

IN THE SUPREME COURT OF THE STATE OF NEVADA

GIBRAN RICHARDO FIGUEROA-
BELTRAN,
Appellant,
vs.
UNITED STATES OF AMERICA,
Respondent.

No. 76038

FILED

JUL 18 2018

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

*ORDER ACCEPTING CERTIFIED QUESTIONS
AND DIRECTING BRIEFING*

This matter involves legal questions certified to this court under NRAP 5, by the United States Court of Appeals for the Ninth Circuit. Specifically, the Ninth Circuit Court certified the following questions to this court:

Is Nev. Rev. Stat. § 453.337 divisible as to the controlled substance requirement?

Does the decision in *Luqman* conclude that the existence of a controlled substance is a “fact” rather than an “element” of § 453.337, rendering the statute indivisible? If so, can this conclusion be reconciled with *Muller*?

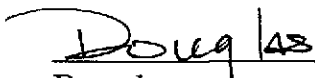
Does the decision in *Muller* conclude that offenses under § 453.337 comprise “distinct offenses requiring separate and different proof,” rendering the statute divisible as to the controlled substance requirement? If so, can this conclusion be reconciled with *Luqman*?

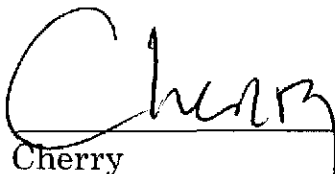
In determining whether to accept a certified question, this court considers three factors: (1) will this court’s answer be determinative of part of the federal case, (2) is there any clearly controlling Nevada precedent, and (3) will the answer help settle important questions of law. *Volvo Cars of N. Am., Inc. v. Ricci*, 122 Nev. 746, 749-51, 137 P.3d 1161, 1163-64 (2006).

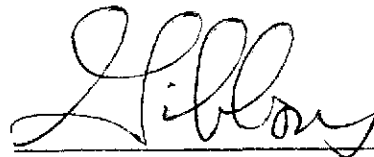
We conclude that those factors are met with respect to the above questions. Accordingly, we accept the certified questions.

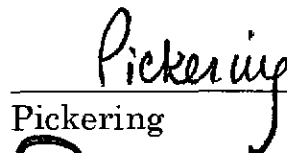
Appellant shall have 30 days from the date of this order to file and serve an opening brief addressing the certified questions. Respondent shall have 30 days from the date the opening brief is served to file and serve an answering brief. Appellant shall then have 20 days from the date the answering brief is served to file and serve any reply brief. In addressing the certified questions, the parties' briefs should address *Andrews v. State*, 134 Nev., Adv. Op. 12, 412 P.3d 37 (2018), which was decided after the parties briefed this matter in federal court. The parties' briefs shall comply with NRAP 28, 28.2, 31, and 32. See NRAP 5(g)(2). The parties may file a joint appendix containing any portions of the record before the Ninth Circuit that are necessary to this court's resolution of the certified question and were not already provided to this court with the Certification Order. See NRAP 5(d), (g)(2).

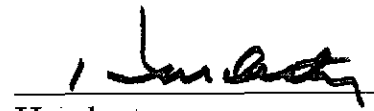
It is so ORDERED.¹

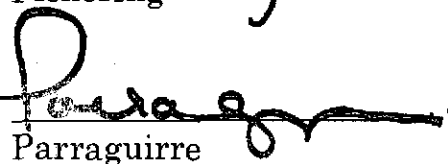

_____, C.J.
Douglas

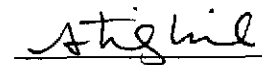

_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Pickering


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Stiglich

¹The clerk of this court shall not charge a filing fee in this case. See NRS 2.250(1)(d)(3).

cc: Federal Public Defender/Las Vegas
United States Attorney, District of Nevada
Clerk, United States Court of Appeals for the Ninth Circuit