

# Acts or omissions causing bodily harm or danger

s 304 Criminal Code

**From 1 January 2014**

**Transitional Sentencing Provisions:** This table is divided into thirds based on the three relevant periods of Sentencing Provisions:

- Post-transitional provisions period
- Transitional provisions period
- Pre-transitional provisions period

These periods are separated by a row which shows when the transitional provisions were enacted, and another showing when they were repealed.

## Glossary:

imp	imprisonment
susp	suspended
PG	plead guilty
agg	aggravated
burg	burglary
AOBH	assault occasioning bodily harm
GBH	grievous bodily harm
dep lib	deprivation of liberty
att	attempted
ct	count
TES	total effective sentence
EFP	eligible for parole
VRO	violence restraining order

s 304(1) Acts/omissions (max penalty 7 yrs imp)

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
14.	<p><i>The State of Western Australia v. Mae</i></p> <p>[2018] WASCA 53</p> <p>Delivered 16/04/2018</p>	<p><u>James</u> 30 yrs at time offending. 32 yrs at time sentencing.</p> <p>Convicted after PG. (cts 1-3) (25% discount).</p> <p>Prior criminal history in NSW; including convictions for violence.</p> <p>Victim of domestic violence as a child.</p> <p>Left school yr 10.</p> <p>Employed construction industry.</p> <p>Long-term de facto relationship; two young children.</p> <p>Significant substance abuse issues; alcohol; cocaine and methyl.</p> <p><u>Jonathan</u> 24 yrs at time offending. 25 yrs at time sentencing.</p> <p>Convicted after PG.</p>	<p>Ct 1: Unlawfully did an act likely to endanger life, health or safety. Cts 2 &amp; 3: GBH with intent.</p> <p>The victims, E (aged 18 yrs) and D (aged 19 yrs) and three other males travelled in a Mercedes to an address. Unbeknown to the men the house was occupied by James and his family.</p> <p>James was not home when one of the males from the Mercedes knocked on the door. James' partner answered and was asked 'Where's Mohammed?'. She said no-one by that name lived there. She then telephoned James and told him what had occurred and that the Mercedes was still at the house.</p> <p>About 15 minutes later, James, Jonathan and Phillip arrived at the house. James was in a state of 'absolute uncontrollable rage'. A verbal altercation occurred with the occupants of the Mercedes. As a result the car began to reverse to escape the situation.</p> <p><u>Ct 1</u> James returned to his vehicle and drove in front of the Mercedes, forcing it backwards and causing it to veer off the roadway. When the Mercedes came to rest, three of the occupants fled the scene. Nobody suffered any physical injury.</p> <p><u>Cts 2 and 3</u> Phillip then went to the front passenger side the</p>	<p><u>James</u> Ct 1: 1 yrs imp (conc). Ct 2: 6 yrs 6 mths imp (conc). Ct 3: 6 yrs 6 mths imp (conc).</p> <p>TES 6 yrs 6 mths imp. EFP.</p> <p><u>Jonathan</u> Ct 2: 5 yrs 9 mths imp (conc). Ct 3: 5 yrs 9 mths imp (conc).</p> <p>TES 5 yrs 9 mths imp. EFP.</p> <p><u>Phillip</u> Ct 2: 6 yrs imp (conc). Ct 3: 6 yrs imp (conc).</p> <p>TES 6 yrs imp. EFP.</p> <p>The sentencing judge took into account they acted in company with each other and each was involved in the offending "in a very severe way".</p>	<p>Allowed (James). Dismissed (Jonathan and Phillip).</p> <p>Appeal concerned TES and totality principle.</p> <p><u>James</u> Order that the sentences cts 2 and 3 be served conc be set aside and substituted with an order of partial conc. Ct 2: To commence 19.11.2015. Ct 3: To commence 19.11.2017.</p> <p>TES 8 yrs 6 mths imp. EFP.</p> <p>At [69] ... his Honour's stated approach to sentencing an offender for multiple offences is in accordance with authority...his Honour, ... correctly, refers to the one transaction rule as potentially applying to the question of concurrency or cumulacy.</p>

