

<h2 style="margin: 0;">Affray</h2> <p style="margin: 0;">s.93C (NSW) <u>Crimes Act</u></p>

s.93C Uses or threaten unlawful violence towards another and whose conduct is such as would cause a person of reasonable firmness present at scene to fear for personal safety

Maximum Penalty: 5 years

increased to 10 years for offences committed on or after 15.12.2005

	NAME (age if known)	OFFENCE	PLEA	SENTENCE	APPEAL	RECORD	SUMMARY
1.	Tarawa (21) [1999] NSWSC 597 Barr J	s.93C [5y]	PG	200h Community service On breach converted to FT 2m		No history of violence	Involved in brawl outside service station – altercation with youths – first person to use physical violence – not responsible for initial altercation Isolated incident – assisting friends – failure to complete work and attendance requirements
2.	McNally [1999] NSWCCA 449	s.93C [5y] Assault	PG	3y NPP 2y 3m FT 6m (concurrent)	AD	Violence	Returned to collect personal possessions from property – took two friends – harassed, terrorised and threatened property owners with gun over several hours – very serious offence of affray
3.	Huynh (23) Ta (21) Lam (23) [2000] NSWCCA 18	s.93C [5y] s.93C [5y] s.93C [5y]	PG PG PG	3y GBB 2y GBB 2y GBB	Crown AD	Nil Minor Affray - breached bail	Brawl outside roller skating rink involving up to 30 Vietnamese youths – offenders not responsible for death and not armed with weapons – very limited roles – no premeditation L and T – present at affray offering encouragement H – injured in fight
4.	Goh [2002] NSWCCA 234	s.93C [5y]	PG	Charge dismissed under s.10	Crown AD		Brawl between two groups on street at night – struck male in defence of friend – upon fight resuming fell to ground and assaulted Youth – sentence unusual but not inadequate

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5.	Langton [2002] NSWCCA 382	s.93C [5y] 3 x Assault 2 x Perjury	PG	FT 2y FT 12m 2y NPP 18m Total: 3y 6m NPP 3y	AA FT 2y FT 12m 18m NPP 3m / 6m Total: 3y 6m NPP 2y 3m	Subsequent assault	(1990) - Police officer involved in assault on young males brought to police station after arrested for brawl with off duty police officers – males assaulted with batons – systematic and savage beating - punched three males in interview room – lied at subsequent court hearing under cross-examination
6.	T. Eleter (19) G. Eleter (19) Y. Eleter (46) JO (17) [2002] NSWSC 1224 Dunford J [2003] NSWCCA 130	s.93C [5y] s.93C [5y] s.93C [5y] s.93C [5y] Att pervert course of justice	PG (20%) PG (20%) PG (20%) PG (20%)	16m NPP 12m 16m NPP 12m 16m NPP 12m 12m NPP 9m Periodic Detention 3y GBB	AD AD	Assault police Prior record	Father, three sons and two friends attended brothel – seeking to extract revenge for earlier fight involving one offender – males threatened and assaulted – one male shot dead by third brother (charged with murder) - JO sought to arrange false alibi statements YE – health problems
7.	Fajka (31) [2004] NSWCCA 166	s.93C [5y]	PG	2y NPP 18m	AA 100h CSO (7w custody served)	Minor offences	Involved in fight at hotel with brother – struck male patron – very limited role Married – evidence of rehabilitation On appeal discount for guilty plea imposed

