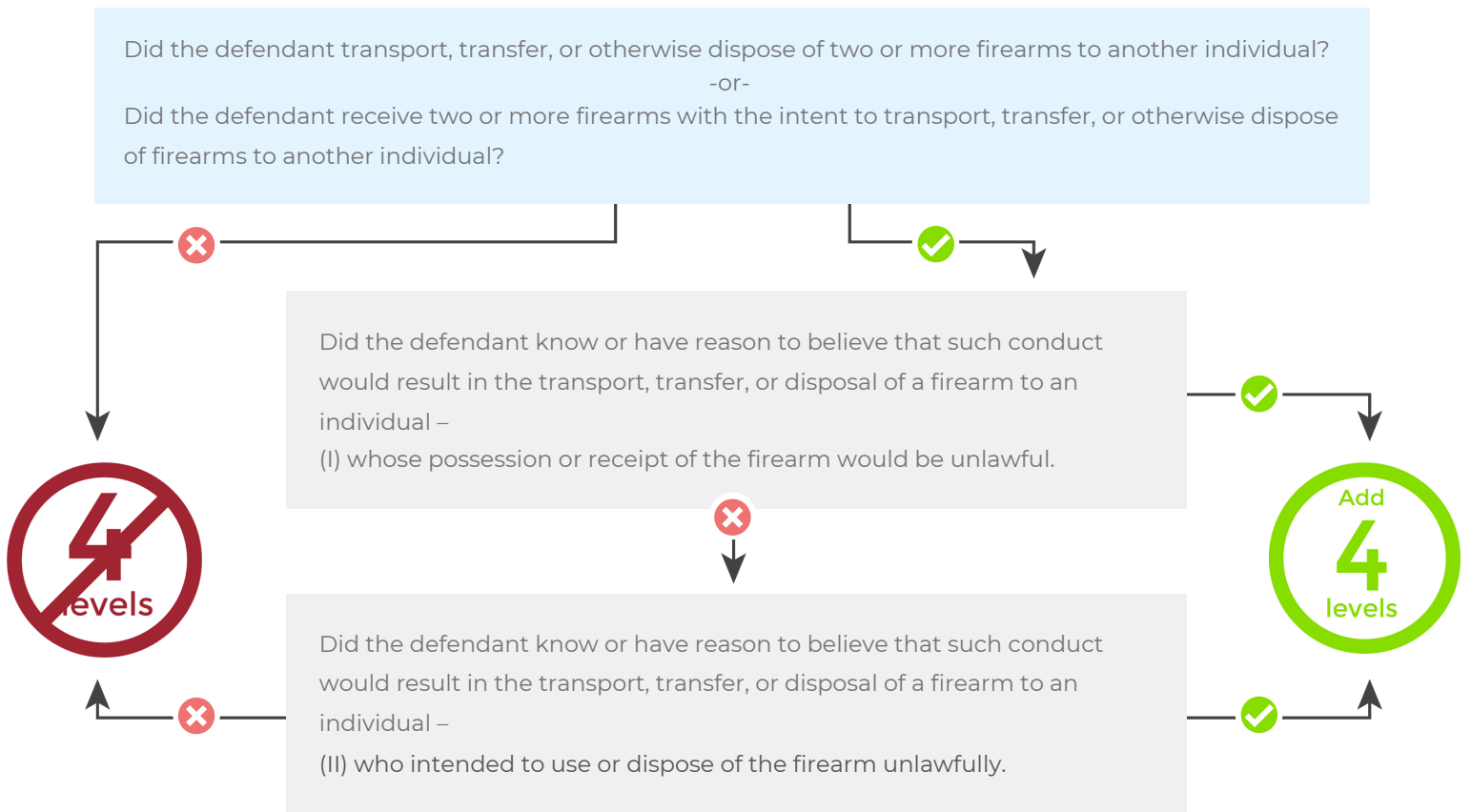




Trafficking in Firearms

Guideline Applicaton - §2K2.1(b)(5)

Under §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition), a defendant's sentence is increased if the defendant trafficked firearms. This one-page primer explains how to apply the four-level enhancement at §2K2.1(b)(5). You must also review Application Note 13 at §2K2.1.



