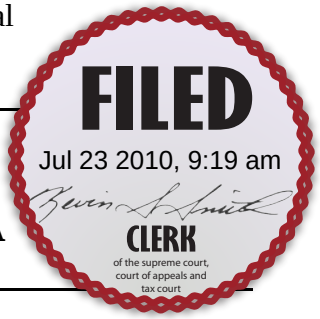
ATTORNEY FOR APPELLANT:

MARCE GONZALEZ, JR.
Dyer, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIGUEZ, II
Deputy Attorney General
Indianapolis, Indiana



IN THE COURT OF APPEALS OF INDIANA

KHALID M. JACKSON-BEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0911-CR-646
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0801-FB-4

July 23, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Khalid M. Jackson-Bey appeals four of his seven convictions, specifically Class B felony robbery, two counts of Class B felony confinement, and Class C felony battery, arguing that the evidence is insufficient to establish his identity and that the trial court erred in ordering one of his sentences in this case be served consecutive to his sixty-five-year sentence in an unrelated case. Finding sufficient evidence to establish his identity and no abuse of discretion in sentencing, we affirm.

Facts and Procedural History

On the morning of January 6, 2008, Jorge Molina was outside his house working on his car when a black man approached him quickly. The man displayed a gun and said he needed money. Specifically, he said "if he didn't get any [money], he would shoot [Molina] right there." 10/5-7/2009 Tr. p. 76. The man then put the gun straight in Molina's face. Molina said he did not have any money on him because his wallet was inside the house, where his wife and daughter were sleeping. The man then held his gun on Molina, pulled on his coat, and led him into the house. Once the man left the house, Molina called 911. Molina identified the man from a photo array and at trial as Jackson-Bey.

Before Molina identified Jackson-Bey from the photo array, on January 8, 2008, Darrel Kilbourne was waiting for the bus outside his East Chicago HUD apartment when he realized he forgot something inside. As Kilbourne started to unlock the door to the apartment building, someone came from behind him and stuck a gun in his ribs,

demanded money, and said, "I will shoot you." 10/5-6/2009 Tr. p. 15. Kilbourne said he did not have any money and gave him the change from his pocket.

Edward Serna, Kilbourne's roommate, heard a commotion outside and proceeded to the door. A black man pushed Kilbourne inside and pointed the gun at Serna's head. The man asked Serna where he lived, and Serna responded upstairs. Once they were inside the apartment, Serna was able to get a good look at the man's face. When the man asked for Serna's money, he said that he did not have any, so the man asked for Kilbourne's money. Still not successful in obtaining any money, the man "pistol whipped" Serna on the side of his head. *Id.* at 36. The man then ordered the men to crawl on the floor and put the gun to the side of Serna's head. At this point, Kilbourne reached into his pocket and said that he had some money after all. However, the man was still upset and threatened to shoot them. Serna begged for his life. The man then ordered Kilbourne and Serna back downstairs and out of the building. Unknown to the man, a police car was in front of the building because someone had called 911.

East Chicago Police Department Officer Hector Rosario was dispatched to the apartment building for a disturbance call. He observed a black male exiting the building. When Officer Rosario summoned the man, he took off running down the alley. Officer Rosario chased him. He lost sight of the man between some houses while additional officers drove to the other side of the block. Eventually, Officer Rosario located the man underneath a front porch and pulled him out. He also located a handgun underneath the porch. Before placing the man inside a patrol car to be transported to the police station, Officer Rosario patted him down and found a bag of marijuana. Serna saw the man at the

patrol car and knew that the officers had found the right guy. Serna later went to the police station and identified Jackson-Bey from a photo array.

The State charged Jackson-Bey with eight offenses based on the January 6 and 8, 2008, incidents. Specifically, the State charged Jackson-Bey with Class B felony robbery (January 6 regarding Molina), Class B felony robbery (January 8 regarding Kilbourne), Class B felony confinement (January 6 regarding Molina), two counts of Class B felony confinement (January 8 regarding Kilbourne and Serna), Class C felony battery (January 8 regarding Serna), Class A misdemeanor resisting law enforcement (January 8), and Class A misdemeanor possession of marijuana (January 8). The trial court bifurcated the charges based on the January 6 and 8 incidents. One jury found Jackson-Bey guilty of the confinement of Molina but not guilty of the robbery of Molina. A separate jury found Jackson-Bey guilty of all the offenses that occurred on January 8, specifically, Class B felony robbery, two counts of Class B felony confinement, Class C felony battery, Class A misdemeanor resisting law enforcement, and Class A misdemeanor possession of marijuana.

