STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 17, 2006
V	No. 255426 Oakland Circuit Court
PABLO BONILLA, Defendant-Appellant.	LC No. 2003-190700-FC

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession of 650 or more grams of cocaine, MCL 333.7403(2)(a)(i),[1] and possession of metallic knuckles, MCL 750.224(1)(d). The trial court sentenced defendant to life imprisonment for the drug conviction, and one to five years' imprisonment for the possession of metallic knuckles conviction, to be served consecutively. Because we are not persuaded by any of defendant's arguments on appeal, we affirm his convictions and sentences.

I. Sufficiency of the Evidence

Defendant's convictions arise from his alleged involvement in drug trafficking on February 7, 2002 along with two other codefendants, Cory Hudson and Ricardo Raphael Arias.[2] Defendant argues first that the evidence adduced at trial was insufficient to sustain his conviction for possession of 650 or more grams of cocaine. Defendant also argues that the trial court erred by denying his motion for a directed verdict on the original charge of possession with intent to deliver 650 or more grams of cocaine. We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and

[1] Defendant was originally charged with possession with intent to deliver 650 or more grams of a controlled substance, MCL 333.7401(2)(a)(i). MCL 333.7401(2)(a)(i) and MCL 333.7403(2)(a)(i) have since been amended to increase the statutory minimum from 650 grams to 1,000 grams. 2002 PA 665.

[2] Both codefendants appealed their convictions separately. See Docket Nos. 255237 and 255428.

determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514-515. All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

A. Possession of 650 or More Grams of Cocaine

To sustain a conviction for possession of 650 or more grams of cocaine, the prosecution is required to show that (1) the defendant possessed a controlled substance, (2) the substance possessed was cocaine, (3) the defendant knew that the substance possessed was cocaine, and (4) the substance was in a mixture that weighed 650 or more grams. CJI2d 12.5.

Defendant argues that there was no evidence he possessed the cocaine. Possession of a controlled substance may be either actual or constructive, and may be joint as well as exclusive. *Wolfe, supra* at 519-520. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Id.* at 520. "The essential question is whether the defendant had dominion or control over the controlled substance." *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

At trial, the prosecutor advanced the theory that defendant was guilty as a principal or an aider and abettor. A person who aids or abets the commission of a crime may be convicted and punished as if he directly committed the offense. MCL 767.39. "To support a finding that a defendant aided and abetted a crime, the prosecution must show that (1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement." *People v Izarraras-Placante*, 246 Mich App 490, 495-496; 633 NW2d 18 (2001).

"'Aiding and abetting' describes all forms of assistance rendered to the perpetrator of a crime and comprehends all words or deeds that might support, encourage, or incite the commission of a crime." *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) quoting *People v Turner*, 213 Mich App 558, 568-569; 540 NW2d 728 (1995). "The quantum of aid or advice is immaterial as long as it had the effect of inducing the crime." *People v Lawton*, 196 Mich App 341, 352; 492 NW2d 810 (1992). An aider and abettor's state of mind may be inferred from all the facts and circumstances, including a close association between the defendant and the principal, the defendant's participation in the planning or execution of the crime, and evidence of flight after the crime. *Carines, supra* at 758. But a defendant's mere presence at a crime, even with knowledge that the offense is about to be committed, is not enough to make him an aider and abettor. *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999).

Viewed in a light most favorable to the prosecution, the evidence was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant either had constructive

possession of the cocaine or assisted others in possessing the cocaine. Evidence was presented that, during surveillance, the police observed the three defendants arrive at a residence in three separate vehicles. Shortly thereafter, officers observed defendant, and codefendants Arias and Hudson come out of the house, and briefly converse in the street. Thereafter, defendant got into the passenger side of a pickup truck that codefendant Arias was driving. Codefendant Hudson removed a dark jacket from the car that he was previously driving, and walked over to a Taurus. The Taurus and a pickup truck then left simultaneously, with the pickup truck in the lead, and continued to travel from Detroit to Pontiac in tandem for approximately an hour. There was testimony that the Taurus closely followed the pickup truck, including switching lanes only when the pickup truck did so. Additionally, there was testimony that, when the police stopped the Taurus, the pickup truck immediately "crossed three lanes," made a U-turn, slowly drove past where the Taurus was stopped, and then sped away, disregarding traffic laws. A jury could reasonably infer from this evidence that the occupants in the pickup truck were acting in concert with the Taurus, i.e., with the pickup truck as the lead vehicle, as they traveled from Detroit to Pontiac.