		<p>(cts 2-3) (25% discount).</p> <p>Prior criminal history relating to cannabis use in NSW; no prior WA convictions.</p> <p>Victim of domestic violence as a child; deeply entrenched family commitment which impacted decision-making on night of offences.</p> <p>Partially completed yr 12.</p> <p>Employed crowd controller and labourer.</p> <p>Single.</p> <p>History of depression; binge drinker; uses cannabis.</p> <p><u>Phillip S</u> 25 yrs at time offending. 26 yrs at time sentencing.</p> <p>Convicted after PG. (cts 2-3) (20% discount).</p> <p>Prior criminal history in NSW; substantial traffic convictions in WA; at time</p>	<p>Mercedes and forcibly removed E from the vehicle, placing him in a neck-hold and dragging him to the other side of the vehicle. Phillip pushed E to the ground and stood over him to prevent him from getting up or leaving.</p> <p>At the same time, Jonathan went to the driver's side of the Mercedes and smashed its window, before striking D multiple times. Jonathan attempted to drag D from his vehicle, so D got out and sat down, being told he was not free to go.</p> <p>Meanwhile, James obtained two large knives from inside his home and returned carrying one in each hand. James walked up to where E was sitting and began to repeatedly stab and slash him. He was struck at least five times, unable to leave or defend himself. Eventually he was able to run from the scene.</p> <p>James chased E for a short time, before returning to where D, who had tried to flee, was now being held and punched by Jonathan and Phillip. James stabbed D multiple times as he was being restrained. Eventually he was able to run from the scene.</p> <p>Both victims were conveyed to RPH. E sustained multiple deep lacerations requiring surgery. He suffered serious damage to the ligaments in one arm, leaving him with impaired use of his hand. D sustained multiple stab wounds, the most serious of which punctured both lungs, causing them to collapse.</p>	<p>The sentencing judge found James used the knife to deliberately inflict serious wounds to both victims and in doing so there was potential for serious or fatal injury.</p> <p><u>James</u> No remorse or victim empathy; willing to undergo counselling; moderate risk of reoffending.</p> <p><u>Jonathan</u> Ashamed of his offending behaviour; accepted responsibility; low risk of reoffending.</p> <p><u>Phillip</u> Remorseful; expressed regret about his behaviour.</p>	<p><u>James</u> At [84] Both victims suffered serious physical injuries. ... Both victims have been badly psychologically traumatised. Whilst the harm inflicted upon [E] and [D] is not as grave as in other cases, it is nevertheless of a high order.</p> <p>At [85] James' overall offending evinced a very high level of criminality. ... James was the principal offender. He substantially escalated the level of violence by going to his house, arming himself with two knives, and then stabbing and slashing ... [E] and then [D].</p> <p>At [86] ... He ferociously and mercilessly inflicted multiple wounds upon each of his victims. ... they could easily have had fatal consequences.</p> <p>At [88] ... He inflicted serious physical and</p>
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		<p>of offending had recently been released to parole.</p> <p>Completed yr 12; won music scholarship; unable to take it up because of lack of funds.</p> <p>Employed as a courier and in packing.</p> <p>Currently single; father to 4 yr old son living in NSW.</p> <p>Heavy drinker and user of amphetamine.</p>			<p>psychological harm on two victims, in separate and distinct attacks. ...</p> <p>At [89] ... Neither victim did anything which justified the use of violence, let alone the extreme violence perpetrated by the respondent.</p> <p>At [99] ... the TES ... did not bear a proper relationship to the overall criminality involved in all of the offences he committed. The only reasonable view, in all the circ was that some accumulation of the individually appropriate sentences was necessary to properly reflect James' overall criminality.</p> <p><u>Jonathan</u> At [106] There can be no doubt that Jonathan's conduct was serious. [He] willingly associated himself in a concerted attack on both victims. ...</p> <p>At [107] ... with respect to</p>
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				<p>the offence committed on [E], Jonathan played a lesser role than James and Phillip. His presence assisted to prevent [E] from escaping. That is a significant feature relevant to the application of the totality principle.</p> <p>At [108] As serious as Jonathan's offending was, he did not wield the knife and had no physical contact with [E].</p> <p>At [111] ... we have not been persuaded that the TES imposed on Jonathan ... infringed the first limb of the totality principle. ... it was not unreasonable or plainly unjust to order conc on cts 2 and 3.</p> <p><u>Phillip</u> At [114] Phillip's offending was also, without question serious.</p> <p>At [117] ... we have not been persuaded that the TES ... infringed the first limb of the totality principle. As was the case</p>
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					with Jonathon, it was open to the sentencing judge to take the view that concurrent sentences would bear a proper relationship to the overall criminality involved in all of Phillip's offences, viewed in their entirety, .... It was not unreasonable or plainly unjust to order concurrency on cts 2 and 3.
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***Transitional provisions repealed (14/01/2009)***

Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in *Yates v The State of Western Australia* [2008] WASCA 144 overruling the majority decision in *The State of Western Australia v Wallam* [2008] WASCA 117 on that point.

**s 304(2) Acts/omissions with intent (max penalty 20 yrs imp)**

No.	Case	Antecedents	Summary/Facts	Sentence	Appeal
13.	<i>The State of Western Australia v. Darroch</i>  [2018] WASCA 114  Delivered 13/07/2018	44 yrs at time offending. 45 yrs at time sentencing.  Convicted after PG (25% discount).  Prior history of violent offending; including two offences of assaulting a police officer causing bodily harm while armed with a tomahawk.  Unremarkable childhood.	Ct 1: With intent to harm did an act likely to endanger life, health or safety. Ct 2: Assault public officer causing bodily harm.  Darroch drove to a country store. He repeatedly entered the store and towards the toilets at the rear of the premises. He did not ask the attendant for a key. He left the store and waited outside by his vehicle.  Meanwhile, the victim, a long-haul truck driver, entered the store, obtained the key, and went to use the facilities.	Ct 1: 5 yrs imp (cum). Ct 2: 12 mths imp (cum).  TES 6 yrs imp. EFP.  The sentencing judge found ct 1 a very serious example of this type of offending and 'clearly in the worst category for this type of offending'.  The sentencing judge found	Allowed.  Appeal against length of sentence (ct 1).  Re-sentenced: Ct 1: 10 yrs imp (conc). Ct 2: 12 mths imp (conc).  TES 10 yrs imp. EFP.  At [34] ... the catastrophic

		<p>Left school yr 10.</p> <p>Completed trade apprenticeship.</p> <p>Unwell as a result of heavy drug abuse; on disability support pension; unable to cope with full-time work.</p> <p>History of physical and mental health issues; exacerbated by illicit drug use; long term schizoaffective disorder; long history of non-compliance with medication.</p> <p>Entrenched illicit drug use.</p>	<p>By this time Darroch had refuelled his car. As a result of taking his time to pay for the fuel the store attendant went outside and challenged him regarding payment. Darroch began to drive off, before stopping and challenging the attendant to a fight when he noticed him chasing his vehicle. He then returned to his car and drove off.</p> <p>A few minutes later Darroch returned and entered the store armed with a hammer. Walking straight into the toilets he struck the victim a number of times to the head with the hammer, inflicting serious life-threatening injuries. He immediately left the store and drove off.</p> <p>Darroch was later arrested. He was not interviewed due to his mental state and aggressive behaviour. When taken to an interview room he punched a police officer, knocking his glasses from his face. The officer suffered a cut to his eyebrow, which bled and caused bruising and swelling.</p>	<p>the offending aggravated by the vulnerability of the victim who was taken by surprise by an unprovoked and senseless attack; he used considerable violence and struck the victim multiple times to the head; resulting in the victim suffering brain injuries and requiring 24-hr a day care and supervision for the rest of his life.</p> <p>The sentencing judge described the victim's injuries as being 'in the upper range of seriousness for this type of offence'.</p> <p>Remorseful.</p> <p>High risk of future violence.</p>	<p>and permanent injuries suffered by the victim were a seriously agg feature of the appellant's offence.</p> <p>At [35] There were also mitigating factors, the most relevant of which were the plea of guilty at the first reasonable opportunity, the respondent's remorse and his mental health issues.</p> <p>At [43] ... the sentence imposed on ct 1 inadequately reflects the very serious nature of the offending, including deterrence and community protection. The sentence was not commensurate with the seriousness of the offence.</p>
12.	<p><b><i>DKN v. The State of Western Australia</i></b></p> <p><b>[2018] WASCA 87</b></p> <p>Delivered 30/05/2018</p>	<p>19 yrs at time offending.</p> <p>Convicted after early PG (25% discount).</p> <p>No prior criminal history.</p> <p>Middle child of three</p>	<p>Ct 8: With intent to harm did an act likely to endanger life, health or safety.</p> <p>Ct 10: Stealing.</p> <p>Ct 12: Criminal damage.</p> <p>Through a social network application DKN and his co-offender, Mr N, arranged to meet the victim, purportedly for sex.</p>	<p>Ct 8: 2 yrs imp.</p> <p>Ct 10: 9 mths imp (conc).</p> <p>Ct 12: 9 mths imp (conc).</p> <p>TES 2 yrs imp.</p> <p>40% discount from TES of 3 yrs 4 mths that would otherwise have been</p>	<p>Dismissed.</p> <p>Appeal concerned length and type of sentence for ct 8 only.</p> <p>At [48] ... The following ... demonstrate the significance of his role and the serious</p>

