

>> PLEASE, RISE.

>> LADIES AND GENTLEMEN, THE
FLORIDA SUPREME COURT.

PLEASE BE SEATED.

>> WE NOW CONSIDER THE THIRD
CASE ON OUR DOCKET, HERNANDEZ V.
STATE OF FLORIDA.

>> MAY IT PLEASE THE COURT,
MANUEL ALVAREZ, ASSISTANT PUBLIC
DEFENDER ON BEHALF OF THE
PETITIONER.

MR. HERNANDEZ'S MURDER TRIAL WAS
TRANSFERRED FROM DADE COUNTY TO
ORANGE COUNTY DUE TO AN
EXTENSIVE, ADVERSE PRETRIAL
PUBLICITY.

OBVIOUSLY, THE ISSUE IS WHICH
APPELLATE COURT HAS JURISDICTION
OVER HIS CONVICTION AND
SENTENCE.

>> IS THERE A CONSTITUTIONAL OR
STATUTORY BASIS FOR WHICH WAY WE
DECIDE THIS CASE?

>> WELL, I THINK THERE'S A
STATUTORY BASIS FOR THE
FOLLOWING REASON: IF WE WERE TO
ADOPT THE STATE'S ANALYSIS, THEN
WE'D BE IN A SITUATION WHERE YOU
HAVE A TRIAL THAT HAPPENED IN
ORANGE COUNTY.

THAT'S AN IRREFUTABLE FACT.

THE THIRD DISTRICT'S
JURISDICTIONAL BOUNDARIES ARE
SET BY THE STATUTE AND SIMPLY
DOES NOT HAVE THE AUTHORITY TO
REVIEW A TRIAL THAT OCCURRED IN

ORANGE COUNTY.

>> WE HAVE A JUDGMENT AND SENTENCE THAT WAS ENTERED IN DADE COUNTY, RIGHT?

>> THE SENTENCE WAS ENTERED IN DADE COUNTY AS WELL AS THE JUDGMENT --

>> WELL, LIKE I SAID, A JUDGMENT AND SENTENCE WHICH ARE, TYPICALLY, WHAT GETS APPEALED.

>> YES.

>> CORRECT?

>> THAT'S CORRECT.

THE PROBLEM IS THAT IF THEY WERE WERE TO ORDER A TRIAL GIVEN THE FACT THE DEFENDANT HAS BEEN PREDETERMINED HE CANNOT RECEIVE A NEW TRIAL IN --

>> WELL, YOU KNOW, I WAS THINKING ABOUT THAT, AND IN FACT, THE SITUATION ABOUT THE PRETRIAL PUBLICITY IF THE THIRD WAS TO OVERTURN THE CONVICTION WOULD BE DETERMINED NOT BASED ON WHAT EXISTED ORIGINALLY, BUT WHAT THE PUBLICITY WOULD BE AT THE PRESENT TIME, AND THERE'S NO GUARANTEE IT WOULD NECESSARILY GO BACK TO ORANGE COUNTY.

MAYBE THERE WOULD BE AN ARGUMENT THAT ORANGE COUNTY NOW HAD TOO MUCH PUBLICITY.

SO THAT DECISION WOULD BE MADE AGAIN BY THE JUDGE SITTING IN THE 11TH CIRCUIT, CORRECT?

>> YES --

>> SO, FOR INSTANCE, EVEN IF IT WAS THE FIFTH DISTRICT OVERTURNED IT, THE DECISION TO -- AS TO WHETHER THE -- WHERE THE NEW TRIAL WOULD BE, WHERE WOULD THAT DECISION BE MADE? IN ORLANDO STILL IN THE NINTH, OR BACK IN THE 11TH WHERE THE RULE SAYS IT GOES BACK TO AFTER THE TRIAL?

>> I'M SORRY.

>> IF IT WAS YOUR ARGUMENT THAT THE THIRD DISTRICT DOESN'T HAVE AUTHORITY, I'M ASKING YOU IF THE FIFTH DISTRICT WAS TO THEN OVERTURN THE CONVICTION AND SENTENCE, WHERE WOULD THE DECISION AS TO WHERE THE TO RETRY IT, WHAT CIRCUIT JUDGE WOULD MAKE THAT DECISION?

