



# Firearms 101



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[pubaffairs@ussc.gov](mailto:pubaffairs@ussc.gov)

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# Most Common Firearms Offenses

- **18 U.S.C. § 922(g)** - “Prohibited Possession/transfer of firearms”
- **18 U.S.C. § 922 (a)(6)** – “Straw Purchase”
- **18 U.S.C. § 924(c)** – “Use/Brandish/Discharge a Firearm in Connection with Crime of Violence or Serious Drug Trafficking Crime





# §2K2.1 – “Felon in Possession”

## Unlawful Receipt, Possession, or Transportation of Firearms; or Prohibited Transactions Involving Firearms



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# Most Common Statute under U.S.G. § 2K2.1

- § 922(g) - “Prohibited Possession/transfer or firearms or ammunition”
  - Typically stat. max. 10 years with no minimum
  - If sentence enhancement for Armed Career Criminal Act (ACCA; § 924(e)): mandatory minimum 15 years with stat. max. of life
    - Requires use of the “Categorical Approach”



## §2K2.1(a) – Base Offense Levels (BOLs)

Eight BOLs, from 6 to 26, determined  
by various factors, including:

- Status, including
  - “felon-in-possession” (“basic” case is BOL 14)
  - “straw purchaser” (“basic” case is BOL 14)
- More serious types of firearms
- Prior convictions of “crime of violence” or “controlled substance offense”



## Use of “Crime of Violence” and “Controlled Substance Offense” in BOs

- The terms are defined at the *Career Offender* guideline. *See*, §4B1.2(a)&(b)
- Courts use the categorical approach



## Use of “Crime of Violence” and “Controlled Substance Offense” in BOLs (cont.)

- For the priors to be used in the BOLs, they must also be counted *separately* for Criminal History at §4A1.1(a), (b), or (c)





# Application of Selected Specific Offense Characteristics

## §2K2.1(b)



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# Number of Firearms SOC

§2K2.1(b)(1), App. Note 5

	Number of Firearms	Increase in Level
(A)	3-7	add 2
(B)	8-24	add 4
(C)	25-99	add 6
(D)	100-199	add 8
(E)	200 or more	add 10



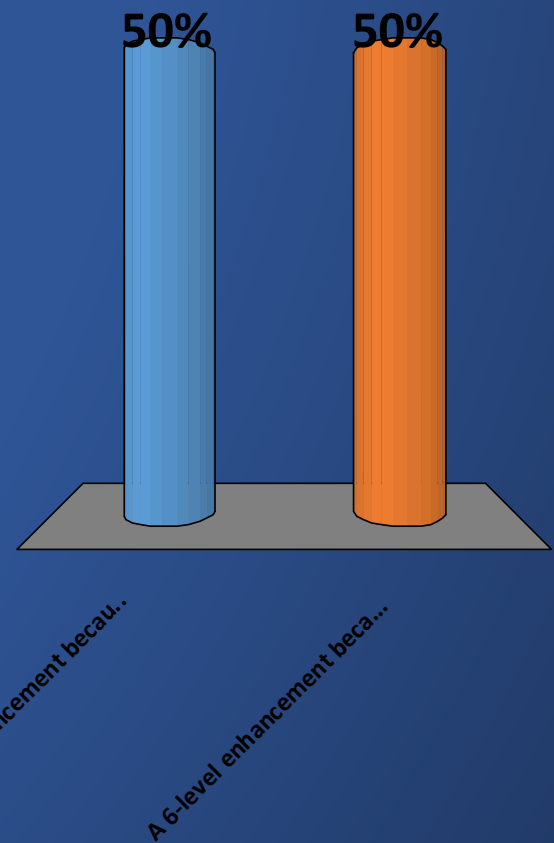
## Question #1

Defendant and two others robbed a gun store. Defendant served as a lookout while the other two entered the store and stole 37 firearms. Defendant received 3 of the stolen weapons. Defendant is convicted of one count of 18 U.S.C. § 922(g).