		<p>siblings; parents separated aged 7 yrs.</p> <p>Volatile home environment; history of physical fights with mother, father and sisters; living with grandparents at time sentencing</p> <p>Left school yr 11; some work experience; undergoing TAFE studies at time sentencing.</p> <p>Supportive relationship at time sentencing.</p> <p>Good physical health; athletic; played volleyball and basketball at State level.</p>	<p>DKN, Mr N and two other alleged male co-offenders planned to meet the victim to beat him up.</p> <p><u>Ct 8</u> At the arranged meeting point DKN stood waiting, while the other three men hid in nearby bushes. As the victim approached and greeted him the three men emerged.</p> <p>One of the alleged co-offenders walked behind the victim and struck him to the back of the head. As the victim tried to run Mr N tripped him. The victim fell to the ground. Mr N and an alleged co-offender punched, kicked and stomped on his head, body and face. DKN punched him in the face.</p> <p><u>Ct 10</u> DKN took the victim's wallet and stole \$40. Also taken from the wallet was the victim's licence. Mr N recorded the assault on his mobile phone while reading the victim's name from his licence, demanding he never do this again.</p> <p>The victim's house and car keys were also taken, before the offenders ran off.</p> <p><u>Ct 12</u> DKN and Mr N returned a short time later and demanded the victim's mobile phone. When Mr N threatened to kill him, the victim handed it over. The phone was smashed and thrown down a drain.</p>	<p>imposed if not for undertaking to provide evidence.</p> <p>The sentencing judge found the offending aggravated by the appellant being in company; it was a premediated and was intended to terrorise the victim; he was involved in the physical violence and punched the victim; stole money from the victim; returned to take his phone and then left the without attempting to render any assistance.</p> <p>Co-operative (undertaking to give evidence); genuinely remorseful; undertaken some counselling to address anger management issues.</p> <p>Low risk of future violent offending.</p>	<p>criminality of his offending: (1) ... He joined in a plan to lure the victim on false pretences .... (2) ... allowed his photograph to be used as part of the means of luring the victim. (3) ... met the victim at the planned location while the other offenders hid. (4) When other offenders seriously assaulted the victim, ... did not protest or remove himself from the situation. ... he stood by and then joined in the assault ... (5) ... compounded the attack on the victim by stealing his wallet and removing money from it. (6) ... after walking away from the scene, ... returned ... [and] took the victim's mobile phone ....</p> <p>At [49] Although the conduct referred to in (5) and (6) occurred after the commission of ct 8 ... it shed light on the appellant's culpability in committing ct 8 and weighs against any suggestion that his involvement was fleeting.</p> <p>At [50] ... the attack on the</p>
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			<p>The victim was hospitalised and treated for bleeding to the brain, as well as bruising and abrasions.</p>		<p>victim caused him very serious, likely life-endangering, injuries including bleeding to the brain.</p> <p>At [53] ... The combined serious features of the appellant's offending demanded the imposition of a term of immediate imp ...</p> <p>At [54] ... we are not persuaded that the length of the sentence for ct 8 reveals implied error.</p>
<p><b>11.</b></p>	<p><i>Ugle v The State of Western Australia</i></p> <p><b>[2018] WASCA 16</b></p> <p>Delivered 16/02/2018</p>	<p>32 yrs at time sentencing.</p> <p>Convicted after PG (20% discount).</p> <p>Extensive criminal history; including violence related offences.</p> <p>Supportive family; third eldest of seven siblings; upbringing disrupted by domestic violence; family feuding; family crises and a transient lifestyle.</p> <p>12 yr de facto relationship with co-offender.</p>	<p>1 x With intent to harm did an act likely to endanger life, health or safety.</p> <p>Ugle and her de facto partner (the co-offender) incorrectly believed the victim was responsible for the death of Ugle's sister.</p> <p>The victim was unknown to Ugle.</p> <p>Ugle approached the victim and asked him about his involvement in her sister's death. When the victim ran away she gave chase. To protect himself the victim took an item from a bin and attempted to strike her with it.</p> <p>The victim walked away, only for Ugle to continue to follow him. After a scuffle the victim again att to walk away.</p>	<p>4 yrs imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending aggravated by the use of a weapon and by the fact that even after the victim was unconscious on the ground she continued the assault by stomping on his head and kicking him.</p> <p>The sentencing judge found the offending conduct was persistent; the appellant continued to pursue and assault the victim, even though the victim retreated</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence.</p> <p>At [24] The appellant's offence was a serious example of an offence against s 304(2).</p> <p>At[25] ... the sentencing judge's observation that the problem lay in the appellant's behaviour when she was under the influence of alcohol, not when she was sober, was, as her record of offending reveals, well placed.</p>