>> WELL, IT'S MY BELIEF THAT IF THE FIFTH DCA HAD THE CASE, THAT THE TRIAL WOULD AUTOMATICALLY GO BACK TO ORANGE COUNTY.

AND I UNDERSTAND THE COURT'S ANALYSIS, AND I THINK THIS COURT IS CERTAINLY FREE TO CARVE UP THE ISSUE ANY WAY IT LIKES BECAUSE --

>> WELL, YOU MENTIONED A STATUTE.

>> WELL, THE STATUTE, I THINK THIS COMES DOWN TO HOW WE WANT TO ADDRESS THE POST-VERDICT TRANSFER ORDER FROM ORLANDO TO MIAMI.

THE WAY THAT COLE DID IT --
WHICH IS THE FOURTH DCA CASE --
AND THE WAY STANLEY COUSINS DID
IT -- WHICH IS THE FIFTH DCA
CASE -- THEY, IN EFFECT, SAID,
WELL, WE'RE GOING TO TREAT IT AS
AN ADMINISTRATIVE TRANSFER AND
NOT A SUBSTANTIVE TRANSFER OF
VENUE BECAUSE THE REASONS THEY
GO BACK TO THE ORIGINAL COURT IS
BECAUSE IT'S HIGHLY INCONVENIENT
TO BRING EVERYONE BACK UP TO THE
TRANSFER VENUE FOR A SENTENCING
HEARING WHICH TYPICALLY IN, YOU
KNOW, A NONCAPITAL CASE IS A
PROCEEDING THAT LASTS A FEW
HOURS OR MOST OF THE DAY.

>> LET ME ASK YOU THIS.

THE STATUTE THAT PROVIDES THAT
THE TRIAL JUDGE IN THE ORIGINAL
VENUE SITE GOES TO THE
TRANSFERRED SITE.

AND THAT'S BY STATUTE?

>> ACTUALLY THAT'S BY
ADMINISTRATIVE RULE.

CORRECT.

>> SO WHAT'S THE POINT OF THAT?
BECAUSE WHAT YOU'RE SAYING IS
THAT ONCE -- BASICALLY, IT SEEMS
TO ME YOUR ARGUMENT IS ONCE IT'S
TRANSFERRED, IT IS IN THIS
TRANSFEREE COURT FOR ALL
PURPOSES.

>> CORRECT.

>> SO WHY BRING THE TRIAL JUDGE
FROM THE ORIGINAL VENUE?

>> ONLY -- WELL, THE ONLY REASON THAT'S DONE IS BECAUSE THE COURT STAFF HAS TO TRAVEL TO THE TRANSFEREE VENUE.

>> THEN WHY BRING THE COURT STAFF?

IF WHAT YOU'RE SAYING IS REALLY TRUE, IT SEEMS TO ME THAT YOU WOULD NOT TRANSFER STAFF FROM THE TRANSFEROR COURT TO THE TRANSFEREE COURT.

>> PURSUANT TO THE RULE OF JUDICIAL ADMINISTRATION, THAT'S USUALLY DONE BECAUSE THE ORIGINAL JUDGE ALREADY HAS DEVELOPED A HISTORY WITH THE CASE, AND NORMALLY I GUESS IT'S CONSIDERED TO BE MORE PRACTICAL TO HAVE THAT JUDGE CONTINUE WITH THE CASE.

THE CONCERN, THE CONCERN I HAVE WITH THE ALTERNATIVE RESOLUTION, WHICH IS THE ONE JUSTICE PARIENTE SUGGESTED, IF THE THIRD DISTRICT COURT OF APPEAL WERE TO APPROVE THE APPEAL AND DEEM THAT A NEW TRIAL WAS MANDATED, THEN WE WOULD HAVE TO READDRESS THE ENTIRE ISSUE OF PRETRIAL PUBLICITY, ETC., AND ENGAGE IN THAT ENTIRE LITIGATION WHICH IS OFTEN LENGTHY AND EXPENSIVE --

>> LET ME ASK YOU --

>> BUT THEN IT'S A DIFFERENT ISSUE.