# What enhancement should the court impose at sentence of number of firearms under (b)(1)?

- A. A 2-level enhancement because the defendant only took 3 guns.
- B. A 6-level enhancement because the offense involved 37 weapons.



## Number of Firearms and Relevant Conduct

- Relevant conduct includes:
  - all the weapons the defendant possessed, including weapons outside the counts of conviction;
  - weapons that defendant's co-participants possessed in jointly undertaken criminal activity



# Stolen Gun/Obliterated Serial Number SOC

§2K2.1(b)(4), App. Note 8

- If any firearm
  - Was stolen, increase by 2 levels
- OR*
- Had an altered or obliterated serial number, increase by 4 levels
- Strict liability standard



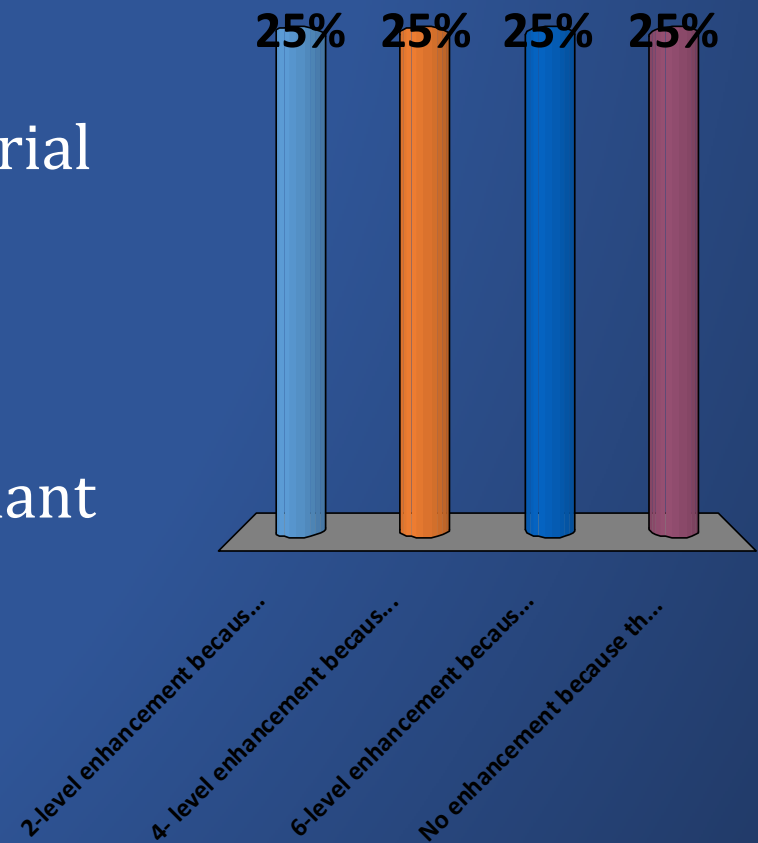
## Question # 2

Defendant, who has a prior felony conviction, was caught with a firearm in his car. It was discovered that the firearm was stolen and that the serial number was scratched off. He is convicted of one count of 18 U.S.C. § 922(g). Defendant maintains he did not know that the gun was stolen nor that the serial number had been scratched off.



# At sentencing, the court should apply

- A. 2-level enhancement because the weapon was stolen.
- B. 4- level enhancement because the serial number was obliterated.
- C. 6-level enhancement because the weapon was stolen and the serial number was obliterated.
- D. No enhancement because the defendant did not know the gun was stolen or altered.



# “Trafficking” SOC

§2K2.1(b)(5)

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





## Trafficking Definition

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.)