		<p>Unemployed.</p> <p>Three children; under care of Child Protection and Family Services.</p> <p>Difficulties with alcohol dependency.</p>	<p>A bystander tried unsuccessfully to intervene and separate Ugle from the victim.</p> <p>Ugle armed herself with a hammer which she used to strike the victim a number of times. The scuffle continued during which the victim tried to unsuccessfully grab the hammer. Ugle was able to strike the victim again, causing him to lose consciousness and collapse.</p> <p>While on the ground Ugle stomped on his head and neck twice.</p> <p>The co-offender became involved and kicked the victim in the chest. Ugle then kicked the victim three times to the chest.</p>	<p>on a number of occasions and even though someone intervened.</p> <p>Genuinely remorseful; victim empathy.</p>	<p>At [29] ... it is not reasonably arguable that the length of the term of imp was unreasonable or plainly unjust. The sentence of ... imp was commensurate with the seriousness of the offending and was within the range open to the sentencing judge ...</p>
10.	<p><i>McAllister v The State of Western Australia</i></p> <p>[2017] WASCA 183</p> <p>Delivered 12/10/2017</p>	<p>47 at time offending. 49 at time sentencing.</p> <p>Convicted after late PG (5% discount) (ct 1). Convicted after trial (ct 2).</p> <p>Prior criminal history; traffic and alcohol related offences.</p> <p>Born UK; moved to Australia aged 9 yrs; abused and traumatised as a child during time at Fairbridge Farm.</p> <p>Self-employed removalist; good character references;</p>	<p>Ct 1: Dep lib. Ct 2: With intent to harm did an act likely to endanger life, health or safety.</p> <p>McAllister owned his own business and the victim was a former employee.</p> <p>When McAllister's business was burgled and items stolen he believed the victim to be the offender.</p> <p>With a promise of work McAllister contacted the victim and arranged to meet him at his business premises. The victim attended at the scheduled time. McAllister and two of his associates, Annakin and Bowden, the co-offenders, arrived soon after.</p> <p>McAllister was armed with a baseball bat and</p>	<p>Ct 1: 15 mths imp (cum). Ct 2: 3 yrs 9mths imp (cum).</p> <p>TES 5 yrs imp.</p> <p>EFP.</p> <p>The trial judge found the offending involved a degree of premeditation over a sustained period; there were three armed offenders against an unarmed victim; who for part of the assault, had his hands tied behind his back; it was completely unprovoked.</p>	<p>Dismissed.</p> <p>Appeal concerned length of sentence; parity and totality principles.</p> <p>At [44] ... it is not reasonably arguable that the sentence of 15 mths' immediate imp for ct 1 was manifestly excessive. That is, when the sentence is viewed from the perspective of the maximum penalty (10 years' imp), and after taking into account all relevant facts and circumstances and all relevant sentencing factors ...</p>

		<p>business collapsed after his detention in custody for these offences.</p> <p>Two adult children previous marriage.</p> <p>Medicated for depression; otherwise in good physical health.</p> <p>No history of illicit substances abuse.</p>	<p>the two co-offenders with wooden sticks. They proceeded to assault and verbally abused the victim for a period of about 30 minutes.</p> <p>During the assault the victim denied any involvement in the burglary. McAllister called the victim a liar and threatened to smash his knee caps if he went to the police.</p> <p>The victim's hands were tied behind his back. He again denied any knowledge of the burglary or location of the stolen property so McAllister struck him on the knee with the bat, while laughing and joking with the co-offenders.</p> <p>At some point a substance, believed to be petrol, was sprayed on the victim's face, mouth and clothes and he was threatened with being set on fire.</p> <p>The victim eventually claimed to know where the stolen property was located and offered to show them. He then managed to escape and call police.</p> <p>The victim suffered a broken eye socket which required surgery. He has ongoing problems with his jaw locking and his face droops on the left side.</p>	<p>The trial judge found the appellant believed the victim had committed the burglary and this factor required him to place significant emphasis on general deterrence to remind the community that vigilante behaviour will not be tolerated.</p> <p>The trial judge found the appellant significantly more culpable than his co-offenders having regard to the element of vigilantism in his conduct</p> <p>No significant remorse shown.</p>	<p>At [50] ... it is not reasonably arguable that the sentence of 3 years 9 months' immediate imp for ct 2 was manifestly excessive. That is, when the sentence is viewed from the perspective of the maximum penalty (20 years' imp), and after taking into account all relevant facts and circumstances and all relevant sentencing factors,</p> <p>At [56] ... the trial judge found, and was entitled to find, that the appellant was the instigator of the offending. The appellant lured the victim to the appellant's business premises with a promise of work, the appellant arranged for Mr Annakin and Mr Bowen to be present and there was an element of vigilantism in his conduct. ... the appellant entered a very late PG on ct 1 and went to trial on ct 2 whereas Mr Annakin and Mr Bowen entered early PG on both cts.</p> <p>At [61] The appellant's</p>
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					overall offending was serious. It was necessary for the trial judge to order that the individual sentence for ct 1 be served cum upon the individual sentence for ct 2 in order properly to mark the serious character of the offending on cts 1 and 2 as a whole.
9.	<p><i>Chikonga v The State of Western Australia</i></p> <p>[2017] WASCA 34</p> <p>Delivered 23/2/2017</p>	<p>28 yrs at time offending. 29 yrs at time sentencing.</p> <p>Convicted after PG (10% discount).</p> <p>Lengthy criminal history; including substantial record of violent offences.</p> <p>Refugee from Rwanda; arrived in Australia aged eight yrs.</p> <p>Exposed to extreme violence as a child; witnessed att murder of his mother by his father.</p> <p>Left school yr eight; completed two yrs bricklaying apprenticeship at time sentencing.</p>	<p>1 x With intent to harm did an act likely to endanger life, health or safety.</p> <p>Chikonga and the victims were in a dispute over a motor vehicle and money owed. Driving to the victims home Chikonga deliberately accelerated the car towards the house and into the victims' bedroom. Chikonga's intention was to cause the victims a pecuniary detriment.</p> <p>The victims saw the car on CCTV and ran out of the bedroom.</p> <p>Chikonga went through the victim's home and damaged doors and upturned property in the house.</p>	<p>4yrs 6ths imp.</p> <p>EFP.</p> <p>The sentencing judge found the offending was in the upper range of seriousness; the appellant had an unreasonable belief that no-one home and his actions in targeting the bedroom were deliberate and motivated by a sense of grievance; he used a motor vehicle as a weapon with the intention of causing significant damage to entail significant financial detriment.</p> <p>The sentencing judge found the appellant's conduct as highly dangerous; there was a significant risk that people would be in the home and there could have</p>	<p>Dismissed.</p> <p>Appellant challenged length of sentence.</p> <p>At [32] While the appellant did not intend to cause physical harm, his deliberate conduct ... created a real risk of death or serious injury. It created considerable fear for the victims, one of whom has suffered significant psychological impact. ... the risk to health and safety of people may, in some cases, be as important as the actual harm caused. ... the appellant's record of violent offending meant that personal deterrence and the need to protect the community from further violent offending by the</p>