And, the evidence showed that, when the police stopped the Taurus, the police found codefendant Hudson sitting on a black jacket covering 916.7 grams of cocaine wrapped in brown packaging tape. Investigators found defendant's fingerprint on the brown packaging tape, along with codefendant Arias' fingerprints. In sum, the prosecutor presented sufficient circumstantial evidence to demonstrate a significant and substantial link between defendant and the cocaine. Even if the cocaine also belonged to others, possession may be joint, *Wolfe, supra*, and, here, defendant was charged as a principal and as an aider and abettor. Although defendant asserts that the evidence linking him to the cocaine was weak, the jury was entitled to accept or reject any of the evidence presented. See *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Also, a prosecutor need not negate every reasonable theory of innocence, but must only prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). The evidence was sufficient to sustain defendant's conviction of possession of 650 or more grams of cocaine.

B. Possession with Intent to Deliver 650 or More Grams of Cocaine

We reject defendant's claim that the trial court erred by denying his motion for a directed verdict on the original charge of possession with intent to deliver 650 or more grams of cocaine. The only distinguishing element between possession of 650 or more grams of cocaine and possession with intent to deliver that amount of cocaine is the additional element of the intent to deliver. *People v Torres (On Remand)*, 222 Mich App 411, 416-417; 564 NW2d 149 (1997); see also *Wolfe, supra* at 516-517. Actual physical delivery of the cocaine is not necessary to prove that a defendant intended to deliver the controlled substance. *Wolfe, supra* at 524; *Fetterley, supra* at 517-518. Rather, intent to deliver may be inferred from the quantity of narcotics in a defendant's possession, from the way those narcotics are packaged, and from other circumstances surrounding the arrest. *Fetterley, supra* at 518.

The evidence supported a reasonable inference that defendant intended to deliver the cocaine. Defendant stipulated that the cocaine weighed 916.7 grams. Pontiac Police Officer Jeremy Pittman, who was qualified as an expert in cocaine trafficking, opined that, given the quantity of cocaine seized, the cocaine was likely being transported for redistribution. The evidence, when viewed in a light most favorable to the prosecution, was sufficient for a rational

trier of fact to conclude that the elements of the crime, including intent to deliver, were proved beyond a reasonable doubt. Consequently, the trial court did not err by denying defendant's motion for a directed verdict on the charge of possession with intent to deliver 650 or more grams of cocaine.

II. Jury Instructions

The trial court did not err when it instructed the jury on the lesser included offense of possession of 650 or more grams of cocaine. Generally, claims of instructional error are reviewed de novo. *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996). "[A] requested instruction on a necessarily included lesser offense is proper if the charged greater offense requires the jury to find a disputed factual element that is not part of the lesser included offense and a rational view of the evidence would support it." *People v Cornell*, 466 Mich 335, 357; 646 NW2d 127 (2002). The prosecutor, as well as the defendant, may request an instruction regarding a lesser included offense. *Torres (On Remand)*, *supra* at 416.

"Possession of more than 650 grams of cocaine has been considered to be a necessarily included lesser offense of possession with intent to deliver that amount of cocaine, because the only distinguishing characteristic is the additional element of the intent to deliver." *Torres (On Remand)*, *supra* at 416-417. As we concluded above, the prosecution presented sufficient evidence for a rational jury to find defendant guilty of possession of 650 or more grams of cocaine beyond a reasonable doubt. The instruction on the lesser offense was supported by a rational view of the evidence. Instruction on the lesser offense was not prohibited. MCL 768.32(2). Indeed, in his brief, defendant himself asserts that "there was no evidence presented at trial to support the intent to deliver element of the crime charged." The trial court did not err by instructing on the lesser offense.

Within this argument, defendant indicates that "neither he nor his counsel were put on notice of the People's intention" "to charge defendant with alternative theories of guilt." A court may not instruct on a lesser offense over the defendant's objection unless the language of the charging document gave the defendant fair notice that he might be charged with the lesser offense. *People v Darden*, 230 Mich App 597, 600-601; 585 NW2d 27 (1998). However, notice is adequate if the lesser offense is a necessarily included offense of the original charge. *People v Usher*, 196 Mich App 228, 232; 492 NW2d 786 (1992), overruled on other grounds in *Perry*, *supra*. Thus, this argument is without merit.[3]

III. Effective Assistance of Counsel

We also reject defendant's related claim that defense counsel was ineffective for failing to object to the trial court instructing the jury on simple possession. Effective assistance of counsel is presumed, and the defendant bears a heavy burden of proving otherwise. *People v*

[3] Contrary to defendant's suggestion, nothing in the record supports the assertion that his conviction was a compromise by the jury. Furthermore, given defendant's defense that he was innocent of any wrongdoing, the lesser offense did not require a different trial strategy or evidence, and it was not a surprise.