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

*See*, §2K2.1(b)(5), App. Note 13(B)



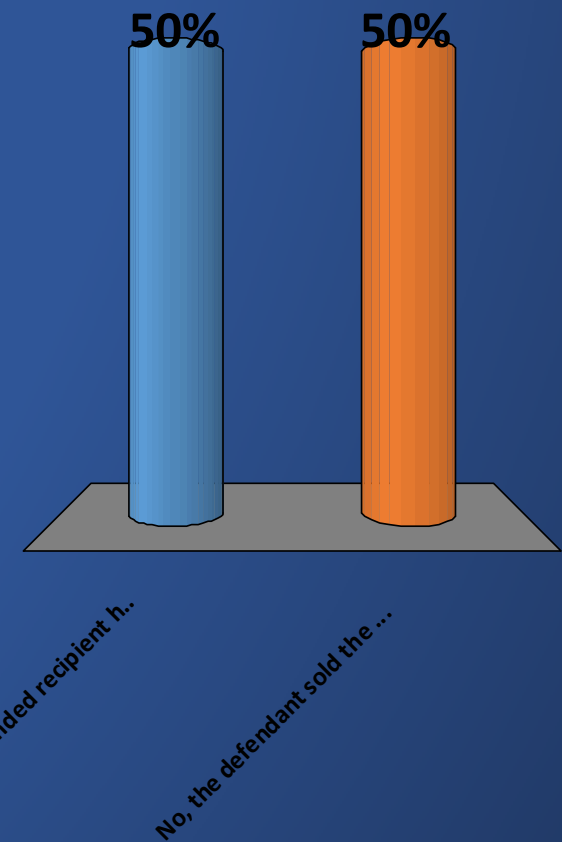
## Question #3

As a favor to his friend Bob, Defendant agrees to buy two guns that he will transfer back to Bob. When the men meet to exchange weapons, Bob tells the defendant that the weapons are really meant for Bob's cousin, who just got out of jail on a drug trafficking offense. The defendant is charged 18 U.S.C. § 922(a)(6).



# Should the sentencing court apply the trafficking enhancement under 2K2.1(b)(5)??

- A. Yes, the intended recipient has a conviction for a drug trafficking offense.
- B. No, the defendant sold the guns to Bob, who has no priors.



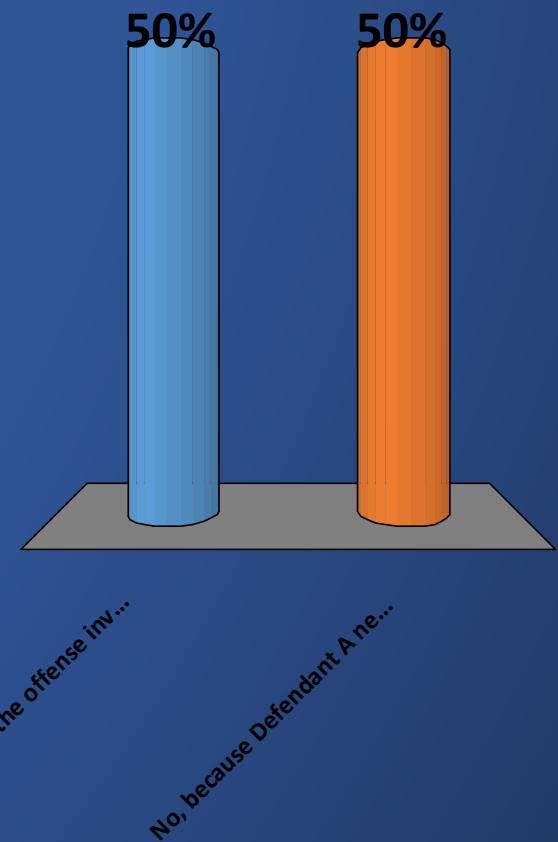
## Question #4

Defendant A, who is a prohibited person, robbed a gun store with co-defendant Defendant B. As a result of the robbery, Defendant A got 4 guns, which he kept in his house and used for shooting practice. Defendant B got 10 guns from the robbery and sold 5 of them to his drug dealer. Both Defendants are prosecuted under 18 U.S.C. § 922(g)



# Should the district court impose the trafficking enhancement for Defendant A?

- A. Yes, because the offense involved trafficking weapons.
- B. No, because Defendant A never personally trafficked weapons.



