

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD RAYMOND TORREZ,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 70944

**FILED**

MAR 23 2017

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

*ORDER OF AFFIRMANCE*

Appellant Richard Raymond Torrez appeals from a judgment of conviction entered pursuant to a jury verdict of robbery and misdemeanor battery. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Torrez claims the district court erred by admitting gang-affiliation evidence at trial because it failed to follow the stringent requirements of *Butler v. State*, 120 Nev. 879, 102 P.3d 71 (2004); it relied upon unpersuasive legal authority to support its ruling;<sup>1</sup> and the victim has since written a letter in which he claims to have provided untruthful testimony.

We review the district court's decision to admit gang-affiliation evidence for abuse of discretion, *id.* at 889, 102 P.3d at 78, and we limit our review to those matters that were presented to and considered by the district court, *see Carson Ready Mix, Inc. v. First Nat'l*

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<sup>1</sup>The district court cited to *Commonweath v. Brewington*, 740 A.2d 247, 256 (Pa. Super. 1999), as persuasive authority for the proposition that gang-affiliation evidence was relevant to show why the victim was providing inconsistent testimony.


*Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) ("We cannot consider matters not properly appearing in the record on appeal.").

The district court conducted a hearing on the State's pretrial motion to admit evidence of Torrez' gang affiliation. The district court found this evidence was relevant because it directly assisted the jury in evaluating the alleged victim's credibility as a witness by understanding why the victim recanted or changed his prior testimony, was proven by clear and convincing evidence, and its probative value was not substantially outweighed by the risk of unfair prejudice. The district court's findings are supported by the record on appeal.

We conclude the district court properly admitted the gang-affiliation evidence under NRS 48.045(2), the district court did not err by considering persuasive authority from another jurisdiction, and the victim's letter was improperly included in the record on appeal because it was not presented to or considered by the district court in deciding the State's motion to admit gang-affiliation evidence. See NRS 48.045(2); *Bigpond v. State*, 128 Nev. 108, 116, 270 P.3d 1244, 1249 (2012); *Butler*, 120 Nev. at 879, 102 P.3d at 71; *Lara v. State*, 120 Nev. 177, 181, 87 P.3d 528, 531 (2004); *Carson Ready Mix*, 97 Nev. at 476, 635 P.2d at 277. Accordingly, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Silver

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Leon Aberasturi, District Judge  
Wayne A. Pederson, P.C.  
Attorney General/Carson City  
Lyon County District Attorney  
Third District Court Clerk