

# GUIDELINE SCENARIOS - GUNS AND DRUGS

## Scenario #1

Defendant Hill pled guilty to the following offenses:

- Conspiracy to Distribute Methamphetamine; in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) - 0 - 20 years' imprisonment
- One count Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2); and,
- Possessing a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i).

The offense conduct involved a total of 35 grams of methamphetamine mixture (not methamphetamine actual or "Ice") and two firearms. The drugs and the guns were found in a safe in the defendant's home. The Indictment for all three offenses only listed one of the two firearms found in the safe.

1. Does the SOC for possession of a dangerous weapon at §2D1.1(b)(1) apply in this case?

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2. Does the SOC for using or possessing a firearm in connection with another felony offense at §2K2.1(b)(6)(B) apply in this case?

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3. Does the cross reference at §2K2.1(c)(1) apply?

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Questions 1 and 2 – No. The SOC for possession of firearm cannot be used because of the Possessing of a Firearm in Furtherance of a Drug Trafficking Crime charge. Section 2K2.4, Application Note 4 indicates, "Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 18 U.S.C. § 924(c); or (B) in an ongoing drug trafficking offense, the defendant possessed a firearm other than the one for which the defendant was convicted under 18 U.S.C. § 924(c)." This also precludes the application of §2K2.1(b)(6)(B), however it does not preclude the possible application of the cross reference at §2K2.1(c)(1). The application of the cross reference, however, hinges on whether the firearm is cited in the offense of conviction. In this case at least one of the firearms

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is cited in the indictment, thus the cross reference could be applied if the resulting offense level is greater than determined under §2K2.1.

## Scenario #2

Defendant Ruger pled guilty to one count of Unlicensed Dealing in Firearms which charged that over a three-year period, the defendant, who was not a licensed firearms dealer, engaged in the business of dealing in firearms. During that time, Ruger purchased approximately 300 firearms from numerous Federal firearms licensees (FFLs) and sold them to individuals online and at local gun shows. On all the occasions that Ruger sold firearms, he failed to conduct background investigations before selling the firearms and asked for nothing more than state identification cards from the purchasers. Some of the firearms were used by the purchasers for unlawful purposes.

1. Does the SOC for trafficking of firearms at §2K2.1(b)(5) apply in this case?

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No. USSG §2K2.1, Application Note 13 states “(A) In General.—Subsection (b)(5) applies, regardless of whether anything of value was exchanged, if the defendant—  
“(i) transported, transferred, or otherwise disposed of two or more firearms to another individual, or received two or more firearms with the intent to transport, transfer, or otherwise dispose of firearms to another individual; **and**  
“(ii) knew or had reason to believe that such conduct would result in the transport, transfer, or disposal of a firearm to an individual—  
“(I) whose possession or receipt of the firearm would be unlawful; or  
“(II) who intended to use or dispose of the firearm unlawfully” (emphasis added).

There is no evidence to suggest that the defendant knew or had reason to believe that his conduct would result in the transport, transfer, or disposal of firearms to individuals listed above. Additionally, the Application Notes require that the defendant know that these individuals’ possession or receipt would be unlawful. This defendant did not know anything about the criminal histories of the individuals as he did not conduct any type of background investigations. Therefore, the 4-level increase for this Specific Offense Characteristic **is not** applicable.

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## Scenario #3

Defendant Washington pled guilty to one count of Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Washington was arrested after a vehicle he was driving was pulled over for a traffic violation. The officer learned there was an active warrant for Washington, so he placed the defendant under arrest. During a search of the vehicle, officers recovered the following items: a plastic bag in the overhead sunglass compartment that contained eight 50mg Tramadol pills, 10 30mg Oxycontin pills, seven 325mg Oxycontin pills, and a second small bag that contained crack cocaine (less than 5 grams). A loaded .40 caliber pistol and a digital scale were found in the locked glove compartment.

1. Does the SOC for use of possession of a firearm in connection with another felony offense at §2K2.1(b)(6)(B) apply in this case?

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Yes. According to Application Note 14 of USSG §2K2.1, "Application When Other Offense is Burglary or Drug Offense.—Subsections (b)(6)(B) and (c)(1) apply...(ii) in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia. In these cases, application of subsections (b)(6)(B) and, if the firearm was cited in the offense of conviction, (c)(1) is warranted because the presence of the firearm has the potential of facilitating another felony offense or another offense, respectively."

In this case, the firearm and a digital scale were located in close proximity to a large quantity of drugs. Therefore, the 4-level increase for this Specific Offense Characteristic is applicable.

## Scenario #4

Defendant Stacy pled guilty to two counts Distribution of Heroin, in violation of 21 U.S.C. §§(a)(1) and (b)(1)(C), and one count Felon in Possession of a Firearm and Ammunition in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Stacy sold 3 grams of heroin to a confidential source who was working with law enforcement on one occasion, and sold 9 grams of heroin to the same undercover source on a second occasion. A few days later, officers conducted a traffic stop of the defendant's vehicle from which they seized a cell phone and U.S. Currency. Most of the U.S. Currency recovered was found to be buy money that was utilized during controlled purchases of heroin from the defendant.

