

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REGINALD CLARENCE HOWARD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69315

FILED

APR 28 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Reginald Clarence Howard appeals from a judgment of conviction, pursuant to a jury verdict, for burglary. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

Howard was arrested for allegedly entering a garage with the intent to commit larceny. Howard asserted his right to represent himself at trial, and the lower court found Howard waived his right to assistance of counsel after conducting a canvass pursuant to *Faretta v. California*, 422 U.S. 806 (1975). A jury found Howard guilty of burglary and the district court sentenced him under the large habitual criminal statute, NRS 207.010, to life with parole eligibility after ten years.¹ On appeal, Howard argues the district court erred by allowing Howard to represent himself at trial, denying his Batson challenge, denying his motion for a mistrial, and denying his motion for a continuance. Howard further argues the evidence was insufficient to support his conviction. We disagree.

¹We do not recount the facts except as necessary to our disposition.

Howard first argues his actions at trial demonstrate he did not knowingly, intelligently, and voluntarily waive his right to counsel. Our law requires that “to exercise the right to self-representation, a criminal defendant must knowingly, intelligently, and voluntarily waive the right to counsel.” *Hooks v. State*, 124 Nev. 48, 53-54, 176 P.3d 1081, 1084 (2008). “We give deference to the district court’s decision to allow the defendant to waive his right to counsel.” *Id.* at 55, 176 P.3d at 1085.

In determining whether a defendant’s waiver is valid, however, the critical question is not how well the defendant performed at trial, but whether the defendant understood the risks of self-representation and competently and intelligently chose to represent himself. *Graves v. State*, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996). To ensure the defendant’s choice to represent himself is valid, the trial court should conduct a *Faretta* canvass to inform the defendant of the risks and determine whether the defendant knowingly, intelligently, and voluntarily waives his right. *Hooks*, 124 Nev. at 54-55, 176 P.3d at 1084-85; *see also* SCR 253(1) (setting forth the guidelines and procedures district courts should follow when a defendant requests self-representation). When reviewing a criminal defendant’s claim that his waiver was not valid, “we must consider the record as a whole, including any canvass by the district court.” *Hooks*, 124 Nev. at 55, 176 P.3d at 1085.

Howard did not include the transcript of his *Faretta* canvass in his appellate record. It is the appellant’s responsibility to provide this court with an adequate appellate record, and we assume missing portions of the record support the district court’s decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

Howard's failure to include this transcript effectively "hamstrings our review" of this issue. *Thomas v. Hardwick*, 126 Nev. 142, 147, 231 P.3d 1111, 1115 (2010) (discussing an appellant's failure to include the voir dire transcript despite arguing error occurred during voir dire). We therefore do not reverse on this basis.

We next consider whether the district court abused its discretion by denying Howard's *Batson*² challenge. When a party challenges a peremptory strike and sets forth a prima facie case of discrimination, the proponent of the strike must provide a race-neutral reason for the strike, after which the district court must determine whether the party opposing the strike established purposeful discrimination. *Guitron v. State*, 131 Nev. ___, ___, 350 P.3d 93, 103-04 (Ct. App. 2015). The proponent's reason for striking a juror "need not be either persuasive or plausible so long as it does not deny equal protection." *Id.* The opponent's burden to show discrimination is "a heavy one," and this court gives the district court's factual findings "great deference." *Id.* at ___, 350 P.3d at 104.

The record supports the district court's decision. The struck jurors both had close family members who were or had been incarcerated. One juror related a negative experience with law enforcement, and the other appeared to avoid revealing his feelings toward the criminal justice system. Although Howard argued the State failed to strike a similarly-situated juror of a different race, the State readily distinguished this third juror by his forthright answers and his more neutral view of the

²*Batson v. Kentucky*, 476 U.S. 79 (1986).

criminal justice system. Therefore, the district court did not abuse its discretion by denying the challenge.

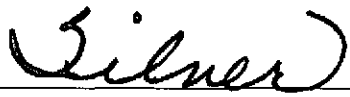
We need not address Howard's third and fourth arguments regarding the district court's decisions to deny his motion for a mistrial and deny his motion for a continuance, as Howard failed to provide this court with relevant authority supporting his particular arguments. *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).³


Finally, Howard's argument that the evidence was insufficient is belied by the record. Evidence is sufficient to support a verdict if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Higgs v. State*, 126 Nev. 1, 11, 222 P.3d 648, 654 (2010) (quoting *Rose v. State*, 123 Nev. 194, 202, 163 P.3d 408, 414 (2007) (internal quotations omitted)). And, "it is the jury's function, not that of the court, to assess the weight of the evidence and determine the credibility of the witnesses." *Rose*, 123 Nev. at 202-03, 163 P.3d at 414 (internal quotations omitted). Here, the prosecution presented evidence from the victim and the responding officers. Although some discrepancies existed between the statements,

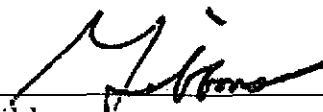
³We note Howard did not set forth facts or arguments demonstrating he was actually prejudiced by the district court's decisions. See *Rose v. State*, 123 Nev. 194, 206, 163 P.3d 408, 416 (2007) (if a defendant fails to show he is prejudiced by the denial of his motion for a continuance, the district court's decision is not an abuse of discretion); *Rudin v. State*, 120 Nev. 121, 144, 86 P.3d 572, 587 (2006) (a mistrial is appropriate where the defendant suffers prejudice that prevents him from receiving a fair trial). Therefore, even were we to address these points, Howard's arguments appear to be without merit.

the evidence was sufficient that a rational juror could find Howard guilty of burglary.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Elizabeth Gonzalez, Chief District Judge
Judge-Department X, Eighth Judicial District Court
Gregory & Waldo
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁴In reviewing the sufficiency of the evidence, this court considers the evidence before the trial court regardless of whether the evidence was erroneously admitted, as this court cannot know what other evidence may have been offered had the contested evidence been excluded. *Stephans v. State*, 127 Nev. 712, 721, 262 P.3d 727, 734 (2011). Thus, to the extent Howard argues this court should not consider certain evidence that may have been erroneously admitted, we do not credit this argument.