UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2480

September Term, 2015

MARIA ELAINE RIPPEON

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Leahy,

JJ.

PER CURIAM

Filed: September 21, 2016

In the Circuit Court for Frederick County, Maria Elaine Rippeon, appellant, entered a plea of not guilty to the charge of first-degree burglary. The case proceeded to a bench trial, upon an agreed statement of facts. Rippeon was convicted and subsequently filed an appeal, presenting one question for our review: Was the evidence sufficient to support her conviction? Because we conclude that Rippeon has waived this claim, we shall affirm.

The elements of first-degree burglary are: (1) a breaking and; (2) an entry; (3) into someone else's dwelling; (4) with the intent to commit theft or a crime of violence inside the dwelling. Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("CL"), § 6-202. And the nature of the theft charge, in this case, was obtaining or exerting unauthorized control over property, with the intent to deprive the owner of the property. CL § 7-104(a).

After the prosecutor read the agreed upon statement of facts, defense counsel stated, "we agree that the witnesses would testify as [the prosecutor] indicated, *and that, um, makes out the charge of burglary in the first degree*." (Emphasis added). On appeal, Rippeon now takes the opposite position, claiming that the statement of facts did not establish that she took items that belonged to someone else and, therefore, that the evidence was not sufficient to establish that she entered the premises with the intent to commit theft.

By agreeing, before the court, that the evidence contained in the statement of facts was sufficient to convict her of first-degree burglary, Rippeon tacitly conceded, and conveyed to the court, that she possessed the requisite intent to commit theft. Accordingly she has waived her right to now challenge the sufficiency of the evidence on appeal. Parties, as we have previously observed, are not "permitted to 'sandbag' trial judges by

expressly, or even tacitly, agreeing to a proposed procedure and then seeking reversal when the judge employs that procedure; . . . nor will they freely be allowed to assert one position at trial and another, inconsistent position on appeal.'" *Claybourne v. State,* 209 Md. App. 706, 748, n. 28, *cert. denied,* 432 Md. 212 (2013) (citations and internal quotation marks omitted). *See also*; *Chimes v. Michael,* 131 Md. App. 271, 288, (Maryland Rule 8–131(a) "curbs appeals that are inconsistent with the parties' positions at trial."), *cert. denied,* 359 Md. 334 (2000).

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.