Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JAN B. BERG
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JESSICA A. MEEK
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

PATIENCE HALL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0704-CR-357
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0611-FB-225103

December 12, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Patience Hall appeals her convictions for burglary[1] as a Class B felony and theft[2] as a class D felony. Hall raises two issues for appeal, which we restate as:

I. Whether the trial court violated due process by admitting the eyewitness' identification testimony.

II. Whether the evidence was sufficient to support Hall's convictions for burglary and theft.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the night of November 24, 2006, Brandy Roland noticed headlights driving past her living room window and heard glass breaking. She went outside and saw the silhouette of a person standing on the porch of her neighbor, Stephanie Hunt. Roland approached Hunt's apartment. There she saw a vehicle with the back hatch open parked on the grass. An adult female exited Hunt's apartment dragging electrical items out by their cords. Roland noticed that the front window of the apartment was broken. She questioned the female and indicated that she intended to call the police. The female identified the apartment as Hunt's and said she would wait for the police. Roland returned to her apartment to call the police and gave them descriptions of the woman, the vehicle, and a partial license plate number. During this time, the woman left the scene.

Based on Roland's description of the vehicle and the woman, Hunt identified Hall as one of two possible suspects, and gave the police a location where the vehicle might be

---

[1] *See* IC 35-43-2-1.

[2] *See* IC 35-43-4-2.

found. Police discovered Hall and the vehicle at that location. In a one-on-one "show-up" confrontation, Roland identified Hall as the person she saw outside Hunt's apartment. Hall admitted she was at Hunt's apartment but denied breaking and entering the apartment.

Hall was arrested and charged with burglary and theft. After a bench trial, Hall was convicted of both charges. She was sentenced to six years with six years suspended and three years probation with 180 days spent on home detention for the burglary charge and 180 days suspended to probation on the theft charge. The sentences were to run concurrently. She now appeals.

DISCUSSION AND DECISION

I. Due Process

Hall contends that the trial court erred by admitting identification evidence that was obtained through a one-on-one confrontation. We note initially that a trial court has broad discretion in ruling on the admissibility of evidence. *Bradshaw v. State*, 759 N.E.2d 271, 273 (Ind. Ct. App. 2001). Accordingly, we will reverse a trial court's ruling on the admissibility of evidence only when the trial court abused its discretion. *Id.* An abuse of discretion involves a decision that is clearly against the logic and effect of the facts and circumstances before the court. *Huffines v. State*, 739 N.E.2d 1093, 1095 (Ind. Ct. App. 2000), *trans. denied.*

Hall did not object to the introduction of the identification evidence at trial. To preserve an issue regarding the admission of evidence for appeal, the complaining party must have made a contemporaneous objection to the introduction of the evidence at trial.

Oldham v. State, 779 N.E.2d 1162, 1170 (Ind. Ct. App. 2002). Otherwise the error is waived and need not be addressed by the reviewing court unless the error is "fundamental." *Id.* Hall contends that the one-on-one confrontation procedure was so unnecessarily suggestive and so conducive to mistake that it constituted a violation of due process and is, therefore, fundamental error. A fundamental error is "a substantial, blatant violation of basic principles of due process rendering the trial unfair to the defendant." *Taylor v. State*, 717 N.E.2d 90, 93 (Ind. 1999). The error must be so prejudicial to the rights of a defendant as to make a fair trial impossible. *Id*.

Although one-on-one confrontations are inherently suggestive, they are not *per se* improper. *Means v. State*, 807 N.E.2d 776, 786 (Ind. Ct. App. 2004). In this case, Hall admitted to being at the scene of the crime and Roland had sufficient time to view Hall at the time of the crime. Furthermore, the confrontation occurred very soon after the commission of the crime, and Hall did not claim that the police used unduly suggestive procedures. Finally, the presence of the vehicle, which Roland had previously identified at the place where Hall was located, adds additional support for Roland's identification of Hall. In this situation, admission of the identification evidence did not make a fair trial impossible and did not constitute fundamental error.

II. Sufficiency of Evidence

Hall next contends that the evidence was insufficient to prove beyond a reasonable doubt that she broke and entered Hunt's apartment with the intent to commit the felony of theft or that Hall committed theft. In reviewing a challenge to the sufficiency of evidence, this court does not reweigh the evidence or judge the credibility of witnesses.

Tobar v. State, 740 N.E.2d 109, 111 (Ind. 2000). An appellate claim of insufficient evidence will prevail if, considering the probative evidence and reasonable inferences that support the judgment, no reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *Torres v. State*, 673 N.E.2d 472, 473 (Ind. 1996).

A. Burglary

In order to convict Hall of burglary, the State was required to show that Hall broke and entered Hunt's dwelling with the intent to commit a felony. *See* IC 35-43-2-1. A burglary conviction may rest on circumstantial evidence, and such evidence need not exclude every reasonable hypothesis of innocence as long as an inference may reasonably be drawn therefrom which supports the findings of the trier of fact. *Gray v. State*, 797 N.E.2d 333, 335 (Ind. Ct. App. 2003). Hall admitted to being present at the crime scene. Roland heard glass breaking, opened her door, and saw a person standing on Hunt's porch. Roland immediately walked over to Hunt's apartment and saw someone, later identified as Hall, dragging electrical items by their cords out of Hunt's apartment toward a vehicle with its back hatch open. The State's evidence was sufficient to enable the trier of fact to reasonably infer that Hall broke and entered Hunt's apartment.

To establish burglary, the State was also required to prove that Hall had the intent to commit theft when she broke into Hunt's apartment. Although the fact of breaking and entering is not itself sufficient to prove the entry was made with the intent to commit the felony, such intent may be inferred from the subsequent conduct of the defendant inside the premises. *Jewell v. State*, 672 N.E.2d 417, 427 (Ind. Ct. App. 1996). In this case, Hunt stated that her television set was pulled out, speakers had been ripped off the wall,

chairs were thrown all over the place, a computer was thrown on the porch, and that her apartment was not in this condition when she left that day. *Tr*. at 35-36. Roland heard glass breaking and immediately walked over to Hunt's apartment. Roland identified Hall as the individual pulling electronic devices out of Hunt's apartment by their cords. Roland did not see anyone else at Hunt's apartment. The trier of fact could reasonably have inferred that Hall intended to commit theft when she entered Hunt's apartment.

B. Theft

To convict Hall of theft, the State was required to show that she knowingly or intentionally exerted unauthorized control over property of another person, with the intent to deprive the other person of any of its value or use. *See* IC 35-43-4-2. Here, Hall admitted to being at Hunt's apartment during the time in question. Hall was identified as the person Roland witnessed pulling electrical items out of Hunt's apartment towards a vehicle with its rear hatch open. Hunt did not give Hall permission to be inside of her apartment or to take the electrical items. Hunt's apartment had been ransacked and money was taken. From these facts, the trial court could reasonably infer that Hall committed theft. The evidence was sufficient to convict Hall of both burglary and theft.

Affirmed.

ROBB, J., and BARNES, J., concur.