				been death or serious injury to the occupants.	appellant were both significant considerations in the sentencing exercise.
8.	<i>Kaokula v The State of Western Australia</i>  [2016] WASCA 198  Delivered 28/11/2016	<u>Kaspar Kaokula</u> 24 yrs at time offending. 26 yrs at time sentencing.  <u>Kuldar Kaokula</u> 31 yrs at time sentencing.  Both convicted after trial.  Both had no prior criminal history.  Brothers born in Estonia.  Unremarkable upbringings; both single without dependants.  On a working holiday in Australia. Difficulties with the English language.	1 x With intent to harm did an act likely to endanger life, health or safety.  The complainant worked as a supervisor on a fruit farm. Kaspar felt his girlfriend, who had been employed as a fruit picker, was treated badly by the complainant. The appellants planned revenge.  The complainant was driving with his 3 yr-old daughter in the rear of this car when he was stopped by the appellants.  Kaspar poured about 2 litres of petrol onto the windscreen, bonnet and roof of the complainant's car. Some of the petrol went into the interior of the car and onto the complainant through his partially open window.  Kuldar held a cigarette lighter and lit the car, but the flame was blown out by the wind. The complainant accelerated away. As he did so he saw a spark from a cigarette lighter that Kaspar was holding.  The complainant was pursued by the appellants' vehicle. He sought refuge at the farm.	<u>Kaspar Kaokula</u> 6 yrs 2 mths imp. EFP.  <u>Kuldar Kaokula</u> 5 yrs 8 mths imp. EFP.  The sentencing judge found the offending was carefully planned and agreed between the appellants well in advance and that the complainant was in a vulnerable position, trapped on a lonely road and encumbered by the fact that his daughter was strapped in the back of the car.  Neither demonstrated remorse or acceptance of responsibility.  The offending had very significant negative psychological consequences on the complainant and his family.	Dismissed.  Appellants challenged length of sentence.  At [65] The risk to the life, health and safety of both the complainant and his daughter was very high. ... The fulfilment of the appellants' plan to ignite the petrol would probably have seriously burnt the complainant and his daughter, and created a real and substantial chance that they would be killed. While the appellants may not have been aware of the presence of the complainant's daughter ... they did not bother to check if anyone was with him. The fact that the petrol did not ignite was not for any want of trying on the appellants' part.
7.	<i>Sophiadakis v The State of</i>	28 yrs at time offending. 29 yrs at time sentencing.	<u>Indictment</u> 1 x With intent to harm did an act likely to	<u>Indictment</u> 4 yrs imp.	Dismissed.