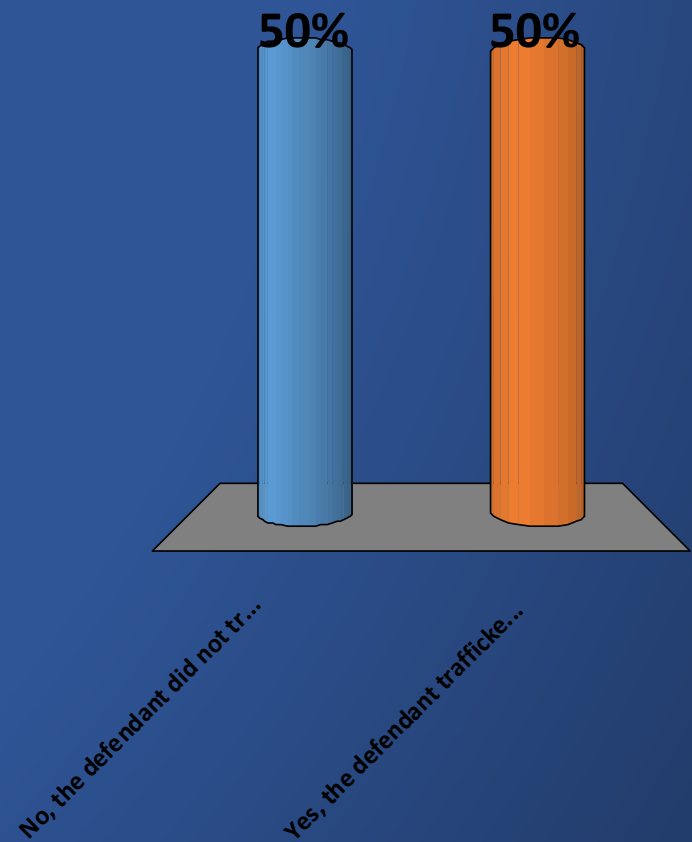
## Question #5

Defendant, who is a prohibited person, inherited 4 guns from his grandfather. Knowing that he was a prohibited person, he decided to give away the weapons as gifts, one gun to each of his four friends, who he knew were going to use the guns to rob a bank. The defendant is charged with one count of 18 U.S.C. §922(g).



# Should the Court apply the trafficking enhancement under 2K2.1(b)(5)?

- A. No, the defendant did not traffic more than one weapon to each person.
- B. Yes, the defendant trafficked more than one gun to individuals he knew would use the weapons unlawfully.





## *Trafficking Multiple Firearms*

In a case in which three or more firearms were both possessed and trafficked, apply both number of firearms SOC and trafficking SOC.

§2K2.1(b)(1) &(b)(5), App. Note 13(D)



## *Summary of Trafficking SOC*

- Courts can look at the nature and circumstances of the transactions to determine whether the defendant knew that the buyer was going to use the firearm in an unlawful manner.
- A district court must make *specific findings*.
- But remember: this is *defendant-specific*, not offense specific.





# Issues in Application of the “Use/Possession” SOC §2K2.1(b)(6)(B)



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## “Use/Possession” SOC

### §2K2.1(b)(6)(B)

- If the defendant:
  - Used or possessed any firearm or ammunition in connection with another felony offense
- OR**
- Possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense

Increase by 4 levels, with floor of 18



## General Standard for “In Connection With”

- If the firearm facilitated, or had the potential of facilitating, another felony offense or another offense.
- Can be based on any federal, state, or local offense  
*EXCEPT*
  - Cannot be another firearms or explosive offense



## Standard for “In Connection With” in a Drug Trafficking Offense

- Applies when a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia
  - §2K2.1(b)(6)(B) & (c)(1), App. Note 14(B)



## Standard for “In Connection With” in a Burglary Offense

- Applies in the case of a defendant who takes a firearm during the course of a burglary, even if the defendant did not engage in any other conduct with that firearm during the course of the burglary
- §2K2.1(b)(6)(B) & (c)(1), App. Note 14(B)



