

Firearms

June 5, 2008

Categorical Approach

Taylor v. U.S.

495 U.S. 575 (1990)

Shepard v. U.S.

544 U.S. 13 (2005)

“Crime of Violence”

- *Begay v. U.S.*, 128 S. Ct. 1581 (2008)
 - New Mexico DUI statute not a “violent felony” under Armed Career Criminal Act (ACCA)
 - Key question: “whether the crime involves purposeful, violent, and aggressive conduct”
- *U.S. v Chambers*, 129 S. Ct. 687 (2009)
 - Illinois offense of “failure to report” is not a “violent felony” under the ACCA

“Trafficking”

§2K2.1(b)(5)

If the defendant engaged in the trafficking of firearms, increase by 4 levels

Trafficking Definition

§2K2.1, App. Note 13(A)

If the defendant:

- transported, transferred, or otherwise disposed of two or more firearms to another individual or received such firearms with the intent to do so

AND

- knew or had reason to believe such conduct would result in the transport, transfer or disposal of a firearm to an individual
 - whose possession or receipt would be unlawful; or
 - who intended to use or dispose of the firearm unlawfully

Trafficking Definition (cont.)

§2K2.1, App. Note 13(B)

Individual whose possession or receipt of the firearm would be unlawful means an individual who:

- Has a prior felony conviction for a crime of violence or a controlled substance offense, or a misdemeanor domestic violence offense

OR

- At the time of the offense was under a criminal justice sentence

Trafficking Definition (cont.)

§2K2.1, App. Note 13(D)

In a case in which three or more firearms were both possessed and trafficked, apply *both* subsections (b)(1) (number of firearms) and (b)(5) (trafficking)