In sentencing Jackson-Bey, the trial court pointed out that Jackson-Bey was charged with murder, felony murder, and robbery (which occurred in November 2007) in Cause No. 45G04-0810-MR-8 ("Cause No. 8") after he was in custody for the January 2008 crimes in this case. Sent. Tr. p. 209. Jackson-Bey was then convicted of murder and robbery and sentenced to an aggregate term of sixty-five years in Cause No. 8. *Id.* at 217; *see also Jackson-Bey v. State*, No. 45A03-0908-CR-365 (Ind. Ct. App. Mar. 15, 2010). The court made the following sentencing statement in this case:

> The nature and circumstances of the crime as the jury found were that on January the 8th, 2008, Defendant was in East Chicago, Indiana and had a handgun with him when he approached Darrel Kilbourne who was coming out of his apartment's front door. The jury found defendant pointed a gun at him and demanded money. Edward Serna arrived in the general area, and the jury found that the defendant forced both Serna and Kilbourne to go upstairs at gunpoint and continue to demand money.
>
> During the incident, the defendant hit Serna in the head with a handgun, and money was taken during the event. Ultimately the defendant left the area, and the police were in the general area, attempted to investigate a disturbance call, saw the defendant. The police testified defendant ran and was caught a short time later under a porch with a gun, marijuana, and money.
>
> On January 6th, 2008, the defendant came in contact with Jorge Molina, the jury found, while Jorge Molina was working on his car in East Chicago, Indiana. The defendant had a pistol on him on that date and demanded money from . . . Jorge Molina. The jury found the defendant confined Mr. . . . Molina without his consent. The jury found the defendant not guilty of the robbery during the same event.
>
> After considering the statutory mitigating factors, the Court does not find any mitigating factors. After looking at the aggravating factors, the Court finds that the defendant has a prior battery from 2005, battery by bodily harm and reckless conduct out of Cook County, Illinois where he received withheld judgment, was sentenced to six months of supervision on each count. However, that in and of itself and the fact that his murder case occurred within a few months of these alleged robberies and confinements, under the circumstances of this case, the Court does not find that it would be appropriate to aggravate his sentence under these circumstances.
>
> Therefore, in considering the sentencings on this matter as it relates to all the counts defendant was convicted on with the exception of the misdemeanor, the Court finds the appropriate sentence to be the advisory term.

Sent. Tr. p. 233-34.

The trial court sentenced Jackson-Bey to ten years on each of his four Class B felonies, four years on his Class C felony, and one year on each of his two Class A misdemeanors. The court ordered Jackson-Bey's ten-year sentence for the robbery of Kilbourne to be served consecutive to his sixty-five-year sentence for murder and robbery in Cause No. 8. The court ordered Jackson-Bey's one-year sentences for the Class A

misdemeanors to be served concurrently but the remainder of his sentences to be served consecutively, for an aggregate term of forty-four years in this case. The reason the court proffered for ordering consecutive sentences was because "these are distinct and separate crimes." *Id.* at 235. Jackson-Bey now appeals.

Discussion and Decision

Jackson-Bey raises two issues on appeal. First, he contends that the evidence is insufficient to establish his identity as the assailant for the January 8, 2008, crimes against Kilbourne and Serna, specifically, Class B felony robbery, two counts of Class B felony confinement, and Class C felony battery. Second, he contends that the trial court erred in ordering his ten-year sentence for the robbery of Kilbourne to be served consecutive to his previously-imposed sixty-five-year sentence in Cause No. 8.

I. Sufficiency of the Evidence

Jackson-Bey first contends that the evidence is insufficient to support his convictions relating to the January 8, 2008, crimes because Kilbourne and Serna never identified him in court and Kilbourne could not pick anyone out of a photo array because he could not remember what the assailant looked like. When reviewing the sufficiency of the evidence, appellate courts must only consider the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it "most favorably to the trial court's ruling." *Id.* Appellate courts affirm the conviction unless

"no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* at 146-47 (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). "[T]he evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Id.* (quotation omitted).