Effinger, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing norms and that the representation so prejudiced the defendant that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.*

In light of our determination that the trial court did not err by instructing the jury on the lesser included offense, it follows that counsel's failure to object did not deprive defendant of the effective assistance of counsel. Moreover, during the motion for a new trial, the trial court stated that "e[v]en if [defense counsel] objected [it] still would have given the instruction over his objection." Additionally, although defense counsel did not object, both codefendants' attorneys objected. In sum, because defendant cannot demonstrate that defense counsel's inaction was prejudicial, he cannot establish a claim of ineffective assistance of counsel.

IV. Prosecutorial Misconduct

We also reject defendant's claim that he is entitled to a new trial because the prosecutor presented inadmissible hearsay suggesting that defendant was a drug dealer, shifted the burden of proof, and made an improper civic duty argument. Generally, this Court reviews claims of prosecutorial misconduct to determine whether the defendant was denied a fair and impartial trial. *People v Rodriguez*, 251 Mich App 10, 29-30; 650 NW2d 96 (2002). Here, however, defendant failed to object to some of the prosecutor's conduct below. We review those unpreserved claims for plain error affecting substantial rights. *Carines*, *supra* at 752-753, 763-764. "No error requiring reversal will be found if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction." *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000), abrogated in part on other grounds in *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

A. Inadmissible Hearsay

1. Prosecutor's Conduct

Defendant argues that he is entitled to a new trial because of the prosecutor's use of inadmissible hearsay to make an impermissible argument that the three defendants were drug dealers, thereby garnering a conviction based on speculation. Defendant contends that, beginning with his opening statement, the prosecutor impermissibly suggested that the defendants were drug dealers:

> Now how did this come about? The City of Pontiac has a police department special section, the Narcotics Enforcement Section. And their job is to do virtually nothing but ferret out those that are using and selling and dealing street drugs in the City of Pontiac.
>
> Now leading up to February of the year 2002 they developed some information and they then developed some suspects. People the Narcotics Enforcement Section officers believed were the suppliers of cocaine to mid-level drug dealers in the City of Pontiac.

> The three defendants over here (indicating) . . . are the suspects they developed . . . .
>
> As a consequence of developing the suspects and this information that they were the ones moving kilo levels of cocaine to the City of Pontiac for redistribution, the police set up surveillance activity down in this (indicating) area of southwest Detroit.

The parties apparently discussed the matter in chambers before trial, and, during trial, discussed the matter on the record outside the presence of the jury. The three defendants primarily argued that the evidence was based on hearsay, and prejudicial. The court ruled that "some background has to be presented to the Jury, or otherwise the case doesn't make any sense at all." As requested, the trial court indicated that it would provide a cautionary instruction. During trial, the prosecutor questioned police officers regarding, inter alia, the purpose of the surveillance. When defense counsel objected, the trial court ruled that the officer could testify "as to what he was looking for, a description of a person, period."

Defendant argues that, in closing argument, the prosecutor again resorted to use inadmissible hearsay when he stated:

> I mean, first of all, why were [the police] there in the first place . . .
>
> Now, it's already been belabored that the police had developed some intelligence and they formed some opinions about some suspects that they wanted to look deeper into.

2. Analysis

Although defendant presents this issue solely as a claim of prosecutorial misconduct, the initial inquiry is whether the trial court abused its discretion by allowing the prosecutor to present the alleged inadmissible hearsay. Hearsay, which is a statement other than one made by the declarant while testifying at the trial or hearing offered to prove the truth of the matter asserted, is inadmissible at trial unless there is a specific exception allowing its introduction. See MRE 801, MRE 802, and *People v Ivers*, 459 Mich 320, 331; 587 NW2d 10 (1998) (*Boyle, J. concurring*). Here, the challenged testimony was not offered to prove the truth of the matter asserted, i.e., that the defendants were drug dealers. Rather, the trial court exercised its discretion and overruled the defendants' hearsay objections, and allowed the testimony as "background information" for the purpose of explaining the officers' subsequent actions, e.g., setting up surveillance of defendant's residence and subsequently following the two vehicles. As noted by the prosecutor, "the Jury is entitled to have some context. It just wasn't a bunch of police officers out there just pulling over cars." Because the statements were admitted for the limited purpose of showing their effect on the officers, they did not constitute hearsay.

