

Martel Settles argues there was insufficient evidence to support his convictions of robbery. We affirm.

FACTS¹ AND PROCEDURAL HISTORY

On the afternoon of August 25, 2009, Settles and another man robbed two women in an apartment in South Bend. During the robbery, the two men stood immediately in front of the victims in a room lit by sunlight. At trial both victims identified Settles as one of the men who had robbed them. Settles was convicted after a jury trial of two counts of Class B felony robbery.²

DISCUSSION AND DECISION

In reviewing claims of insufficient evidence, we neither reweigh evidence nor judge witness credibility. *Proffit v. State*, 817 N.E.2d 675, 680 (Ind. Ct. App. 2004), *trans. denied*. We instead consider only the evidence that supports the conviction and the reasonable inferences to be drawn therefrom to determine whether there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* While we seldom reverse for insufficient evidence, in every case where that issue is raised on appeal we have an affirmative duty to make certain that the proof at trial was in fact sufficient to support the judgment beyond a reasonable doubt. *Scruggs v. State*, 883 N.E.2d 189, 190

¹ We remind Settles' counsel that the statement of facts is to be presented in accordance with the standard of review appropriate to the judgment or order being appealed and "shall be in narrative form and shall not be a witness by witness summary of the testimony." Ind. Appellate Rule 46(A)(6)(c).

(Ind. Ct. App. 2008), *trans. denied*.

Settles' argument is premised on his assertion the victims described the robber as wearing jeans studded with gems and a striped polo shirt with a collar, but that when he was arrested several hours later, Settles was wearing a white tank top and his accomplice was wearing jeans studded with gems.

Settles has waived this argument on appeal. To support the single assertion he was wearing a white tank top when he was arrested, Settles directs us to a portion of the transcript spanning ten pages of a police officer's testimony, in which we can find no testimony whatsoever about how Settles was dressed when he was arrested. Later in the transcript, the same officer was asked on cross-examination, "Did you see [Settles] wearing a white T-shirt?" (Tr. at 339), and "Did you see [Settles] wearing white undershirt and tank top?" (*Id.* at 340.) The officer's response to both questions was "I don't recall." (*Id.* at 339, 340.) There appears to be no support in the record for Settles' statement that "[a]t the time of his arrest . . . Mr. Settles was wearing a white tank top, not a red or striped polo, or jeans with gems, as the two witnesses had testified," (Br. of Appellant at 8), and we admonish Settles' counsel to refrain from so mischaracterizing the record.

On appeal, it is a complaining party's duty to direct our attention to the portion of the record that supports its contention. *Vandenburgh v. Vandenburgh*, 916 N.E.2d 723, 729 (Ind. Ct. App. 2009). This is mandated by our appellate rules. *See* Ind. Appellate R. 46(A)(8)(a)

² Ind. Code § 35-42-5-1.

(the argument “shall contain citations to . . . parts of the Record on Appeal relied on . . .”).

The purpose of the rule is to relieve appellate courts of the burden of searching the record and stating a party’s case for him. 916 N.E.2d at 729. Failure to comply with the appellate rules may result in waiver of an issue where, as here, the noncompliance impedes our review.

Id. We accordingly decline Settles’ invitation to search the record to find support for this allegation of error.

Notwithstanding the waiver, there was ample evidence identifying Settles as one of the robbers. Both victims testified to the appearance of the men who robbed them and noted the men were standing directly in front of them in a sunlit room. Both victims identified Settles at trial. In such a situation, a reviewing court “is not at liberty . . . to assess [the witness’s] credibility or to say that her unequivocal testimony was not credulous in light of her somewhat tentative statements.” *Brock v. State*, 423 N.E.2d 302, 304 (Ind. 1981). There, our Indiana Supreme Court stated identifying testimony need not necessarily be unequivocal, *id.*, and noted

the jury had the opportunity to view [the witness’s] demeanor; she was examined extensively by both the state and defense concerning the verity of her photographic and in-court identifications. We cannot disturb the jury’s conclusion that the defendant, whose physical characteristics were substantially in accord with those attributed to the perpetrator, was the person who committed the robbery.

Id. The evidence was sufficient to support Settles’ conviction, and we accordingly affirm.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.