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Search warrants were subsequently executed for his vehicle and residence, resulting in the recovery of the following:

- A .40 caliber pistol with a magazine and ammunition located in a console of the couch in the living room;
- A .38 caliber pistol with ammunition located in the dog house in the rear yard; four 12-gauge shotgun shells, located in the dog house in the rear yard; and,
- One plastic bag containing 28.7 gross grams of marijuana, located in the living room. The defendant indicated that the marijuana was for his personal use.

1. Does the SOC for use or possession of a firearm in connection with another felony offense at §2K2.1(b)(6)(B) apply in this case?

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2. Does the cross reference at §2K2.1(c)(1) apply?

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No. According to Application Note 14 of USSG §2K2.1, “Application When Other Offense is Burglary or Drug Offense.—Subsections (b)(6)(B) and (c)(1) apply...(ii) in the case of a drug trafficking offense in which a firearm is found in close proximity to drugs, drug-manufacturing materials, or drug paraphernalia. In these cases, application of subsections (b)(6)(B) and, if the firearm was cited in the offense of conviction, (c)(1) is warranted because the presence of the firearm has the potential of facilitating another felony offense or another offense, respectively.”

In this case, the firearms and the quantities of “buy money” that were used to purchase the heroin were not located in close proximity to each other. Therefore, the 4-level increase for this Specific Offense Characteristic **is not** applicable.

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## Scenario #5

Defendant Emerson was convicted of the following:

- Unlawful Importing, Manufacturing, or Dealing in Firearms in violation of 18 U.S.C. § 922(a)(1)(A) - Applicable guideline is §2K2.1
- Unlawful Possession and Transfer of a Firearm in violation of 26 U.S.C. §§ 5845(a)(2) and (d), 5861(d), and 5871 - Applicable guideline is §2K2.1, and
- Possession of a Controlled Substance with Intent to Distribute in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) - Applicable guideline is §2D1.1

During approximately a one-month period, Emerson sold undercover ATF agents, and/or confidential informants a total of six firearms and .15 grams of heroin. The sale of the .15 grams of heroin did not occur on the same day as any of the sales of the firearms.

The defendant, the ATF undercover agent, and the confidential informant had numerous telephone conversations and exchanged numerous texts, during which they discussed Emerson selling both guns and illegal drugs (heroin and cocaine) to the ATF undercover agent; however, Emerson was never observed to be in possession of weapons and illegal drugs at the same time.

1. Does the SOC for use or possession of a firearm in connection with another felony offense at §2K2.1(b)(6)(B) apply in this case?

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2. Does the SOC for possession of a dangerous weapon at §2D1.1(b)(1) apply in this case?

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It is not clear that the defendant possessed any of the firearms in connection with the drug distribution offense, therefore the SOC at §2K2.1(b)(6)(B) will not apply. The SOC at §2D1.1(b)(1) will not apply either based on the same analysis.

**NOTE:** The two firearms counts will group together under §3D1.2(d), but the gun count group will not group with the drug count as there is no apparent connection between the guns and the drugs. Assign units accordingly.

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## Scenario #6

Defendant Dane was convicted of the following counts:

- Conspiracy to Possess with Intent to Distribute Heroin in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B) - Applicable guideline is §2D1.1, and
- Felon in Possession of a Firearm (2 counts) in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(1) - Applicable guideline is §2K2.1

During a two-year period, Dane conspired with others to possess with intent to distribute and to distribute heroin, cocaine, and marijuana. Dane was a middle-level participant in the conspiracy. At one point, he was arrested after his vehicle was stopped for traffic violations, at which time he was found to be in possession of heroin, cocaine, marijuana, a large amount of cash, and a .38 caliber revolver. The gun was found to have an obliterated serial number and to be stolen.

The following day, a search warrant was executed at Dane's home, which resulted in the recovery of additional heroin, cocaine, marijuana, scales, more cash, and three additional firearms. One firearm was found to be stolen and one was a semiautomatic firearm that was loaded with a magazine containing 17 rounds of ammunition.

Dane's criminal history computation resulted in a total of 7 points. A previous felony conviction for a controlled substance offense accounted for three of those points.

1. What is the Base Offense Level at §2K2.1?

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2. Would the defendant's Base Offense Level change if his previous felony conviction for a controlled substance offense had not been assigned any criminal history points?

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3. Do the SOC's for a firearm being stolen at §2K2.1(b)(4)(A) and a firearm having an altered or obliterated serial number at §2K2.1(b)(4)(B) apply in this case?

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4. Does the SOC for use or possession of a firearm in connection with another felony offense at §2K2.1(b)(6)(B) apply in this case?