<p><i>Western Australia</i></p> <p><b>[2016] WASCA 203</b></p> <p>Delivered 25/11/2016</p>	<p>Convicted after early PG (25% discount).</p> <p>The appellant was on a pre-sentence order for the two agg AOBH offences at time offending on indictment.</p> <p>Significant prior criminal history, including convictions of unlawful damage, use of prohibited drugs, wounding, AOBH, assault a driver, common assault and breach of bail.</p> <p>Deprived childhood; exposed to violence.</p> <p>Illicit drug addiction at time offending; drug free at time sentencing.</p> <p>Drug-fuelled violence not out of character.</p> <p>Mental health issues; stabilised since the appellant had been in custody and ceased taking illicit drugs.</p> <p>The appellant had asserted at sentencing that she was</p>	<p>endanger life, health or safety.</p> <p><u>Section 32 Notice</u> Ch 1: Agg AOBH. Ch 2: Agg AOBH. Ch 3: Criminal damage. Ch 4: Breach of bail.</p> <p><u>Ch 1 &amp; 2</u></p> <p>A verbal altercation occurred between the appellant and the victim A.</p> <p>After the appellant's children threw sand and grass on A's car, the victim's partner (B) confronted the appellant and flicked the grass at her. The appellant then attacked B, repeatedly punching him to the head (ch 1).</p> <p>A attempted to stop the fight. The appellant grabbed A by the hair and punched her left eye. A fell to the ground and the appellant repeatedly punched her to the head as she lay on the ground (ch 2).</p> <p><u>Indictment and ch 3</u></p> <p>The victim C lived with the appellant. The appellant verbally abused C about a missing television. When C tried to placate the appellant, the appellant became aggressive and irrational. C bent over to pick up food that the appellant had thrown on the floor. The appellant then raised a hammer, said "I'm going to fucking kill you" and struck C</p>	<p><u>Section 32 Notice</u> Ch 1: 15 mths imp (conc). Ch 2: 15 mths imp (cum). Ch 3: 18 mths imp (conc). Ch 4: 3 mths imp (conc).</p> <p>TES 5 yrs 3 mths imp.</p> <p>EFP.</p> <p>The sentencing judge observed that the sentences for the two agg AOBH offences were shorter than the offences deserved because of totality reasons.</p> <p>The sentencing judge accepted for sentencing purposes that C was the appellant's drug supplier.</p> <p>Sentencing judge found that the flicking of grass by B was pretty minor, but probably inflamed the situation; the appellant was in a highly volatile state anyway and may well have overreacted even if B had treated her with kid gloves.</p> <p>The appellant's mental health was of limited</p>	<p>Appeal concerned the facts for Agg AOBH charges and totality.</p> <p>At [27] ...neither the prosecutor nor defence counsel who appeared in the District Court was aware of the negotiations and agreement on the material facts which occurred before the appellant entered her PG in the Magistrates Court ...</p> <p>At [28] ... the facts as stated in the Magistrates Court asserted that Rodney Smith had flicked grass into the appellant's face and that Rodney Smith had raised his fist towards the appellant before she struck him. By contrast, the facts as stated in the District Court ... asserted that Rodney Smith had flicked grass at the appellant and the stated facts did not include the assertion that Rodney Smith had raised his fist towards the appellant before she struck him.</p> <p>At [33] ... the appellant's response was grossly</p>
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		<p>upset with C because C had shown her daughter pornography and believed that C was grooming her daughter.</p>	<p>repeatedly to the head. C raised her hands to protect herself and the appellant hit her arms and legs. C suffered bruising to her arms and legs and required 14 staples to her head.</p> <p>The appellant pursued C out of the house and struck the windscreen and door panel of the C's car (ch 3). \$500 damage was caused to the car.</p> <p>The appellant's young children witnessed part of the offending.</p> <p><u>Ch 4</u> The appellant failed to appear at the Magistrates Court for the return date of her pre-sentence order.</p>	<p>mitigatory value. The sentencing judge found that illicit drug use was the appellant's predominant problem, but accepted that there was also an underlying mental fragility which was exacerbated by the use of drugs. The appellant had abused illicit drugs knowing that she had a tendency to behave violently when both under the influence of and when coming down from drugs.</p> <p>High risk of violent reoffending if relapses into substance abuse and has further contact with C.</p> <p>No evidence of remorse above PG.</p>	<p>disproportionate on either version of the facts... even if the appellant should have been sentenced on the basis of the facts as alleged in the Magistrates Court, no different individual sentences should have been imposed for the offences of agg AOBH and no different TES should have been imposed.</p> <p>At [34] ... the level of violence inflicted by the appellant on Samantha Smith, as alleged in the Magistrates Court, was less than the level of violence, as alleged in the District Court, is significant, to the extent it was alleged in the District Court that the appellant struck Samantha Smith to the head after she had fallen to the ground, but less significant, to the extent it was alleged in the District Court that the appellant grabbed Samantha Smith by the hair. However...even if the appellant should have been sentenced on the basis of the facts as alleged in the Magistrates Court, no</p>
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					different individual sentences should have been imposed for ... agg AOBH and no different TES should have been imposed.
6.	<p><i>Penny v The State of Western Australia</i></p> <p>[2016] WASCA 52</p> <p>Delivered 23/03/2016</p>	<p>45 yrs at time offending.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including murder, threat to kill, GBH, sex pen without consent, dep lib, and dishonesty and drug offences.</p> <p>Limited education.</p> <p>Antisocial personality disorder.</p> <p>High risk of reoffending.</p>	<p>1 x s 304(2)(b) - With intent to harm did an act likely to endanger life, health or safety.</p> <p>Penny, driving a bus, was stopped by police. When asked if he had anything to declare, including firearms, he responded 'No'.</p> <p>Penny exited the bus through the rear door with a sawn-off 410 shotgun concealed under his clothes and attempted to dispose of the gun.</p> <p>On suspicion he was concealing something Sgt Williams told Penny he was to be searched and repeatedly requested Penny to show his hands. Penny refused and resisted violently causing Sgt Williams to fire his taser twice.</p> <p>Penny pulled the shotgun out of his shorts. Const Needs drew her firearm and shouted for him to drop the gun. Sgt Williams tackled Penny and there was a violent struggle for control of the gun. He was repeatedly told to drop the gun, which was at times pointed at Sgt Williams' face. Const Needs unsuccessfully tried to stop Penny and attempted to disarm him.</p> <p>Sgt Williams, fearing he would be shot, grabbed the gun and Penny's hand to get him to release his grip. The gun went off near Sgt</p>	<p>9 yrs imp.</p> <p>The sentencing judge found that Penny intended to use the gun to escape from police, but was not satisfied beyond reasonable doubt that Penny intentionally discharged the shotgun.</p> <p>Significant adverse impact on both police officers and the fact that they were performing an important public function.</p> <p>No remorse, victim empathy or insight as to the causes of his offending behaviour.</p>	<p>Allowed – by majority on the basis that the sentencing judge erred in finding that the appellant intended to endanger the life, health and safety of Sgt Williams [30]-[31], [74]-[75].</p> <p>Penny challenged length of sentence.</p> <p>Re-sentenced 6 yrs imp. EFP.</p> <p>At [42] ... In assessing the seriousness of the offence, regard can be had to the potential, as distinct from the actual, consequences to a person's life, health or safety of the offender's conduct.... Based on the results of forensic testing, the objective risk of the gun accidentally discharging was significant.</p> <p>At [58] A particularly serious aspect of the offending is that the victim</p>

			Williams' face. Const. Needs shot Penny in the stomach with her firearm.		of the offence was a police officer acting in the execution of his duty. The use of a firearm against police officers performing their lawful duty significantly elevates the appellant's criminality.
5.	<p><b><i>Lawrence v The State of Western Australia</i></b></p> <p><b>[2015] WASCA 187</b></p> <p>Delivered 14/09/2015</p>	<p>34 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Lengthy criminal history, including numerous convictions of violent offences.</p> <p>Offences committed six months after release from prison.</p> <p>Difficult and dysfunctional upbringing.</p>	<p>Ct 1: s 304(2)(b) - With intent to harm did an act likely to endanger life, health or safety.</p> <p>Ct 2: AOBH.</p> <p>Ct 3: Stealing.</p> <p>The appellant and co-offender, Winmar, were highly intoxicated.</p> <p><u>Ct 1</u> The appellant and Winmar were in an aggressive mood and approached the victim's group. A stare-down ensued between Winmar and the victim. Winmar took up a boxing stance and the victim tried to calm the situation down. A fistfight broke out and each landed blows on the other.</p> <p>The appellant punched the victim in the back of the head from behind, causing a cut to his chin. The victim fell to the ground and lapsed in and out of consciousness. The appellant and Winmar kicked and stomped on the victim's upper body and head.</p> <p>The victim received 11 stitches to his chin and sustained a concussion, scalp haematomas, black eye, facial swelling and bruising and</p>	<p>Ct 1: 5 yrs imp.</p> <p>Ct 2: 1 yrs imp (cum).</p> <p>Ct 3: 3 mths imp (conc).</p> <p>TES 6 yrs imp.</p> <p>EFP.</p> <p>Sentencing judge characterised the offending as 'at the high end involving gratuitous violence in company against innocent members of the community'.</p> <p>Sentencing judge found that there was a real potential that harm might have been caused to both victims by reason of the force used by the appellant and Winmar.</p> <p>Sentencing judge found appellant had no remorse, no insight into seriousness of his actions and no</p>	<p>Dismissed.</p> <p>At [34] ... his antecedents, offending behaviour, lack of insight and absence of remorse belie genuine rehabilitation.</p> <p>At [41] His criminal history is disturbing... the appellant represents a danger to the community...</p>