## Question #6

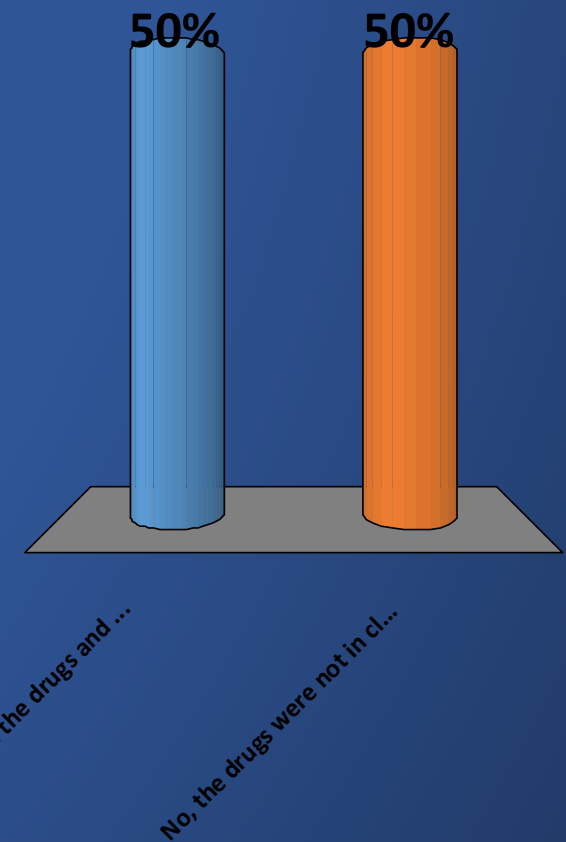
Defendant is charged in one count of felon in possession. When the police searched his home, they found the gun under the defendant's bed along with 10 grams of heroin in the kitchen, and \$5000 in cash in the closet next to the front door.





# At sentencing, should the court apply the 4-level enhancement under 2K2.1(b)(6)?

- A. Yes, because the drugs and the gun were found in the same house.
- B. No, the drugs were not in close proximity to the gun.



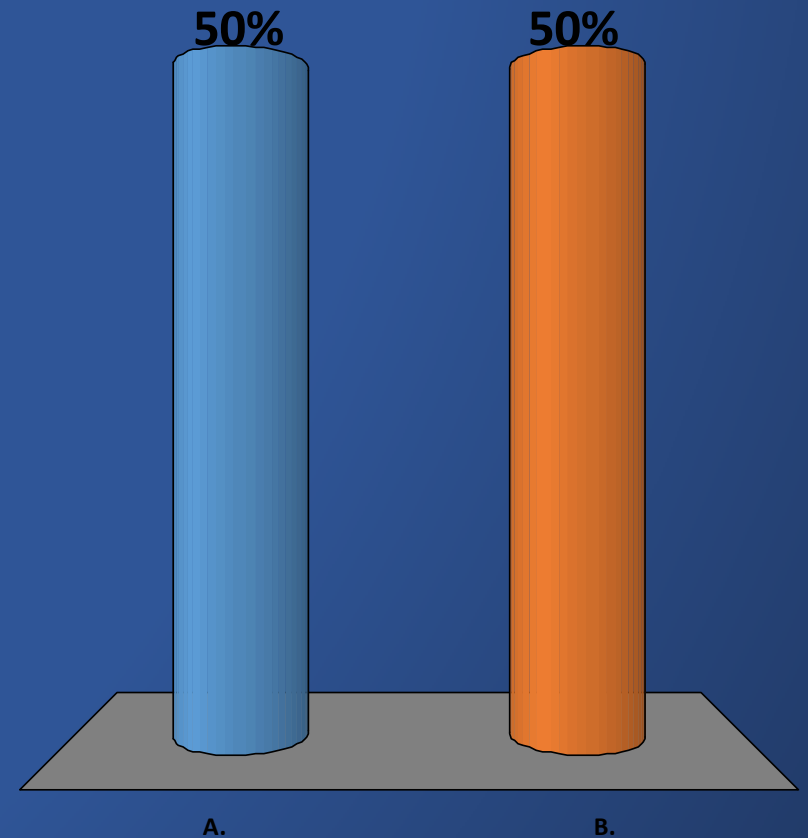
## Question #7

Defendant was a passenger of a car that was stopped for speeding. During a search of the defendant's person, the officer found a weapon in the defendant's waistband and a "joint" in his pocket. He is charged with unlawful possession of a handgun.