Defendant argues on appeal that the challenged testimony impermissibly created the inference that defendants were in fact drug dealers and therefore *Crawford, supra,* is implicated. However, defendant objected on the basis of hearsay alone in the trial court. "Because the grounds for objection at trial and the grounds raised on appeal must be the same, an objection on the basis of the Rules of Evidence will not necessarily preserve for appeal a Confrontation

Clause objection." *People v Bauder*, ___ Mich App ___, ___; ___ NW2d ___ (2005), citing *People v Coy*, 258 Mich App 1, 12; 669 NW2d 831 (2003). The *Bauder* Court also counseled that,

> When constitutional error occurs that is preserved, as defendant alleges here, the admission of hearsay in violation of the right of confrontation, a new trial must be ordered unless it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error. *People v Shepherd*, 472 Mich 343, 347; 697 NW2d 144 (2005). On the other hand, ordinary trial error, even if preserved, will merit reversal only when it involves a substantial right, and in the context of the entire trial, it affirmatively appears more probable than not that the error was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). [*Bauder, supra* at ___.]

Applying *Bauder* and *Coy*, since defendant did not properly preserve a Confrontation Clause issue at trial, our review is limited to ordinary evidentiary error. *Id*. Thus, in reviewing the hearsay challenge, we review alleged unpreserved non-Constitutional error for plain error affecting defendant's substantial rights. *Carines*, *supra* at 752-753, 763-764, 774.

After carefully reviewing the exchange at issue, the record reveals that the prosecutor only narrowly questioned Officer Pittman in order to set the stage for Pittman's later interactions with defendants. Pittman revealed that he considered defendants "suspects" in drug activity and accordingly instituted further police action resulting in the accumulation of evidence that ultimately resulted in defendant's arrest and later conviction. Pittman's testimony did not involve the considerations that led him to believe defendants were involved in a criminal enterprise. Contrary to defendant's assertion, one cannot infer from the challenged testimony alone that defendants had committed any crime, but only that defendants were persons of interest in an ongoing investigation. Thus, we cannot conclude that defendant's rights were violated because we agree with the trial court's conclusion that the challenged testimony served only as a backdrop for later police interactions with defendants, was not offered to prove the truth of the matter asserted, and for these reasons cannot be characterized as hearsay.

While we question the propriety of the prosecutor for seeking the identity information from the witness because identity was not an issue of consequence in the case, we point out that even if we were to consider the inference of which defendant complains as hearsay, i.e., that the defendants were drug dealers, the error is harmless beyond a reasonable doubt. None of the three defendants were convicted of possession with intent to deliver 650 or more grams of cocaine. And, defendant's conviction for possession of 650 or more grams of cocaine was supported separately and independently of the challenged testimony. Clearly, defendant's substantial rights were not violated. *Carines*, *supra* at 752-753, 763-764, 774.

Additionally, in its final instructions, the trial court instructed the jury that "there was some testimony that the police were targeting certain individuals. And the mere fact the Defendants may have been suspect [sic] is not evidence of their guilt." The court also instructed the jury that the case should be decided on the basis of the properly admitted evidence. Juries are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Because the trial court allowed the testimony for the stated limited purpose, it was not improper for the prosecutor to refer to the background information during closing argument. We also note that immediately after making the challenged statements in closing argument, the prosecutor stated:

> And of course you know and I'm sure the Court will instruct you that just because that there were suspects, people suspected of moving heavy quantities of cocaine from Detroit into Pontiac, in and of itself is not a crime. Being a suspect does not make you a criminal.
>
> So understand that that's not direct evidence of it. It's not evidence at all of anyone's guilt. But it places in context, "Why were they there in the first place?"

In sum, under the circumstances, the prosecutor's conduct was not improper. Consequently, this claim does not warrant reversal.

B. Shifting the Burden of Proof

Defendant also argues that the prosecutor impermissibly shifted the burden of proof during closing argument when he remarked that the testimony regarding defendant's fingerprint being on the package was "uncontroverted," and that there was "no evidence on this record to refute the testimony of the expert . . . that this is a weight that is only indicative of a redistribution quantity."