			<p>soreness to his upper body and neck area.</p> <p><u>Cts 2-3</u> The appellant and Winmar then came across the second victim. The victim attempted to avoid the appellant and Winmar.</p> <p>The appellant and Winmar corralled the victim. The appellant punched the victim's left eye with substantial force, knocking him to the ground. The appellant and Winmar punched and kicked him while on the ground.</p> <p>The victim got to his feet and ran away, leaving his mobile on the ground. Railway police later found the mobile in the appellant's pocket.</p> <p>The victim sustained a black eye, facial bruising and swelling, grazing and abrasions to his knees and hands and extensive bruising to his inner left thigh.</p>	concern for victims.	
4.	<p><i>De Alwis v The State of Western Australia [No 2]</i></p> <p>[2015] WASCA 42</p> <p>Delivered 10/03/2015</p>	<p>65 yrs at time offending. 66 yrs at time sentencing.</p> <p>Convicted after trial.</p> <p>Diagnosed with psychosis.</p> <p>Born in Sri Lanka; two children from an earlier marriage; obtained legal qualifications in Sri Lanka and Australia.</p>	<p>1 x s 304(2)(a) - Act with intent to cause bodily harm.</p> <p>The appellant and the victim were previously living together and married. Following separation, the victim obtained a violence restraining order against the appellant.</p> <p>The victim was standing alone outside of her unit. The appellant ran towards the victim, holding a long-handled shovel and meat cleaver. The appellant struck the victim on the top of her head with the shovel, causing a</p>	<p>4 yrs 9 mths imp.</p> <p>Sentencing judge found the conduct was premeditated, violent and life-threatening.</p> <p>Sentencing judge found a total absence of remorse, lack of judgment and no insight into offending behaviour.</p> <p>Sentencing judge found that</p>	<p>Dismissed.</p> <p>At [127] It is of no significance that the appellant's breaches were of interim orders rather than final violence restraining orders.</p> <p>At [139] Save for the mitigation arising from the appellant's mental condition, there are no mitigating</p>

			significant laceration to her forehead, which cut through the skin and soft tissue to the bone. A pedestrian observed the incident, intervened and restrained the appellant until police arrived.	the appellant's mental condition was not causative of the offending, but was a contributing factor to an extent which was difficult to quantify.	factors in this case. Of significant concern are the findings that the appellant was unremorseful, lacked judgment and had no insight into his offending, all of which underscore the need for protection of the public and for personal deterrence. Although the sentence is at the high end of the sound sentencing range, it is not manifestly excessive.
3.	<b><i>Beard v The State of Western Australia</i></b>  [2015] WASCA 74  Delivered 09/04/2015	36 yrs at time sentencing.  Convicted after late PG.  Significant criminal history including speeding, drink driving, reckless driving and AOBH.  Relatively normal childhood; completed yr 12.  Unemployed at time offending; stressed.  Two children from prior relationships.  History of drug use.	Ct 1: s 304(2)(b) - With intent to harm did an act likely to endanger life, health or safety. Ct 2: Manslaughter.  The appellant was driving his car heavily intoxicated by methyl.  The first victim was driving behind the appellant and, after indicating, he pulled out, intending to pass the appellant's car. As he overtook the car, the appellant suddenly, and without any justification, rammed his car into the side of the victim's car. In an attempt to get his car on the road, the victim steered his car back into the appellant's car.  The victim tried to get away from the appellant. The appellant pursued the victim at high speed, ramming his car into the victim's car another two times. This forced the victim's car sideways into the kerb and to spin onto the wrong side of the road.	Ct 1: 3 yrs 1 mth imp. Ct 2: 12 yrs 4 mths imp (to commence 8 mths after ct 1).  TES 13 yrs imp.  EFP.  Sentencing judge found limited victim empathy and prospects of rehabilitation mitigating.  Criminal history showed disobedience to road traffic laws.  Sentencing judge found aggravated by: highly reckless conduct; speed grossly inappropriate for	Dismissed.  At [42] ... his Honour's characterisation, when read in context, was not a finding that ct 2 was in the worst category of manslaughter cases generally.  At [43] It is clear from what his Honour said that he was agreeing with the prosecutor's submission... that ct 2 was 'in the worst category of motor vehicle manslaughter cases'.  At [44] Such a conclusion was, having regard to his Honour's findings as to the circumstances of the offending, completely