# At sentencing, should the court apply the 4-level enhancement under 2K2.1(b)(6)?

- A. Yes, because the drugs and guns were found in close proximity to each other
- B. No, because the drugs were only for personal use





# Issues in Application of the Cross Reference

## §2K2.1(c)(1)



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## “Use/Possession” Cross Reference

### §2K2.1(c)(1)

- If the defendant:
  - Used or possessed any firearm or ammunition *cited in the offense of conviction* in connection with commission or attempted commission of another offense
- OR**
- Possessed or transferred a firearm or ammunition *cited in the offense of conviction* with knowledge or intent that it would be used or possessed in connection with another felony offense

**Apply the cross reference**



## Distinctions Between §2K2.1(b)(6)(B) and §2K2.1(c)(1)

- SOC (b)(6)(B) applies to firearms contained in the offense of conviction **AND** firearms that are not listed in the offense of conviction but are in “the same course of conduct/common scheme or plan”
- Cross reference (c)(1) applies only in cases in which the firearm cited in the count of conviction was used or possessed in connection with another offense



## Question #8

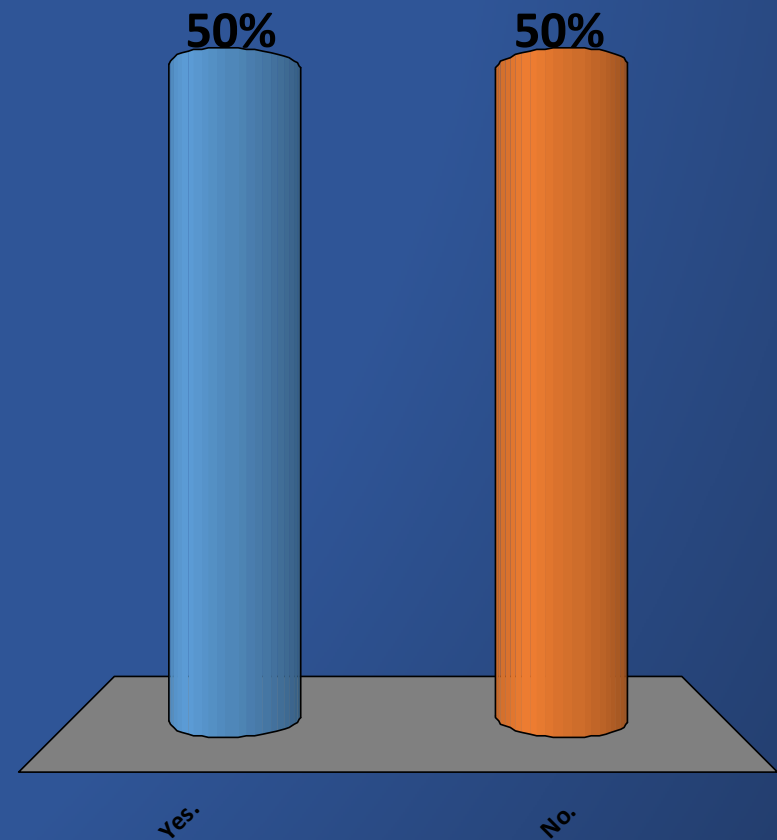
Defendant is convicted of one count of 18 U.S.C. § 922(g). The Indictment specifically lists a semi-automatic handgun; however, the police also found a short-barreled shotgun at the defendant's home. That shotgun was later found to have been used in a bank robbery.