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8.	Bugmy (28) [2004] NSWCCA 258	s.93C [5y] AOABH	PG (20-25%)	FT 9m 2y Suspended	AA (to remove condition of suspended sentence)	Lengthy criminal record – assaults	Tackled shop keeper during attack with two co-offenders – unaware co-offender had knife – unable to ascertain who attacked victim with baseball bat – lesser offender Long history of drug and alcohol abuse
9.	Graham (2004) 62 NSWLR 252 NSWCCA	s.93C [5y] Sched 2 related offences	PG	2y GBB On breach converted to 2y NPP 18m	AD	Breached bond and bail	Forced entry to neighbour's house and threatened to kill with knife – damaged door and threw brick through window – unprovoked attack Suffering depression, chronic back pain and substance abuse
10.	DW (17) KW (16) [2006] NSWSC 118 Buddin J	s.93C s.93C	PG PG	9m GBB (15m PSC) 9m GBB (15m PSC)		Minor Minor	History of animosity between family groups – male associated with one family threatened by group associated with second family including offenders – yelled abuse in threatening manner after victim collapsed – (victim subsequently died) – spontaneous reaction Favourable prospects of rehabilitation
11.	JM (16) [2006] NSWSC 1220 Buddin J	s.93C	PG (25%)	9m GBB (11m PSC)		Subsequent offences	Became involved in fight outside residential premises at night – victim hit and kicked by a number of people including offender – subsequently died – attending nearby party with no reason to get involved in affray – subsidiary role – co-offenders charged with manslaughter General good character – hard worker
12.	Stevens (44) [2007] NSWCCA 152	s.93C [5y]	PG	18m NPP 12m	AD	Lengthy record for violence – breached parole	Travelled to remote property with two co-offenders to retrieve car – male and female owners assaulted with baton and tyre lever
13.	Elphick (21) [2010] NSWCCA 112	s.93C AOABH	PG (25%)	2y NPP 18m 2y NPP 18m (concurrent)	Crown AA 3y NPP 2y 3m 2y NPP 18m (concurrent)	Breached parole – property and violence offences	Assaulted bus driver when he declined to take victim home – swung using metal bars, kicking driver several times – caused bus to swerve and mount kerb – savage and sustained attack Intoxicated

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14.	Greer (19) [2011] NSWCCA 40	s.93C	PG (25% on appeal)	3y 9m NPP 2y 6m	AA 3y NPP 18m	Breached bail for offence of reckless wounding committed during drunken fight	Became involved in altercation in street – male victim surrounded by group of young males and viciously assaulted – brother and sister also assaulted – group sought to pursue victims into shop Dysfunctional childhood – early drug and alcohol abuse
15.	Apthorpe (21) [2012] NSWCCA 100	s.93C Sched: Damage prop Larceny	PG (15%)	3y 4m NPP 2y	AD	Mal inflict GBH, AOABH, affray, assault - on bond.	With 4 co-offenders assaulted victim by punching and kicking whilst victim on ground – ongoing dispute between families - victim hit by hard object and lost consciousness - suffered fracture of nasal bone, damage to teeth, extensive bruising to head, face, chest and shoulders and a ruptured blood vessel to right eye - sustained group attack on one victim
16.	Khanwaiz (29) Khanvez (19) [2012] NSWCCA 168	s.93C AOABH s.93C AOABH	PG (12.5%) PG (12.5%)	2y 4m NPP 18m 21m NPP 14m Total: 2y 7m NPP 21m 2y 4m NPP 18m 21m NPP 14m Total: 2y 7m NPP 21m	AD	Nil nil	Pakistani student residing in Australia lured out of apartment and assaulted by group of males – punched and kicked – planned assault – family dispute
17.	Abdulhadi (30) [2012] NSWSC 1658 Latham J Co-offender: HEK / MARIAM ELBADAR / AM HE / SE	s.93C	PG (10%)	3y 7m NPP 2y		Minor	Attended with others at night on street to confront another group over dispute – shots fired resulting in accidental death of passing truck driver – offender shot in abdomen - particularly serious example of affray

