

**Grouping of Multiple Counts of Conviction
Scenarios**

New Orleans, LA
June 17, 2010, 2:45 p.m. - 4:15 p.m.

Scenario 1

Convictions:

- Count 1: Conspiracy to Possess With Intent to Distribute 5 Kilograms of Cocaine, 21 U.S.C. §§ 846 and 841(a)(1), (b)(1)(A)
- Count 2: Felon in Possession of a Firearm, 18 U.S.C. § 922(g)(1)

Offense Conduct:

Defendant managed a stash house, and was armed with a Tech 9 semi-automatic firearm when transporting cocaine to mid-level suppliers on behalf of his boss. Defendant’s relevant conduct (under §1B1.3) involved 10 kilograms of cocaine.

Defendant has a prior state felony conviction for Sale of Narcotics for which he was convicted and sentenced prior to his involvement in the instant offense.

Guideline Calculations:

Count 1: The applicable guideline for a violation of 21 U.S.C. §§ 846 is **§2D1.1**.

§2D1.1(a)(5)	Base Offense Level:	32
§2D1.1(b)(1)	Possession of weapon:	<u>+2</u>
Adjusted offense level for Count 1:		34

Count 2: The applicable guideline for a violation of 18 U.S.C. § 922(g)(1) is **§2K2.1**.

§2K2.1(a)(4)(A)	Base Offense Level:	20
§2K2.1(b)(6)	Possession in connection w/ another felony offense:	+4
§2K2.1(c)(1)	Cross Reference to §2D1.1 (See calculations for Count 1)	
§2D1.1	Offense level	34

How would these counts group?

Scenario 2

Convictions:

- Count 1: Re-entry Following Deportation, 8 U.S.C. § 1326(a)(1), (b)(2)
Count 2: Possession of Fraudulent Naturalization Document, 18 U.S.C. § 1426(c)

Offense Conduct:

After serving a 36-month sentence on a federal conviction for bank robbery, the defendant was deported to his home country, Mexico. The defendant illegally reentered the United States 3 months after his deportation proceedings. The defendant was employed at a factory that was under investigation for failing to comply with citizenship requirements. The defendant was arrested during a “sweep” of the factory, in possession of fraudulent naturalization documents. After his arrest, authorities discovered the defendant’s status as an illegal alien.

Guideline Calculations:

Count 1: The applicable guideline for a violation of 8 U.S.C. §1326 is **§2L1.2**.

§2L1.2(a)	Base Offense Level:	8
§2L1.2(b)(1)(A)(ii)	Prior COV Conviction	<u>+16</u>
Adjusted offense level for Count 1:		24

Count 2: The applicable guideline for a violation of 18 U.S.C. § 1426(c) is **§2L2.2**.

§2L2.2(a)	Base Offense Level:	8
§2L2.2(b)(1)	Prior deportation	<u>+2</u>
Adjusted offense level for Count 1:		10

How would these counts group?

Scenario 3

Convictions:

- Count 1: Collection of Extension of Credit by Extortionate Means, 18 U.S.C. § 894
Count 2: Felon in Possession of a Firearm, 18 U.S.C. § 922(g)(1).

Offense Conduct:

The defendant is a notorious local thug, with a reputation for committing armed robberies and assaults, and working as an enforcer for local street gangs. He was recently released from state prison, having served a ten year sentence on two separate robbery convictions.

The local LCN gambling operation is trying to collect a debt from the victim, who is a pretty rough character himself, and quite savvy at detecting the mob's presence and avoiding confrontations. The LCN leaders contract with the defendant to rob and assault the victim in an effort to collect the debt. The defendant is paid \$1,000 for his work.

The defendant robs the victim at gunpoint of \$20,000, then pistol whips the victim. The victim was hospitalized as a result of the assault.

Guideline Calculations:

Count 1:

The applicable guideline for a violation of 18 U.S.C. § 894 is **§2E2.1**.

§2E2.1(a)	Base Offense Level:	20
§2E2.1(b)(2)(B)	Weapon otherwise used	+ 4
§2E2.1(b)(1)(B)	Serious bodily injury	<u>+ 4</u>
Adjusted offense level for Count 1:		28

Count 2:

The applicable guideline for a violation of 18 U.S.C. § 922(g)(1) is **§2K2.1**.

§2K2.1(a)(2)	Base Offense Level:	24
§2K2.1(b)(6)	Possession in connection w/ another felony offense:	<u>+ 4</u>
Adjusted offense level		28

How would these counts group?

Scenario 3 - Continued

If the court applied the cross reference at §2K2.1(c)(1) to the robbery guideline (§2B3.1), how would these counts group?

Count 1:

The applicable guideline for a violation of 18 U.S.C. § 894 is **§2E2.1**.

§2E2.1(a)	Base Offense Level:	20
§2E2.1(b)(2)(B)	Weapon otherwise used	+ 4
§2E2.1(b)(1)(B)	Serious bodily injury	<u>+ 4</u>
Adjusted offense level for Count 1:		28

Count 2:

The applicable guideline for a violation of 18 U.S.C. § 922(g)(1) is **§2K2.1**, however, the cross reference to robbery (**§2B3.1**) is applied.

§2K2.1(a)(2)	Base Offense Level:	24
§2K2.1(b)(6)	Possession in connection w/ another felony offense:	<u>+4</u>
Adjusted offense level		28

§2K2.1(c)(1)	Cross Reference to §2B3.1 (Robbery)	
§2B3.1(a)	Base Offense level	20
§2B3.1(b)(2)(B)	Gun otherwise used	+6
§2B3.1(b)(3)(B)	Serious bodily injury	+4
§2B3.1(b)(7)(B)	Loss of \$20,000	<u>+1</u>
Adjusted offense level		31