Should the district court apply the cross reference in (c)(1) and use the guidelines for robbery?

A. Yes.

B. No.

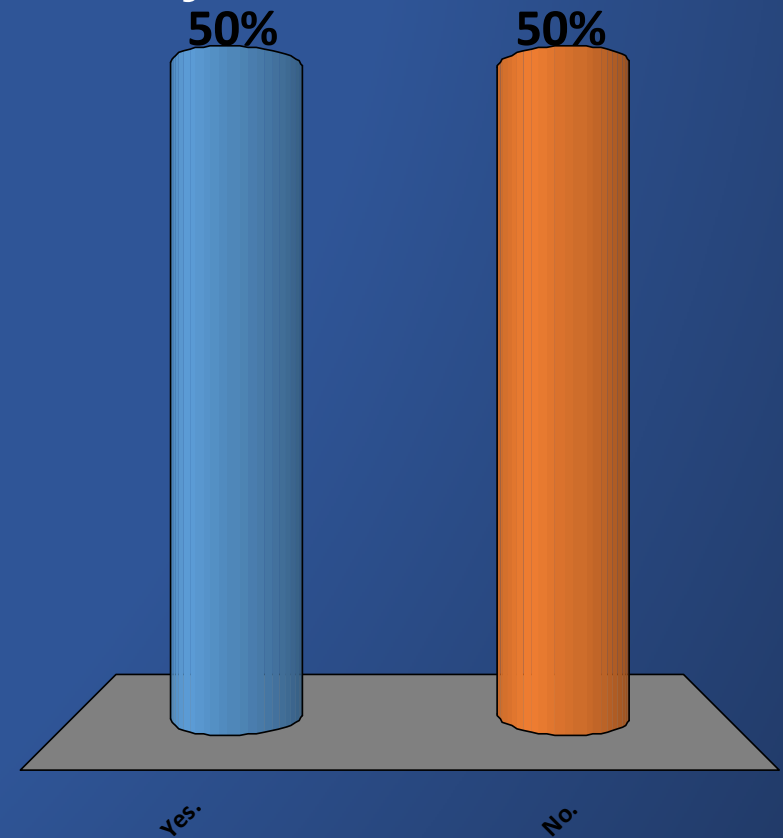




Should the district court apply the 4-level enhancement under (b)(6) because the shotgun was used in connection with another felony ?

A. Yes.

B. No.





# 18 U.S.C § 924(c)

## Use of a Firearm During a Crime of Violence or Drug Trafficking Crime



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## 18 U.S.C. § 924(c)

- Statutory maximum is life
- Mandatory minimums of at least five years, depending upon:
  - Whether firearm possessed, used, carried, brandished, or discharged
  - Type of firearm
  - Prior § 924(c) convictions



## 18 U.S.C. § 924(c) (cont.)

- “Second or subsequent conviction”
  - May occur at same sentencing
  - Mandatory minimum typically 25 years
- Must be consecutive to any and all other sentences



## U.S.S.G. § 2K2.4

- (b) Except as provided in subsection (c), if the defendant, whether or not convicted of another crime, was convicted of [18 U.S.C. § 924(c)] the guideline sentence is the minimum term of imprisonment required by statute. Chapters Three and Four shall not apply to that count of conviction.



## U.S.S.G. § 2K2.4 App. Note 4

- “If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense.”