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18.	<p>HE (16)</p> <p>SE (15)</p> <p>[2012] NSWSC 1024 Latham J</p> <p>Co-offender: HEK / MARIAM ELBADAR / AM ABDULHADI</p>	<p>s.93C</p> <p>s.93C</p>	<p>PG</p> <p>PG</p>	<p>3y GBB</p> <p>3y GBB</p>		<p>Nil</p>	<p>Brothers – attended with others at night on street to confront another group over dispute – shots fired by rival group resulting in accidental death of passing truck driver - minor roles in affray - neither had knowledge of loaded firearms or inflicted violence - discharge of loaded firearms as a feature of the affray - particularly serious example of affray</p> <p>Remorse – rehabilitation prospects</p>
19.	<p>HEK (20)</p> <p>[2012] NSWSC 1364 Latham J</p> <p>Co-offenders: HE / SE / MARIAM ELBADAR / AM ABDULHADI</p>	<p>s.93C</p> <p>Malicious damage property by fire</p>	<p>VG</p>	<p>3y NPP 2y</p> <p>FT 2y</p> <p><u>Total</u> 3y NPP 2y 4m</p>		<p>Nil</p>	<p>Attended with others at night on street to confront another group over dispute – shots fired by rival group resulting in accidental death of passing truck driver - drove van to scene carrying own group – fought with member of rival group – later drove away and destroyed van by fire to destroy evidence of participation - discharge of loaded firearms as a feature of the affray - particularly serious example of affray.</p> <p>Remorse – rehabilitation prospects</p>
20.	<p>Elbadar (34)</p> <p>[2012] NSWSC 1492 Latham J</p> <p>Co-offenders: HE / SE / HEK MARIAM / AM ABDULHADI</p>	<p>s.93C</p> <p>2 x Give false evidence</p>	<p>PG (15%)</p>	<p>1y 8m suspended (3m 19d PSC)</p> <p>FT 10m suspended</p>		<p>minor</p>	<p>Involved in affray in car park – 11 youths from two groups met to settle dispute – member of group fired shots at rival group accidentally killing truck driver passing by – shots returned by rival group – gave false evidence at NSW Crime Commission investigation into affray – late at night – short duration – element of premeditation and planning – present with intention of assisting – removed himself when firearms used – alerted authorities before taking friend to hospital</p> <p>Mental and behavioural problems including Tourette's disorder – primary carer for mother</p>

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21.	Mariam (24) [2012] NSWSC 1496 Latham J Co-offenders: HE / SE / ELBADAR HEK / AM ABDULHADI	s.93C	PG (25%)	2y 3m NPP 1y 6m 22d		Rob in company	Involved in affray in car park – 11 youths from two groups met to settle dispute – brother fired shots at rival group accidentally killing truck driver passing by – shots returned by rival group – received gunshot wounds to arm – late at night – short duration – element of premeditation and planning – drove brother to scene and involved in assault Several offers to plead guilty to affray rejected
22.	AM (15) [2012] NSWSC 1635 Latham J Co-offenders: HEK / HE / SE ELBADAR MARIAM	s.93C	PG (25%)	3y GBB			Affray in car park – 11 youths from two groups met to settle dispute – brother fired shots at rival group accidentally killing truck driver passing by – offender had no knowledge of firearms at scene – not armed – least culpable of all participants in affray. Youth - period of almost 4 months pre-sentence custody - strong subjective case
23.	Dadash (28) [2012] NSWSC 1511 RA Hulme J Co-offenders: DARABI / RAZAI MANSOOR CHENARJAAFARIZAD ABDOLLAHI	s.93C	PG (12.5%)	1y 9m NPP 1y 4m		Nil	Held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - stand-off with other detainees against staff members – sprayed fire extinguishers and then threw them at staff – emptied contents of bins and set them alight. Prior good character - post-traumatic stress.

