



§1B1.3 - Relevant Conduct Analysis

Principle Two - Acts of Others

Principle Two

The defendant may be accountable for certain acts of others that are in furtherance of the offense of conviction.

The relevant conduct analysis at §1B1.3, answers two questions:

WHO AND WHEN?

WHO committed the act and WHEN did the act occur?

WHO?

Acts of Others | §1B1.3(a)(1)(B)

When involved in a jointly undertaken criminal activity, the defendant will be held accountable for the acts of others that are:

- 1 within the scope of the jointly undertaken criminal activity,
- 2 in furtherance of that criminal activity, and
- 3 reasonably foreseeable in connection with that criminal activity.

WHEN?

Did the relevant behavior occur:



In preparation for that offense?



During the commission of the offense of conviction?



In the course of attempting to avoid detection or responsibility for that offense?

Bright Line Rule

Found in Application Note 3(B) of the relevant conduct guideline: when determining a defendant's scope of jointly undertaken criminal activity, that defendant's relevant conduct does not include the conduct of members of a conspiracy prior to defendant joining the conspiracy.

Example One



The defendant is convicted of one count of armed bank robbery. The applicable guideline is §2B3.1 (Robbery). The defendant and his co-participant agreed to commit robbery of their local bank. While committing the bank robbery, the defendant, acting primarily as a lookout, was not armed. However, his co-defendant brandished a firearm as he demanded the teller empty her drawer. The defendant was a passenger in the getaway vehicle when his co-defendant led law enforcement officers on a high-speed chase. During the getaway, the co-defendant struck another vehicle, causing the driver of that other vehicle to suffer serious bodily injury.

When applying the robbery guideline for this offense, the defendant will be held accountable for the following acts of his co-defendant under §1B1.3.(a)(1)(B): Brandishing a firearm, and Causing serious bodily injury.

The scope of the defendant's jointly undertaken criminal activity was to rob the local bank with his co-participant. The co-defendant's act of brandishing the firearm occurred during the commission of the robbery, was done in furtherance of the robbery, and was reasonably foreseeable, given that they agreed to rob a bank together. The co-defendant's act of leading officers on a high-speed chase was committed to avoid detection or responsibility for the robbery. This act was both in furtherance of, and reasonably foreseeable in connection with the robbery. Therefore, the increase for the serious bodily injury that resulted is attributed to the defendant.

Example Two

The defendant is convicted of one count of conspiracy to commit health care fraud from January 2017 through December 2019. The applicable guideline is §2B1.1(Fraud/Theft). The three-year conspiracy involved numerous fraudulent claims by a health clinic to Medicare for services never provided. The conspiracy included a total of 12 participants, each fully involved with one another in the fraud activity, but only during the period he or she was employed by the clinic. This defendant participated in the conspiracy from January 2019 through December 2019. The defendant also knew about all the fraud conduct that occurred prior to his joining the clinic.



What does the defendant's relevant conduct include?

The defendant's relevant conduct includes the fraudulent acts and resulting losses committed by the defendant and the other participants during the defendant's involvement in the conspiracy. When determining a defendant's scope of jointly undertaken criminal activity, the conduct of other co-conspirators that occurred prior to the defendant joining the conspiracy cannot be included as relevant conduct, even if the defendant knows of the conduct. In this case, the scope of jointly undertaken criminal activity is the entirety of the conspiracy for the 12 months the defendant was involved. The defendant's relevant conduct includes all the acts he committed and the acts of others within the scope of his jointly undertaken criminal activity that were in furtherance of his undertaking and that were reasonably foreseeable.