Unlawful Possession or Receipt §2K2.1 Application Note 13(B)

(i) has a prior conviction for a crime of violence, a controlled substance offense, or a misdemeanor crime of domestic violence. *

- or -

(ii) at the time of the offense was under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.

* "Crime of violence" and "controlled substance offense" have the meaning given those terms in §4B1.2 (Definitions of Terms Used in Section 4B1.1).

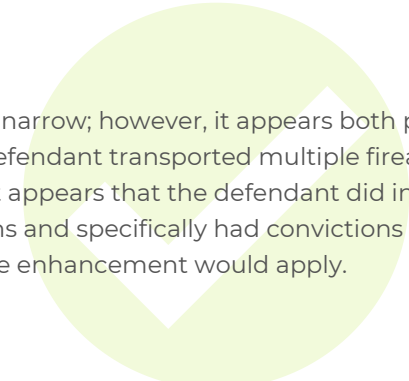
"Misdemeanor crime of domestic violence" has the meaning given that term in 18 U.S.C. § 921(a)(33)(A).



One

Defendant convicted of 18 U.S.C. § 922(a) (6) – Making False Statements in Relation to Acquiring a Firearm. Defendant was stopped at the Canadian border with 34 firearms that she intended to transfer to one individual. She also admitted to buying 180 firearms in the past year for multiple friends, some of whom had done time for felony drug trafficking crimes. She was paid \$100 per firearm. At least two firearms were recovered in Canada. Should the defendant receive the trafficking enhancement under §2K2.1(b)(5)?

Does the SOC apply?

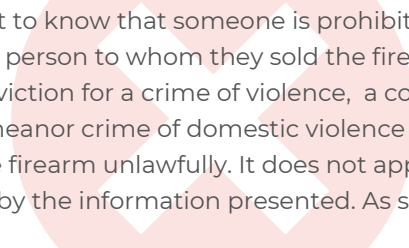


Yes. This SOC is very narrow; however, it appears both prongs have been met. First, it is clear the defendant transported multiple firearms to another individual. Second, it appears that the defendant did in fact know her friends were convicted felons and specifically had convictions for controlled substance offenses. As such, the enhancement would apply.

Two

Defendant convicted of 18 U.S.C. § 922(g) - Felon in Possession. The defendant admitted purchasing firearms and reselling them to others to make money – typically \$50 to \$100 per firearm. On at least one occasion, the person he was buying for, whom he knew was prohibited, accompanied him to the gun store to pick out several specific firearms. Should the defendant receive an enhancement under §2K2.1(b)(5)?

Does the SOC apply?

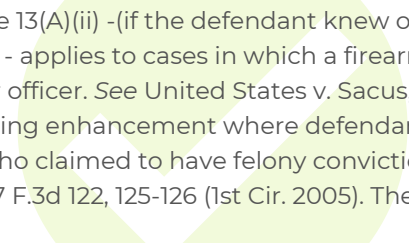


No. It is not sufficient to know that someone is prohibited. The defendant also must know, that the person to whom they sold the firearms, was someone who had a prior conviction for a crime of violence, a controlled substance offense, or a misdemeanor crime of domestic violence or that they intended to use or dispose of the firearm unlawfully. It does not appear either of these prongs are satisfied by the information presented. As such, the enhancement would not apply.

Three

Defendant convicted of 18 U.S.C. § 922(g) - Felon in Possession. Defendant sold numerous firearms to an undercover ATF agent. The ATF agent told the defendant he did time for felony robbery and as a result was a convicted felon and couldn't buy his own firearms. The defendant also said he had friends in a California motorcycle gang who needed them for protection. Should the defendant receive an enhancement under §2K2.1(b)(5)?

Does the SOC apply?



Yes. Application Note 13(A)(ii) -(if the defendant knew or had reason to believe that such conduct...) - applies to cases in which a firearm is sold to an undercover agent or officer. See *United States v. Sacus*, 784 F.3d 1214, 1218 (8th Cir. 2015) (affirming enhancement where defendant sold firearms to undercover agent who claimed to have felony convictions.) See also *United States v. Tavares*, 427 F.3d 122, 125-126 (1st Cir. 2005). The enhancement would apply.