			<p>In a desperate attempt to escape the appellant, the victim sped past a number of cars so that he was in front when the lanes merged into one. With the intention of causing harm to the victim, the appellant drove at a dangerous speed onto the gravel verge. He took over the cars in front of him, causing other motorists to take evasive action.</p> <p>The appellant lost control when at least part of his car was still on the gravel verge. His car suddenly slewed, in a diagonal direction onto the wrong side of the road and into the path of a car being driven by the second victim. They collided head on. The appellant was driving fast enough to stop the second victim's car and push it backwards. The second victim had no opportunity to avoid the collision.</p> <p>The second victim died at the scene. The appellant was pinned in his vehicle with serious physical injuries.</p> <p>The appellant claimed to be the person being pursued.</p>	<p>position car was being driven; adversely affected by methyl; victim had no opportunity to take evasive action.</p> <p>Sentencing judge found both cts in the category of the more serious offending of its type; ct 2 in worst category of offending in such cases.</p> <p>Appellant presented with risk factors relating to substance abuse and ability to control emotions.</p>	<p>justified.</p> <p>At [50] There is no tariff for manslaughter ...</p> <p>At [53] ...it must be born in mind that both <b>Penny</b> and <b>Brown</b>, and for that matter, <b>Munda</b>, were all decided before the increase in the maximum penalty for manslaughter. Those cases, and the authorities reviewed in them, must be reviewed in that light.</p> <p>At [57] Anyone who drives intoxicated by methyl and in that state commits the offence of manslaughter, must expect to receive a significant custodial penalty.</p> <p>At [61] Ct 1 carries a maximum penalty of 20 years' imp. On any account, the sentence imposed on that ct was lenient, particularly having regard to the persistency of the appellant's attempts to harm (the first victim), the use of his motor vehicle as a weapon, and the terror the appellant inflicted upon (the</p>
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					second victim).
2.	<p><i>Hinkley v The State of Western Australia</i></p> <p>[2014] WASCA 122</p> <p>Delivered 16/06/2014</p>	<p>25 yrs at time sentencing.</p> <p>Convicted after early PG.</p> <p>Minor criminal record; traffic convictions.</p> <p>Left school at 15 yrs.</p> <p>Limited employment history; completed courses whilst on home detention.</p> <p>Close relationship with family.</p> <p>Long history of depression that had been poorly treated.</p> <p>History of marijuana and amphetamine-based substance abuse.</p> <p>Consumed drugs the day before the offence and was 'coming down' from them at time of offending.</p>	<p>1 x s 304(2)(b) - With intent to harm did an act likely to endanger life, health or safety.</p> <p>The victim was the mother of the appellant's ex partner's two children.</p> <p>Following the breakdown of their relationship, the appellant's ex-partner asked her to remove her belongings from the house they shared. The appellant made threatening comments towards his children and the victim. The ex-partner's children were at the house at the time. The ex-partner contacted the victim and asked her to collect the children. The appellant packed her belongings and left the house.</p> <p>The victim arrived at the house, parked her car and walked towards the house. As she did she noticed the appellant was sitting in the driver's seat of a vehicle parked near the front of the house. The ex-partner was speaking to the appellant through the window.</p> <p>As the victim walked up the driveway towards the house, the appellant deliberately drove at the victim, who managed to evade the vehicle. The appellant then reversed her vehicle and hit the victim's vehicle. The appellant reversed again, this time into the victim's motor vehicle, causing damage. The appellant then drove away.</p> <p>The victim and the appellant's ex-partner went to inspect the damage. The appellant returned</p>	<p>30 mths imp.</p> <p>EFP.</p> <p>Remorse.</p> <p>Intended as an act of revenge against her ex-partner for asking her to leave the house, rather than as a result of any particular grievance against the victim.</p> <p>Sentencing judge noted actions were deliberate and persistent; seriousness of the appellant's intent to harm was at the high end, and the potential, as distinct from the actual, consequences for her conduct placed the offending in the serious bracket for this type of offending.</p> <p>Accepted offending was impulsive and opportunistic, and occurred while she was in a highly agitated state; found mental illness had affected her judgment.</p>	<p>Dismissed on papers.</p> <p>At [24] The offending in this case was very serious.</p>

			<p>and deliberately drove at speed at the victim, who was facing the other way and did not see the vehicle coming. The appellant hit the victim from behind, causing her to flip into the air over the bonnet of the appellant's car vehicle it continued forwards. The victim's shoulder struck the windscreen, causing it to smash. The victim then fell onto the grass verge. The appellant drove away without making any attempt to render assistance.</p> <p>The victim sustained bruising, grazing to her body and continuing back pain.</p>		
1.	<p><b><i>Blurton v The State of Western Australia</i></b></p> <p><b>[2014] WASCA 61</b></p> <p>Delivered 21/03/2014</p>	<p>26 yrs at time offending. 27 yrs at time sentencing.</p> <p>Convicted after late PG (PG Cts 1 &amp; 2 in full satisfaction of indictment).</p> <p>Recent violent criminal history; including armed robbery, deprivation of liberty, common assault &amp; unlawful damage.</p> <p>Father of five young children.</p> <p>Not of good character.</p> <p>Intoxicated and angry on the night of the offence.</p>	<p>Ct 1: AOBH. Ct 2: s 304(2)(a) – Acts with intent to cause bodily harm. Ct 3: Unlawful wounding. Ct 4: Criminal damage.</p> <p>The appellant was at a family party at a Caversham Hall. Late in the evening the appellant had an argument with his partner and as a result, he left. Drunk and angry, he walked onto West Swan Road and remained there, posing a hazard to himself.</p> <p>The two victims, both off-duty police officers, were passengers in a motor vehicle driving on West Swan Road. The appellant stood in front of their vehicle on the roadway causing the driver to slow down and drive around him. As she did and without reason, the appellant struck the vehicle several times with his fist. The driver stopped the car.</p>	<p>Ct 1: 12 mths imp. Ct 2: 2 yrs 6 mths imp.</p> <p>TES 3 yrs 6 mths imp.</p> <p>EFP.</p> <p>Little victim empathy.</p> <p>Voluntarily handed himself into Police.</p> <p>Appellant and co-offender assisted police in the prosecution of third co-offender.</p> <p>In VROI admitted to fighting with victims but denied using anything as a weapon.</p>	<p>Dismissed.</p> <p>At [38] ... As his Honour rightly said, the offences were unprompted and unprovoked by the victims. The appellant assaulted both men out of anger brought on by self-induced intoxication, a factor which affords no mitigation.</p>

			<p>One of the victims got out of the car and approached the appellant. The appellant swung a number of punches at him, which missed, but eventually the victim was struck to the left side of the jaw with a clenched fist. At this point, others who had been at the party, including two co-offenders, joined in the attack. The victim as knocked to the ground, kicked and punched by various people.</p> <p>The second victim got out of the car to assist. He made known to the victim that he was a police officer. The appellant approached the second victim and punched him in the face. Others also attacked him. The victim ended up on the ground, struggling with the co-offenders. As a result he sustained a laceration to his lip.</p> <p>The first victim then came to the second victim's aid and pushed his attacker's away. The two men retreated towards their vehicle. As the first victim was retreating, the appellant and co-offenders continued to attempt to strike him. Bottles were thrown, one hitting him on the back of the head. The appellant; armed with a wooden picket struck him on the forehead with such force as to snap the picket in two. Both victims managed to get into their vehicle.</p> <p>Objects continued to be thrown at the car; one a bottle; smashing a window, hitting victim 1 on the jaw and showered him with shattered with glass. At the time the victim's wives and</p>	<p>Sentencing judge found was principal offender.</p>	
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			a 10 year old girl were in the car. The second victim had seven stitches inserted inside his mouth. The first victim suffered a laceration to his forehead.		
<b><i>Transitional provisions repealed (14/01/2009)</i></b>					
<b><i>Transitional provisions enacted (31/08/2003)</i></b>					
Provisions were held to apply to the offence of s 304(2) despite the offence coming into operation after the enactment of the provisions (21/05/2004) in <i>Yates v The State of Western Australia</i> [2008] WASCA 144 overruling the majority decision in <i>The State of Western Australia v Wallam</i> [2008] WASCA 117 on that point.					