<br><br><u>Aggregate</u><br>3y<br>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.<br>Operated under mixture of inappropriate medication and mental health issues that had “compromised his ability to exercise control” - disadvantaged background – refugee – drug abuse<br>CCA: Error in not taking pre-sentence custody into account – no other sentence warranted  |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(AGE IF KNOWN)                                       | OFFENCE  | PLEA         | SENTENCE  | APPEAL | WEAPON             | RECORD   | FACTS  |
|-----|--|--|--------------|---|--------|--------------------|--|--|
| 23. | <b>Courtney</b><br>(30)<br><a href="#">[2022] NSWCCA 223</a> | s.33B(1)(a) – use off weapon to prevent lawful app<br><br>s.166 Certificate: Drive whilst disq<br><br>Sched: Take and drive conveyance | PG<br>(25%)  | <u>Indicative</u><br>5y<br><br>6m<br><br><u>Aggregate</u><br>5y 3m<br>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.<br>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<br>Remorse - prospects of rehabilitation guarded – special circumstances: drug addiction.   |
| 24. | <b>Teece</b><br>(44)<br><a href="#">[2022] NSWCCA 265</a>    | s.33B(2) Possess offensive weapon in company with intent to intimidate<br><br>2 x Use carriage service to menace (Cth offence)         | VG<br><br>PG | 5y 6m<br>NPP 4y<br><br>1y<br>Released to recog after 8m<br><br><u>Total:</u><br>6y<br>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<br>Little insight – drug abuse – guarded prospects of rehabilitation<br>On appeal: rejected parity ground – not manifestly excessive  |
| 25. | <b>Zerefa</b><br>(26)<br><a href="#">[2023] NSWCCA 109</a>   | s.33B(1) Threaten to use off weapon with intent to intimidate<br><br>Unauthorised possess pistol<br><br>s.112(3) – Intimidate          | PG<br>(25%)  | <u>Indicative:</u><br>5y 3m<br><br>3y<br>NPP 1y 9m<br><br>4y 6m<br>NPP 2y 8m<br><br><u>Aggregate:</u><br>7y<br>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<br>Difficult and deprived childhood - <i>Bugmy</i> considerations applied – substance abuse since 14y – prospects of rehabilitation poor – difficult custodial conditions due to Covid<br>On appeal: sentences not manifestly excessive |

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.

|     | NAME<br>(AGE IF KNOWN)                                      | OFFENCE  | PLEA                   | SENTENCE   | APPEAL   | WEAPON  | RECORD  | FACTS   |
|-----|---|--|------------------------|--|--|---------|---|---|
| 26. | <b>Quarta</b><br><a href="#">[2023] NSWCCA 173</a>          | s.33B(1) Use off weapon with intent to intimidate<br><br>Police pursuit<br><br>Drive disqualified  | VG<br><br>PG (5%)      | <u>Indicative:</u><br>5y 9m<br><br>2y 4m<br><br><u>Aggregate:</u><br>6y 9m<br>NPP 4y 6m<br><br>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<br>Difficult and abusive childhood – no remorse – prospects of rehabilitation poor to guarded<br>On appeal: no error in application of <i>Bugmy</i> principles – sentence not excessive  |
| 27. | <b>Scholte</b><br>(44)<br><a href="#">[2023] NSWCCA 318</a> | s.33B(2) Possess offensive weapon in company with intent to intimidate<br><br>Possess unauth firearm<br><br>Common assault<br><br>s.166 – Fail safe keep firearm | VG<br><br>PG<br><br>PG | <u>Indicative</u><br>4y<br><br>14m<br><br>6m<br><br>3m<br><br><u>Aggregate</u><br>5y<br>NPP 2y 6m                  | AA<br><u>Indicative</u><br>4y<br><br>15m<br><br>4m<br><br>6m<br><br><u>Aggregate</u><br>4y<br>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.<br>Serious medical issues - cardiac condition.<br>CCA: Aggregate sentence not reconcilable with sentencing judge's stated intentions as to accumulation of indicative sentences – error conceded by Crown. |



|     | NAME<br>(AGE IF KNOWN)                              | OFFENCE  | PLEA                | SENTENCE   | APPEAL   | WEAPON | RECORD | FACTS   |
|-----|---|--|---------------------|--|--|--------|--------|---|
| 28. | Barker<br>(21)<br><a href="#">[2024] NSWCCA 227</a> | s.33B(1)(a) Use<br>offensive weapon<br>with intent commit<br>indictable offence of<br>intimidation<br><br>s.59(1)<br><br>s.195(1)(a) | PG<br>(10%;<br>25%) | <u>Indicative</u><br>2y<br><br>18m<br><br>6m<br><br><u>Aggregate</u><br>2y 6m<br>NPP 1y 3m | AA<br><u>Indicative</u><br>18m<br><br>15m<br><br>6m<br><br><u>Aggregate</u><br>2y to be<br>served by 14m<br>Intensive<br>Correction<br>Order | Knife  | Nil    | Three offences involved acts of domestic violence against former partner – female victim attended applicant’s premises to collect belongings - applicant picked up knife from kitchen, held knife in right hand next to his head, pointed at victim, told victim, “If you leave, I will kill you” - punched victim to face and head, smashed mobile phone. Indigenous male – Bugmy - abuse, neglect, trauma -- drug abuse from young age - trauma from childhood sexual abuse – depression, anxiety.<br>CCA: Various sentencing errors – on resentencing, take into account 10 months in custody (including presentence custody). |

Last Updated: December 2024

This table has been prepared by the Public Defenders as a guide. Individual cases should be read if they are to be relied upon.