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## **FORTIFY!!TOP!! Crack(1)**

The defendant and three co-defendants were convicted of drug trafficking charges. The Sixth Circuit affirmed the application of 2D1.1(b)(1) for possession of a firearm. When the police entered the home, they found one defendant with a firearm in his hand. The second defendant had a firearm in his hand. The third defendant had two loaded weapons on his person. One of the weapons was on the kitchen counter, the other was on the bathroom counter. Ninth Circuit reverses firearm increase in drug conspiracy conviction. The Ninth Circuit reversed a 2D1.1(b)(1) increase where police discovered a sawed-off shotgun in a bus used to transport drugs, but not in plain view. *U.S. v. Tucker*, 90 F.3d 1145 (9th Cir. 1996). The Ninth Circuit held that the evidence was insufficient to support a finding that the shotgun was present to protect the drugs or facilitate their transportation. *Id.* at 1149. The defendant took a gun into the combination bar/drug store. He put the weapon on the counter, in full view of the bartender. Other than a bullet in the chamber, the weapon was ready to fire. He put several glass vials of crack in the cash register, and then retrieved the gun. He then walked down the street with the gun in hand. Defendant was convicted under 21 U.S.C.A. 841. The Seventh Circuit upheld the 2D1.1(b)(1) enhancement. *U.S. v. Corral-Ibarra*, 23 F.3d 18 (7th Cir. 1994). The 2D1.1(b)(1) enhancement was upheld in *U.S. v. Roach*, 754 F.2d 1401 (6th Cir. 1985). Defendant had been charged with manufacturing and distributing marijuana, but was acquitted of distribution. At sentencing, the judge found that defendant was at least in constructive possession of a substantial amount of marijuana, based on his own statements, in connection with the case. It was also found that a shotgun was readily accessible to the defendant. It was properly found to be an unsafe weapon which the defendant could have used to protect himself. See *U.S. v. Hayes*, 919 F.2d 1262 (7th Cir. 1990).

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## FORTIFYcrack(1)

2d Circuit affirms 2D1.1(b)(1) firearms enhancement despite inadvertent discovery during an illegal search. The defendant was arrested during the execution of an illegal search warrant. Police seized a sawed-off shotgun and cocaine during the search. The trial court, relying on U.S. v. Brown, 14 F.3d 247 (2d Cir. 1994) determined that the 2D1.1(b)(1) enhancement applied. On appeal, the Second Circuit affirmed the district court in U.S. v. Giraldo, 80 F.3d 667 (2d Cir. 1996). The Second Circuit stated that the search was illegal, but the firearm was easily concealed in a ceiling cabinet that contained women clothes. The search warrant was never validly issued or executed. The Second Circuit affirmed the 2D1.1(b)(1) increase, not only because of the firearm, but because of its location. Id. at 671. 4th Circuit upholds 2D1.1(b)(1) because prosecutor provided reliable evidence that defendant knew about presence of firearm and intended to assert dominion and control over it. (284) Defendant was convicted of possession of cocaine with intent to distribute and using a firearm during the drug offense. Defendant had been given a list of firearms present in the house, along with information about where the weapons could be found. In fact, defendant had occupied the bedroom in which the loaded firearm was found. The defendant challenged the 2D1.1(b)(1) enhancement. The Fourth Circuit affirmed the enhancement, finding that defendant knew of the gun's presence and that it was readily available for use. Furthermore, the district court found that defendant had dominion and control over the gun. 5ec8ef588b

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