

# Supreme Court of Florida

MARY ANTONIA PAGE,  
Petitioner,

vs.

STATE OF FLORIDA,  
Respondent.

No. 88,535

[December 19, 1996]

PER CURIAM.

We have for review a decision certifying the following question to be of great public importance:

DOES THE DECISION IN CONEY V. STATE, 653 So. 2d 1009 (Fla.), cert. denied, --- U.S. ---, 116 S. Ct. 315, 133 L. Ed. 2d 218 (1995), APPLY TO "PIPELINE CASES," THAT IS, THOSE OF SIMILARLY SITUATED DEFENDANTS WHOSE CASES WERE PENDING ON DIRECT REVIEW OR OTHERWISE NOT YET FINAL WHEN THE OPINION WAS RELEASED?

Page v. State, 677 So. 2d 55, 56 (Fla. 1st DCA 1996).<sup>1</sup> We have jurisdiction. Art. V, §

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<sup>1</sup>The court also certified a second question, which was not briefed by either party. We therefore decline to address that question here.

3(b)(4), Fla. Const.

We answered this question in Boyett v. State, No. 81,971 (Fla. Dec. 5, 1996). We acknowledged there that we had incorrectly accepted the State's concession that not allowing Coney to be present at the immediate site of juror challenges was error. In Boyett we wrote, "In Coney, we held for the first time that a defendant has a right under [Florida Rule of Criminal Procedure] 3.180 to be physically present at the immediate site where challenges are exercised." Boyett, slip op. at 5. We therefore receded from that part of Coney where we applied the new definition of "presence" to Coney himself. The result of Coney remained unchanged, however, since we had found the error harmless. We went on to address prospective application:

In Coney, we expressly held that "our ruling today clarifying this issue is prospective only." Unless we explicitly state otherwise, a rule of law which is to be given prospective application does not apply to those cases which have been tried before the rule is announced. Because Boyett had already been tried when Coney issued, Coney does not apply.

Boyett, slip op. at 5 (citations omitted).

Accordingly, we answer the certified question in the negative and approve the decision of the district court of appeal.

It is so ordered.

OVERTON, SHAW, GRIMES, HARDING,  
WELLS and ANSTEAD, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO  
FILE REHEARING MOTION AND, IF  
FILED, DETERMINED.

Application for Review of the Decision of the  
District Court of Appeal - Certified Great  
Public Importance

First District - Case No. 95-454

(Escambia County)

Nancy A. Daniels, Public Defender and  
Michael A. Wasserman, Assistant Public  
Defender, Second Judicial Circuit, Tallahassee,  
Florida,

for Petitioner

Robert A. Butterworth, Attorney General; and  
James W. Rogers, Bureau Chief and Amelia L.  
Beisner, Assistant Attorney General,  
Tallahassee, Florida,

for Respondent