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24.	<p>Darabi (25)</p> <p>Mansoor (25)</p> <p>Razai (24)</p> <p>[2013] NSWSC 387 RA Hulme J</p> <p>Co-offenders: DADASH CHENARJAAFARIZAD ABDOLLAHI</p>	<p>s.93C</p> <p>s.93C</p> <p>s.93C</p>	<p>PG (12.5%)</p> <p>PG (5%)</p> <p>PG (12.5%)</p>	<p>1y 4m NPP 8m</p> <p>1y 5m NPP 9m</p> <p>1y 1m NPP 7m</p>		Nil	<p>Held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - affray involving number of detainees against staff members – M and D commenced the protest by climbing roof and throwing tiles at staff members – continuing swearing and threatening behaviour towards staff – others joined in – R joined M and D on rooftop.</p> <p>All offenders of good character – rehabilitation prospects – suffering anger, frustration, depression and anxiety.</p>
25.	<p>Chenarjaafarizad (32)</p> <p>[2013] NSWSC 388 RA Hulme J</p> <p>Co-offenders: DARABI / RAZAI MANSOOR DADASH ABDOLLAHI</p>	s.93C	PG	2y NPP 1y		Nil	<p>Held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - affray involving number of detainees against staff members – offender grabbed staff member twice, discharged fire extinguishers - others threw tiles from roof at staff - significant contribution to violence – not a leader but played a role in motivating others to join or continue with violence.</p> <p>Good character – rehabilitation prospects.</p>
26.	<p>Ali (40)</p> <p>RA Hulme J</p> <p>[2013] NSWSC 871</p> <p>Co-offenders: DARABI / DADASH MANSOOR / RAZAI ABDOLLAHI CHENARJAAFARIZAD</p>	s.93C	PG	2y Bond		Nil	<p>Held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - affray involving number of detainees against staff member - held soccer goal post above head and moved toward staff in menacing fashion.</p> <p>Psychiatric issues - good character; good prospects of rehabilitation - unlikely to re-offend.</p>

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27.	Abdollahi (37) [2013] NSWSC 428 RA Hulme J Co-offenders: DARABI / DADASH MANSOOR / RAZAI CHENARJAAFARIZAD	s.93C	VG	12m GBB (7m PSC)		Nil	Iranian held at Villawood Detention Centre – offence committed during large-scale disturbance at Centre - affray involving number of detainees against staff members – sentenced for attempting unsuccessfully to punch activities officer several times – offence committed after unrest started but before deteriorated into riot – subsequently learned father-in-law had passed away in Iran and joined others on roof threatening suicide – offence at low end of spectrum Lengthy period in detention awaiting outcome of immigration status review – separated from wife and son for several years – deteriorating mental state – subsequently determined to be genuine refugee – wife and son now in Australia – prospects of rehabilitation
28.	Swan [2016] NSWCCA 79	s.93C s.35(1) substituted on appeal by s.59(2)	VG	3y 6m NPP 2y 3y NPP 1y 6m <u>Total:</u> 3y 9m NPP 2y 3m	AA 3y 6m NPP 2y 18m NPP 12m <u>Total:</u> 3y 6m NPP 2y		One of ten men who approached victim's home at night armed with bats or pieces of wood – threatened victim - victim's wife and 9y son fled next door – victim took 6y daughter who then ran next door – victim dragged to middle of yard and kicked and punched – offender kicked victim several times Difficult background – low intelligence On appeal concluded injuries only constituted ABH and substituted conviction

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29.	Aleshbi (54)	s.93C Fail to appear	PG (10%) (25%)	5y 5m 13m <u>Aggregate:</u> 6y NPP 4y 6m	AA 3y 7m 12m <u>Aggregate:</u> 4y NPP 2y 6m	Nil	(2013) - offenders and eight other men arrived and assaulted two male victims at their home – altercation began over slight misunderstanding between E and victims - group armed with weapons including baseball bats, metal pole, knife, Taser-like device - no evidence offenders aware of knife or Taser device, but must have been aware of larger items – E hit with plastic bucket - victims suffered bruising and grazing though no long-term injuries. Offenders left country in 2016 mistakenly believing they would be receiving 10 years imprisonment – returned voluntarily in 2017 A: rehabilitation prospects E: reasonable rehabilitation
	Eshbi (34) [2018] NSWCCA 30	s.93C Fail to appear	PG (10%) (25%)	5y 5m 13m <u>Aggregate:</u> 6y NPP 3y 7m	3y 7m 12m <u>Aggregate:</u> 4y NPP 2y 6m	Nil	
30.	Dillon (18 at offence; 22 at sentence)	s.93C	PG (10%)	3y NPP 2y		Agg BE, larceny, violence offences in custody.	Street brawl involving around 10 people – responding to insult male (AM) - R stopped car and agreed with D to confront male - brawl Dillon - ring-leader – in later incident AM killed and D acquitted – brother killed in retaliation causing mental illness – remorse. Rivera - willingly participated - no specific acts of particular violence attributed but fully involved in trading blows with fists or feet with other participants – good character – remorse.
	Rivera (19 at offence; 24 at sentence) [2019] NSWSC 1750 Campbell J	s.93C	PG	6m		Nil relevant; on bond for drug possession.	