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The Base Offense Level under §2K2.1 is 22 because the offense involved a semiautomatic firearm that is capable of accepting a large capacity magazine and the defendant committed the instant offense subsequent to sustaining a felony conviction for a controlled substance offense [§2K2.1(a)(3)]. However, per Application Note 10 at §2K2.1, if the prior conviction had not scored criminal history points, the BOL would not be 22 as that BOL requires not only a certain type of firearm, but also a prior conviction that received criminal history points. The SOC for the offense involving a firearm that had an altered or obliterated serial number at §2K2.1(b)(4)(B) is applicable. Even though there was a firearm that was stolen and another that had an obliterated serial number, only one of the increases at §2K2.1(b)(4) can be applied. The SOC for use or possession of a firearm in connection with another felony offense at §2K2.1(b)(6)(B) is applicable in this case. The drugs and guns were found in close proximity to each other.

**NOTE:** The two firearms counts will group together under §3D1.2(d) and the firearm count group will group with the drug count under §3D1.2(c).

### **Scenario #7**

Defendant Christopher was convicted of the following counts:

- Possession with Intent to Distribute Heroin in violation of 21 U.S.C. §§841(a)(1) and (b)(1)(B),
- Possession with Intent to Distribute Cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and
- Felon in Possession of Firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

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Christopher sold large amounts of heroin and cocaine using three different residences, none of which were owned or occupied by him. Officers conducted surveillance of Christopher for approximately one week, during which time they observed many different people entering one of the residences and leaving a short time later. They also observed Christopher engaging in hand-to-hand transactions with others while sitting in his car that was parked at one of the residences.

Officers conducted a traffic stop of Christopher's vehicle, and later searched that vehicle and the residences that he was using. The officers found a handgun in a hidden compartment of Christopher's vehicle and a significant amount of cash on him. They also found the following items at the residences:

- First residence- A firearm and mail addressed to the defendant
- Second residence- Drug weighing and packaging material and equipment as well as a firearm
- Third residence- Numerous bags containing illegal drugs located in the dining room and kitchen along with a firearm located in the basement.

The agents received the results from the crime lab for the drugs seized from the third residence, which are as follows: 150 grams of heroin, and 200 grams of cocaine.

1. What is the total marijuana equivalency of all the drugs in this case?

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2. Does the SOC for possession of a dangerous weapon at §2D1.1(b)(1) apply in this case?

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The total marijuana equivalency is 190 kilograms. 150 grams of heroin (1gr x 1kg) = 150 kg or marijuana. 200 grams of cocaine (1gm x 200 gm) = 40kg. The SOC for the weapon is applicable because it is not "clearly improbable" that the weapons were connected with the offense. One of the weapons was found in the defendant's truck, where he was observed making drug transactions. Another weapon was found with drug weighing and packaging material and equipment, and a third weapon was found in the residence where the drugs were located, although on a different floor of the residence.



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## **Scenario #8**

Defendant Phillips pled guilty to the following counts:

- Conspiracy to Possess with Intent to Distribute Cocaine, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A) - Applicable guideline is §2D1.1
- Felon in Possession of a Firearm 18 U.S.C. §§ 922(g)(1) and 924(a)(2) - Applicable guideline is §2K2.1, and
- Money Laundering (3 counts) in violation of 18 U.S.C. § 1957 - Applicable guideline is §2S1.1

From January 1, 2013, to August 14, 2016, twelve defendants conspired to possess with intent to distribute and to distribute at least 5 kilograms of cocaine.

Investigation revealed that Phillips was one of the two main cocaine suppliers in the conspiracy, and that he was a leader or organizer. A traffic stop was conducted on Phillips' vehicle. The officer detected a strong odor of marijuana and asked Phillips to exit the vehicle, but he refused and was forcibly removed from the vehicle and arrested.

Phillips had 54.19 grams of heroin in his pants pocket. A large amount of cocaine (206.85 grams) was seized from the back seat of his vehicle. A search of Phillips' residence located the following:

- An additional 251.96 grams of heroin,
- A digital scale,
- Packaging material,
- A heroin grinder, and
- A stolen handgun.

Further investigation into Phillips' activities revealed that he laundered his personal drug proceeds through a local casino on three different occasions, totaling \$72,730.

1. What is the quantity of drugs that will be used to calculate the guidelines at §2D1.1?

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## GUIDELINE SCENARIOS - GUNS AND DRUGS

2. Is the Chapter Three adjustment for Aggravating Role (§3B1.1) applicable in this case?

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The defendant will be held accountable for a total of 306.15 kg (1gm=1kg) of heroin and 41.37 kg (1gm=200gm) of cocaine. This results in a total of 347.52 kg of marijuana and a BOL of 24. Although the defendant is only convicted of the conspiracy involving cocaine, the heroin will most likely be considered as in the “same course of conduct, common scheme or plan” as the offense of conviction as the facts indicate that the defendant was distributing both cocaine and heroin. The drug guideline, therefore, will be applied on the basis of all the drugs involved and the Chapter Three Adjustment for Aggravating Role will apply to the application of the drug count.

**NOTE:** The drug count group will group with the money laundering count group under rule (c) per Application Note 6 at §2S1.1. The higher of the two calculations will control. The drugs and money laundering count group will then group with the felon in possession count under rule (c) as the firearm was possessed “in connection with” the drug offenses.