

INTRODUCTION TO RELEVANT CONDUCT

1. The defendant is convicted of one count of Bank Robbery in which the defendant stole \$1,700.

Applicable guideline is §2B3.1 (Robbery)

If the defendant did not possess a gun in the bank, but after the bank robbery used a gun to carjack a vehicle in order to aid the getaway, would the §2B3.1 firearm specific offense characteristic apply?

Yes. It was an act committed by the defendant in order to avoid detection or responsibility for the offense of conviction. The defendant carjacked the victim to obtain a vehicle to use to aid in the getaway from the robbery.

2. The defendant is convicted of a drug conspiracy involving at least 100 kg of cocaine. Applicable guideline is §2D1.1 (Drugs)

Conspiracy involved multiple importations; however, the defendant was only involved in two importations of 5 kg each.

What quantity of drugs will be used to determine the defendant's base offense level at §2D1.1?

5kg each for a total of 10 kgs. Defendant is not responsible for the drugs in the entire conspiracy simply because he is convicted of a conspiracy involving 100kgs. Relevant conduct is an individualized determination and this defendant's undertaking only involves 10kgs of cocaine.

3. The defendant is convicted of bank robbery.

Applicable guideline is §2B3.1 (Robbery)

Co-participant carried a gun in the robbery, a fact unknown to the defendant until the commission of the robbery. Will the §2B3.1 specific offense characteristic for "if a firearm was brandished or possessed" apply?

Yes. Defendant and co-defendant agreed to commit a bank robbery. The act of the co-defendant carrying a gun during the robbery was in furtherance of their agreement to rob the bank and it is certainly foreseeable that a gun would be used while committing a robbery. The fact that the defendant did not "know" about the gun is not relevant as the relevant conduct analysis is not determined on the basis of knowledge but rather the 3-part analysis at §1B1.3(a)(1)(B) to determine jointly undertake criminal activity.

4. The defendant is convicted of bank robbery.

Applicable guideline is §2B3.1 (Robbery)

Defendant and co-participant robbed the bank while armed. During the robbery, a teller set off a silent alarm. The police responded to the robbery in process. While attempting to subdue the defendant and his co-participant, the officer shot and injured a customer in the bank. Will the §2B3.1 specific offense characteristic for "bodily injury" apply?

INTRODUCTION TO RELEVANT CONDUCT

No. Neither defendant is involved in a jointly undertaken criminal activity with the police officer. The first step of the three-part analysis is determining the scope of the jointly undertaken criminal activity. If there is no jointly undertaken criminal activity, the three-part analysis is over.

5. Three defendants convicted of a Drug Conspiracy involving 10,000 kg of Marijuana- §2D1.1.

Defendant 1 lives in Minnesota, but owns a marijuana grow operation in California. Defendant 2 lives in California at the grow operation and is responsible for taking care of the plants, watering them, harvesting, etc. Defendant 3 lives in New Orleans and has access to an airplane. He flew to California on several occasions to pick-up the marijuana (total of 5,000 kgs) and took it back to New Orleans to distribute to his people.

What amounts are attributable to each defendant?

Defendant 1 is responsible for the entire 10,000 kgs as he is the “king pin” in charge of the entire operation. Defendant 2 is also responsible for the entire 10,000 kg as he lives at the grow operation and is responsible for caring for all the plants. Defendant 3 is only responsible for 5,000 kg as that is his agreement with defendant 1 who runs the entire operation.

6. Defendants were convicted of Filing False Tax Returns. Applicable guideline is §2T1.1. (Tax Evasion). Defendant 1 steals personal identifying information from a local business. Defendant 2 files the vast majority of the false tax returns. Defendant 1 only files a handful of returns, but they share the return money which exceeds \$100,000.

Is each defendant accountable for the total loss amount?

Yes. They have agreed to participate in a fraudulent tax return scheme together. The acts of defendant 1 stealing personal identifying information are in furtherance of the agreement to participate in a fraudulent tax scheme and certainly reasonably foreseeable in connection with the agreement to participate in the fraudulent tax scheme. Finally, both defendants shared the proceeds of the illegal activity.

7. The defendant is convicted of sale of 1 kg of cocaine on a single occasion

Applicable guideline is §2D1.1 (Drugs)

It is determined that the defendant additionally sold 1 kg of cocaine to the same gang member each week for 40 weeks.

What quantity of drugs will be used to determine the defendant’s base offense level at §2D1.1?

41 kgs. The defendant is only convicted of the single distribution on the single occasion, however the additional 40 kilos will be included through expanded relevant conduct as they are part of the same course of conduct, common scheme or plan. See also §1B1.3(a)(2) and App. Note 5(B). They involve common accomplices, similar modus operandi, regularity, similarity, etc.

INTRODUCTION TO RELEVANT CONDUCT

8. Defendant convicted of Felon in Possession of a Firearm. Applicable guideline is §2K2.1. (Prohibited Transactions involving Firearms).

Several weeks after the offense cited in the indictment, during the execution of a search warrant, officers located seven additional firearms, including two that were stolen and four that had the serial numbers scratched off.

Is the defendant accountable for the firearm in the count of conviction as well as the seven firearms located at his residence?

Yes. Although the defendant was not convicted of the additional firearms that were found during the search warrant, they will be included through expanded relevant conduct as they will meet the definition of same course of conduct, common scheme or plan. Also, note: as two were stolen and four had obliterated serial numbers, that will also impact guideline application as the specific offense characteristic at §2K2.1(b)(4)(B) will apply. There will only be a 4-level increase at this SOC.

9. The defendant was arrested for committing two robberies. The first robbery occurred on June 7, 2019 and the defendant passed a note to the teller stating that the teller would die unless he gave him the money. The defendant did not possess a gun during the robbery. On June 8, 2019, the defendant committed another bank robbery where he possessed a gun. The defendant plead guilty to only the June 7th robbery. The probation officer applied a two-level increase for threat of death under §2B3.1(b)(F), but the government believes the defendant should have received a five-level increase for possession of a gun under §2B3.1(b)(2)(C).

Is the government correct?

No. The guideline for bank robbery (§2B3.1) is not listed as groupable under §3D1.2 and therefore not subjected to “expanded relevant conduct”. You cannot look to the second robbery as same course of conduct, common scheme or plan.