

# Supreme Court of Florida

**RAUL ZAPANTA RAFAEL,**  
Petitioner,

vs.

**STATE OF FLORIDA,**  
Respondent.

No. 88,828

[February 20, 1997]

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?

Rafael v. State, 679 So. 2d 314, 315 (Fla. 1st DCA 1996). We have jurisdiction. Art. V, § 3(b)(4), Fla. Const.

We answered this question in Boyett v. State, 21 Fla. L. Weekly S535 (Fla. Dec. 13, 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, 21 Fla. L. Weekly at S535. 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, 21 Fla. L. Weekly at S535 (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. 94-3887

(Bay 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;  
James W. Rogers, Tallahassee Bureau Chief,  
Criminal Appeals, and Giselle Lylen Rivera,  
Assistant Attorney General, Tallahassee,  
Florida,

for Respondent