Viewed in context, the prosecutor's comments were not improper. A prosecutor may not imply that a defendant must prove something or present a reasonable explanation because such an argument tends to shift the burden of proof. *People v Guenther*, 188 Mich App 174, 180; 469 NW2d 59 (1991). However, it is permissible for a prosecutor to observe that evidence against a defendant is undisputed. *People v Godbold*, 230 Mich App 508, 521; 585 NW2d 13 (1998). Moreover, even if the challenged remarks could be viewed as improper, any prejudice that may have resulted could have been cured by a timely instruction. *Schutte*, *supra* at 721. Indeed, the trial court's instructions that defendant did not have to offer any evidence or prove his innocence, and that the prosecution was required to prove the elements of the crimes beyond a reasonable doubt, were sufficient to cure any possible prejudice. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001). Consequently, this unpreserved claim does not warrant reversal.

C. Civic Duty Argument

We also reject defendant's argument that the prosecutor impermissibly appealed to the jurors' civic duty by engaging in a "speculative argument" regarding the alleged value of the cocaine:

> [Officer Jeremy Pittman] told you that about . . . $100 a gram . . . is what you would pay on the street. So 917 times 100, $91,700 street value.
>
> * * *

> And you heard the testimony also that this stuff gets stepped on, cut; in other words, it's - - put filler material in there to spread the weight so you can sell more of it, again, and again . . .
>
> If we just admit that it gets cuts once, that one of those bricks turns into two, then it's $91,700 times two. It has a minimum street value of $183,000.

Prosecutors should not resort to civic duty arguments that appeal to the fears and prejudices of jurors. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). But viewed in context, the prosecutor's statements were reasonable inferences from the evidence as they related to his theory of the case, *People v Fisher*, 220 Mich App 133, 156; 559 NW2d 318 (1996), which was that defendant possessed the cocaine with the intent to deliver it. During trial, Officer Pittman testified, inter alia, that a gram of cocaine would generally cost $100, and that the profit is derived from "buying in bulk, stepping on the product, adding a cutting agent to the product making your product bigger, and selling it in smaller quantities." He explained "that if you take a gram of cocaine and a half gram or a gram of a cutting agent and mix them together, you now have two grams of cocaine." He further indicated that before cocaine reaches a "person who shows up on the street," "it could have been stepped on five, ten, twenty times by then." A prosecutor is not required to phrase arguments and inferences in the blandest possible terms. *People v Ullah*, 216 Mich App 669, 678; 550 NW2d 568 (1996).

Further, to the extent the prosecutor's remarks could be considered improper, defense counsel objected and, in response, the trial court instructed the jury that "closing arguments are nothing more than the attorney's summation of what they believe the testimony to be. If you find there's no evidence supporting that, just ignore it." This instruction, combined with the trial court's final instructions that the jury should not be influenced by prejudice, that the lawyers' comments are not evidence, and that the case should be decided on the basis of the evidence were sufficient to dispel any possible prejudice. *Long*, *supra*. Consequently, this issue does not warrant reversal.

V. Sentence

We reject defendant's final claim that his life sentence imposed under the former version of MCL 333.7403, constitutes cruel and unusual punishment. Defendant contends that he should be sentenced under the amended version of MCL 333.7403, because (1) he "is the victim of . . . an arbitrary capricious sentencing scheme," and (2) he was convicted and sentenced after the amendment became effective. However, the amended statutory scheme in MCL 333.7403 applies only to offenses committed on or after March 1, 2003. *People v Doxey*, 263 Mich App 115, 122-123; 687 NW2d 360 (2004); *People v Thomas*, 260 Mich App 450, 458-459; 678 NW2d 631 (2004). The offense in this case occurred on February 7, 2002.[4] Consequently,

[4] On the date of the offense, MCL 333.7403(2)(a)(i) prescribed a minimum life sentence for persons found guilty of possession of 650 or more grams of cocaine.

defendant was properly sentenced under the statute in effect at the time of the offense. Defendant is not entitled to resentencing.[5]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio

[5] Defendant suggests that his parolable life sentence constitutes cruel and unusual punishment. Although our Supreme Court has held that imposition of a mandatory sentence of life imprisonment without the possibility of parole for a conviction of simple possession of 650 or more grams of a controlled substance constitutes cruel or unusual punishment, *People v Bullock*, 440 Mich 15, 37-42; 485 NW2d 866 (1992), defendant has not cited any support for his claim that a parolable life term of imprisonment constitutes cruel and usual punishment. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority." *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001) (citation omitted).

Defendant also requests that he be sentenced to a prison term within the sentencing guidelines range of 81 to 135 months as set forth in the sentencing information report. Although the basic information report set forth a sentencing guidelines range of 81 to 135 months, it also checked "LIFE." Further, in the presentence investigation report, the author "recommend[ed] that defendant be sentenced to a life term of incarceration for Count I."