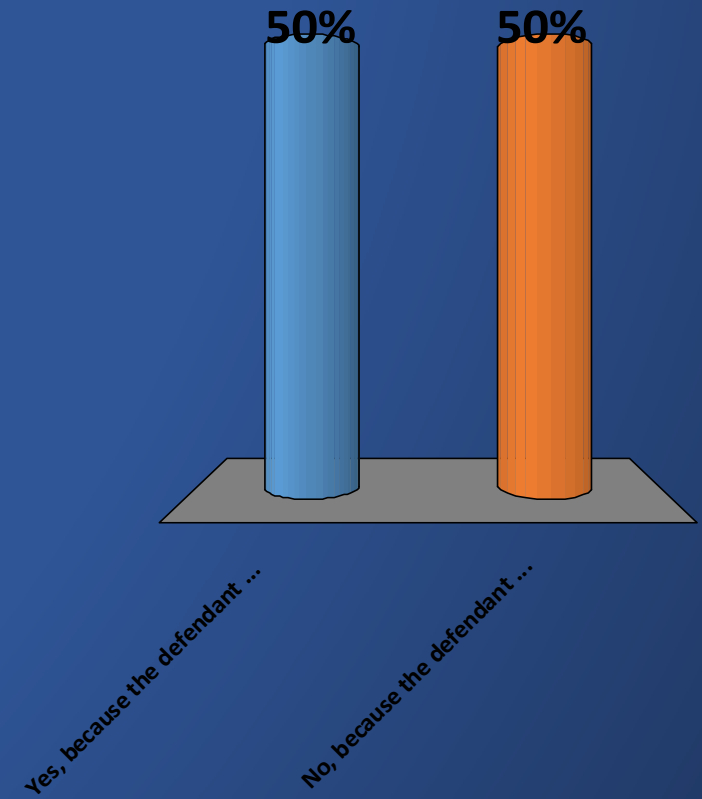
## Question #9

Defendant is convicted of one count of bank robbery (18 U.S.C. § 2113), one count of unlawful possession of a firearm (18 U.S.C. § 922(g)), and one count of 18 U.S.C. § 924 (c). During the robbery, the defendant brandished the weapon and threatened to kill the teller.



At sentencing, should the court apply the 5-level enhancement under the robbery guidelines for brandishing a weapon under § 2B3.1 (b)(2)(C)?

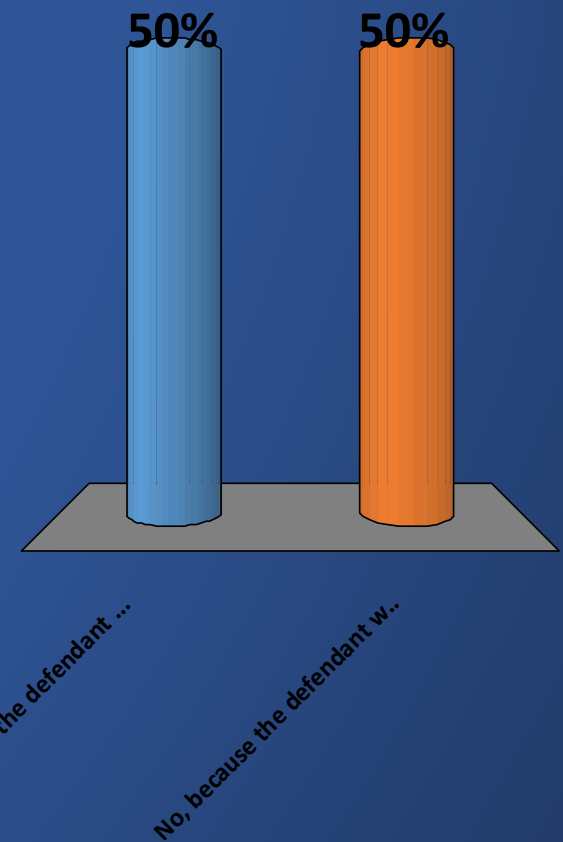
- A. Yes, because the defendant used a weapon during the robbery.
- B. No, because the defendant already pleaded guilty to § 924(c).





At sentencing, should the court apply the 2-level enhancement under the robbery guidelines for threat of death under § 2B3.1 (b)(2)(F)?

- A. Yes, because the defendant threatened to kill the teller.
- B. No, because the defendant was convicted of § 924(c).



At sentencing, should the court apply the 4-level enhancement under § 2K2.1 (b)(6) because the weapon was used in connection with another felony?

- A. No, because the defendant was convicted of a 924(c).
- B. Yes, because the defendant used a weapon during the robbery and the felon in possession is not the underlying offense.