Although during trial the State did not ask Serna to make an in-court identification of Jackson-Bey, Serna did identify the photos that he selected from the two photo arrays, and these were then published to the jury. 10/5-6/2009 Tr. p. 45-47. Moreover, circumstantial evidence supports Jackson-Bey's identity as the assailant of the January 8, 2008, crimes. *See Malone v. State*, 547 N.E.2d 1101, 1104 (Ind. Ct. App. 1989) ("[A] conviction may be sustained in whole or part upon circumstantial evidence so long as the evidence is of such probative value that a reasonable inference of guilt beyond a reasonable doubt may be drawn therefrom."), *trans. denied*. That is, Kilbourne and Serna followed Jackson-Bey outside the apartment building and saw him run down the alley after spotting Officer Rosario. Kilbourne pointed to Jackson-Bey and said, "[T]hat is him, that is him." 10/5-6/09 Tr. p. 22. Officer Rosario chased Jackson-Bey and found him hiding underneath a front porch along with a gun. Serna later saw Jackson-Bey next to a police car and knew "[t]hey got the right guy." *Id.* at 42. Although neither Kilbourne nor Serna made in-court identifications of Jackson-Bey, assisting Officer Daniel Ponce testified at trial that Jackson-Bey was the person who the officers found hiding underneath the front porch of the house and then arrested. Officer Ponce's in-court identification, coupled with the victims' testimony and Serna's photo array

identifications, allowed the jury to reasonably infer that Jackson-Bey was indeed the assailant on January 8, 2008. We therefore affirm Jackson-Bey's convictions for Class B felony robbery, two counts of Class B felony confinement, and Class C felony battery.

II. Sentencing

Jackson-Bey next contends that the trial court erred in ordering his ten-year sentence for the robbery of Kilbourne to be served consecutive to his previously-imposed sixty-five-year sentence in Cause No. 8 by not providing an adequate reason.[1] Sentencing decisions, including the imposition of consecutive sentences, are reversed only upon a showing of abuse of discretion. *Hull v. State*, 839 N.E.2d 1250, 1254 (Ind. Ct. App. 2005).

Indiana Code section 35-50-1-2, which governs consecutive sentences, provides in part:

> (c) Except as provided in subsection (d) or (e) [which delineate when consecutive sentences are required], the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:
>
> (1) aggravating circumstances in IC 35-38-1-7.1(a); and
>
> (2) mitigating circumstances in IC 35-38-1-7.1(b);
>
> in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively *even if the sentences are not imposed at the same time.*

(Emphasis added).

Here, the trial court ordered Jackson-Bey's robbery sentence in this case to be served consecutive to his sixty-five-year sentence for murder and robbery in an unrelated

[1] Jackson-Bey makes no challenge to the counts which the trial court ordered to be served consecutively within this cause number.

case because they all were "distinct and separate crimes."[2] A single aggravating circumstance may justify the imposition of consecutive sentences. *Mathews v. State*, 849 N.E.2d 578, 589 (Ind. 2006); *Gilliam v. State*, 901 N.E.2d 72, 74 (Ind. Ct. App. 2009). It is a well established principle that multiple crimes or victims constitutes a valid aggravating circumstance that a trial court may consider in imposing consecutive sentences. *O'Connell v. State*, 742 N.E.2d 943, 952 (Ind. 2001); *see also Gilliam*, 901 N.E.2d at 74 (the presence of multiple victims is an aggravating circumstance). "Consecutive sentences reflect the significance of multiple victims." *Pittman v. State*, 885 N.E.2d 1246, 1259 (Ind. 2008); *see also Frentz v. State*, 875 N.E.2d 453, 472 (Ind. Ct. App. 2007) (stating that consecutive sentencing in cases involving individual offenses against multiple victims prevents a defendant from receiving a "free pass" as to one or more of those victims), *trans. denied*. Here, Jackson-Bey committed murder and robbery against his victim in Cause No. 8. He also committed robbery against Kilbourne. Thus, the imposition of consecutive sentences vindicates the separate harm done to Kilbourne. There is no abuse of discretion.

Affirmed.

NAJAM, J., and BROWN, J., concur.

[2] We acknowledge that the State's brief provides that the trial court did not give a reason why it ordered Jackson-Bey's sentences to be served consecutively. However, we believe that the State misread the trial court's sentencing statement. Our reading of the trial court's sentencing statement is that the court ordered all of the counts (except the misdemeanors) to be served consecutively because of their distinct and separate nature. Even Jackson-Bey acknowledges as much in his brief. *See* Appellant's Br. p. 8 ("Here the trial court imposed consecutive sentences based on the fact that the offenses were 'distinct and separate crimes'.").