



**US Sentencing Commission's Annual National Seminar
on the Federal Sentencing Guidelines**

National Seminar

Guns and Drugs Answers



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

Answer: No. The specific offense characteristic (SOC) for possession of firearm cannot be used because of the Possession 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 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 Jones is convicted of the following:

- Possession with Intent to Distribute Cocaine Hydrochloride in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C) and
- Possession of a Firearm in Furtherance of a Drug Trafficking Crime in violation of 18 U.S.C. § 924(c)(1)(A).

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On September 30, 2016 a confidential source (CS) placed a call to the defendant to arrange for the purchase of one ounce of “Molly” (MDMA). The defendant agreed to sell the CS one ounce of “Molly” for \$1,000. They agreed to meet at the Dick’s Sporting Goods parking lot later that day. When the defendant arrived, the CS entered the passenger side of the vehicle and the defendant sold the CS approximately 44 grams of “Molly”. A subsequent laboratory analysis revealed the MDMA was actually Methylone and had a net weight of 41 grams.

On October 2, 2016, the defendant contacted the CS and indicated that he had several ounces of cocaine hydrochloride for sale. Arrangements were made between the defendant and the CS to make the purchase. The defendant was intercepted on his way to meet the CS when authorities conducted a traffic stop. When the officer approached the defendant’s vehicle, he observed a semi-automatic handgun on the driver’s side floorboard between the defendant’s feet.

The officer asked for permission to search the defendant’s vehicle and his person. A clear plastic bag containing 36.9 grams of cocaine hydrochloride was found on the defendant. The weapon was identified as a .40 caliber Taurus semi-automatic handgun.

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

Answer: The 36.9 grams of cocaine hydrochloride will convert to 7.38 kg of marijuana (1gm=200 gm marijuana). Methylone is not currently listed in the Drug Equivalency Table, thus the court will have to find the most analogous substance per AN 6 of §2D1.1.

NOTE: As of May 1, 2018, the Commission has submitted an amendment to Congress that would adopt a class-based approach to synthetic cathinones (such as Methylone) and would provide a conversion of 1gm= 380 gm of marijuana. Should the court wish to use such a conversion prior to the amendment taking effect, they could vary using 18 U.S.C. § 3553(a).

The SOC for possession of a dangerous weapon will not apply because of the conviction for 18 U.S.C. §924(c). See §2K2.4 App. Note 4.

Scenario #3

Defendant Washington was convicted of the following:

- Possession with Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C)
- Possessing a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i).

Defendant Washington sold methamphetamine to an undercover officer. After the arrest, the officer searched the defendant’s vehicle and found a .40 caliber pistol which is the pistol in the

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18 U.S.C. § 924(c) violation. A subsequent search of the defendant's home resulted in the discovery of several additional firearms that were used in connection with the drug offense.

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

Answer: The SOC for possession of a dangerous weapon will not apply because of the conviction for 18 U.S.C. §924(c). See §2K2.4 App. Note 4.

Scenario #4

Defendant Cole has been convicted of the following:

- Distribution of Heroin in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)- 10 years imprisonment to life- Applicable guideline is §2D1.1
- Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §§ 922(g)(1) - Applicable guideline is §2K2.1

The defendant has two prior convictions for crimes of violence. The defendant went to trial in this case and the adjustment for Acceptance of Responsibility (§3E1.1) will not apply.

The guideline calculations are as follows:

§2D1.1	§2K2.1
BOL 32 (2 kg heroin)	BOL 24 (2 prior COV's)
+ 2 (gun)	+ 2 (5 guns)
	+ 4 (obliterated serial number)
	+ 4 (in connection with felony offense)
= 32	= 34

The defendant qualifies as both a Career Offender (§4B1.1) and an Armed Career Criminal (§4B1.4), however, the calculations under the Career Offender guideline (§4B1.1) come out higher than what the Armed Career Criminal (§4B1.4) guideline calls for.

1. Does the Career Offender (§4B1.1) override apply in this case?

Answer: Yes, the Career Offender Override applies in this case. §4B1.1 instructs that the greater of the offense level from the table or the offense otherwise applicable is to be used. In this case, the offense level otherwise applicable is greater and applies.

Scenario #5

Defendant Emerson was convicted of the following:

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- Unlawful Importing, Manufacturing, or Dealing in Firearms in violation of 18 U.S.C. § 922(a)(1)(A) - Applicable guideline is §2K2.1
- 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?
2. Does the SOC for possession of a dangerous weapon at §2D1.1(b)(1) apply in this case?

Answer: 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.

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.

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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?
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?
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?
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?

Answer: 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 App. 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. 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).

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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).

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

Answer: 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

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the residence where the drugs were located, although on a different floor of the residence.

Scenario #8

Defendant Wilson was convicted of the following counts:

- Possession of a silencer in violation of 18 U.S.C. § 922(g)(1)- Applicable guideline is §2K2.1
- 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 and
- Possessing a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i)- Applicable guideline is §2K2.4.

The defendant always carried a gun during his drug transactions. The defendant also sold five guns and the silencer during one of his drug deals.

1. Does the SOC for possession of a dangerous weapon at §2D1.1(b)(1) apply in this case?
2. 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? Does the SOC for number of firearms at §2K2.1(b)(1) apply in this case?

Answer: Neither the SOC at §2D1.1(b)(1) nor §2K2.1(b)(6)(B) applies in this case because of the conviction for 18 U.S.C. § 924(c). See §2K2.4 App. Note 4. The court, however, is not precluded from giving any other SOC at §2K2.1 and therefore, the SOC for number of firearms will apply in this case, resulting and an increase of 2 levels.