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31.	Sarhene (18) [2022] NSWCCA 79	s.93C AOABH	PG (25%)	14m 2y 4m <u>Aggregate:</u> 2y 10m ICO	AA 12m CCO 15m ICO (1m plus 14m already served)	Nil	Offences committed in context of gang turf war – affray committed outside birthday party at private residence – part of group who assaulted male guest although did not physically participate and did not follow group into backyard – three weeks later one of several offenders who assaulted male acquaintance on street late at night – personally kicked victim to face and stepped on shoulder – unprovoked violence Genuine remorse – good prospects of rehabilitation – out of character - born in Ghana – poverty On appeal: SJ erred in finding only sentence of imprisonment appropriate for affray offence – failed to take into account youth and immaturity

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32.	<p>S.Taumalolo (20)</p> <p>ET (17)</p> <p>M.Taumalolo (18)</p> <p>Mayol (22)</p> <p>[2022] NSWSC 1696 Davies J</p>	<p>s.93C</p> <p>s.93C</p> <p>s.93C</p> <p>s.93C</p>	<p>PG (25%)</p> <p>PG (25%)</p> <p>PG (25%)</p> <p>PG (5%)</p>	<p>3y 9m NPP 2y 3m</p> <p>3y 4m NPP 2y</p> <p>3y 9m NPP 2y 4m</p> <p>2y 9m NPP 1y 1m 25d</p>		<p>Subsequent conviction for affray committed shortly before this offence – prison violence</p> <p>Priors for affray and riot in similar circumstances</p> <p>Convictions for affray before and after this offence – prison infractions</p> <p>Nil</p>	<p>Group of youths assaulted 18y male victim outside party – victim kicked, punched and stomped to head and face for several minutes while defenseless on ground – assault fatal – above mid-range – largely spontaneous but cowardly and vicious assault by group of men on one victim – moral culpability of each distinguishable</p> <p>M.T.: most serious offender – continued assaulting victim on ground</p> <p>ET: marginally less serious – only offender to drive to scene armed with baseball bat – element of deliberateness and planning – no actual assault but swung bat making threats and causing fear</p> <p>S.T.: deliberately joined assault on victim but withdrew when he fell to ground</p> <p>Mayol: least serious – presence during affray only</p> <p>Subjective case: S.T.: stable childhood – reasonable prospects of rehabilitation – under influence of alcohol at time of offence – special circumstances ET: affected by ice and alcohol at time of offence - struggled after loss of brother to suicide – good prospects of rehabilitation after engaging in programs in custody – remorse – low risk of re-offending – relevance of youth – special circumstances M.T.: stable childhood – alcohol abuse – limited insight – special circumstances Mayol: chronic substance abuse – remorse – special circumstances Co-offenders sentenced for manslaughter and murder</p>
33.	<p>Edwards (30)</p> <p>[2023] NSWCCA 313</p>	<p>s.93C</p> <p>Assault police</p> <p>Assault police</p>		<p><u>Indicative</u> 1y 6m</p> <p>8m</p> <p>10m</p> <p><u>Aggregate</u> 2y 3m NPP 1y 6m</p>	AD	<p>Lengthy. Armed with intent, detain person with intent, violence offences, summary drug offences. On bail and parole.</p>	<p>Apprehended by two police officers when riding unregistered motorbike – during struggle, punched V1 to thigh, punched V2 to face and bit hand – called out to friends who were nearby, encouraging them to “flog” the two officers – officers placed in extreme fear. Aboriginal male – significant disadvantage.</p>

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