ISN'T WHAT JUSTICE PARIENTE SAID

CORRECT, THAT YOU'VE GOT TO LOOK AT THE CIRCUMSTANCES AT THE TIME THE TRIAL IS GOING TO BE CONDUCTED AND NOT SOME HISTORICAL FACT FROM MANY YEARS AGO TO DETERMINE WHETHER THE STANDARD IS MET TO MOVE THE CASE OUT OF THE PLACE WHERE IT WOULD ORDINARILY BE?

>> WELL, I THINK THAT THAT ENTIRE ISSUE COULD BE AVOIDED IF WE SAY THE FIFTH DCA HAS JURISDICTION --

>> WELL, WELL, TO KIND OF JUMP TO THE BOTTOM LINE HERE, YOU'RE HERE PRIMARILY BECAUSE YOU JUST WANT TO BE SURE THAT THIS CASE, IF IT IS RETRIED, IS TRIED IN ORLANDO?

>> RIGHT.

WELL, WE WANT TO BE SURE, FIRST OF ALL, THAT WE'RE NOT PURSUING AN APPEAL IN THE APPELLATE COURT THAT ULTIMATELY DOESN'T HAVE JURISDICTION.

WE WANT TO MAKE SURE IF THERE'S A RETRIAL, THERE'S NOT GOING TO BE AN ISSUE REGARDING PRETRIAL PUBLICITY.

>> I HAVE ONE CONCERN.

LET'S SAY THAT DEFENSE COUNSEL AFTER A CONVICTION DOES A PREEMPTIVE STRIKE.

BEFORE THE JUDGE ENTERS AN ORDER TRANSFERRING THE CASE BACK, THE JURY COMES BACK GUILTY --

>> UH-HUH.

>> -- AND RIGHT NOW YOU HAVE
YOUR APPEAL READY TO GO.
YOU FILE IT.

ONCE THAT'S DONE, THAT CASE
STAYS AT THE FIFTH DCA, DOESN'T
IT, UNDER THE PRESENT SYSTEM?
BEFORE THE JUDGE HAD AN
OPPORTUNITY TO TRANSFER THE CASE
BACK TO MIAMI, IF YOU FILED
APPEAL, THEN THE CASE STAYS IN
THAT DIRECT.

DOESN'T IT?

>> WELL, I GUESS THAT'S ONE
POSSIBLE INTERPRETATION.

>> I MEAN, THE ONLY REASON IT
WENT BACK TO MIAMI IS BECAUSE
THE JUDGE ENTERED AN ORDER
TRANSFERRING IT BACK TO MIAMI.

>> YEAH.

BUT I WOULD POINT OUT IN COLE
AND COUSINS THE COURT --

>> WELL, ONCE THE NOTICE OF
APPEAL IS FILED, THAT'S
JURISDICTION.

>> THAT'S ASSUMING WE TREAT THE
TRANSFER ORDER AS TRANSFERRING
JURISDICTION TO THE ORIGINAL,
BACK TO THE ORIGINAL COURT.
IF WE TREAT IT AS MERELY AN
ADMINISTRATIVE TRANSFER BECAUSE
IT'S MORE CONVENIENT FOR THE
PARTIES TO DO THE SENTENCING
HEARING IN THE ORIGINAL
LOCATION, THEN --

>> WELL, LET'S ASSUME THAT IT

TRANSFERS JURISDICTION BACK TO
THE TRANSFEREE COURT.

>> WELL, UNDER VASILINDA THEN IT
WOULD SEEM THAT WHICHEVER COURT
HAS JURISDICTION AT THE TIME OF
THE NOTICE OF APPEAL IS FILED
THEN BECOMES THE APPELLATE
COURT.

>> THAT --

>> I'M SORRY.

>> THAT WILL GIVE THE DEFENSE
LAWYER THE ABILITY TO SHOP FOR
THE DISTRICT COURT THEY WANT TO
HEAR THE CASE.

WOULDN'T IT?

I MEAN, IF YOU WANT, IF YOU
TRIED A CASE UP IN ORLANDO AND
THE CLIENT GETS CONVICTED AND
YOU DON'T WANT THE FIFTH DCA TO
HEAR IT, ALL YOU'VE GOT TO DO IS
LET THE JUDGE TRANSFER IT BACK
TO MIAMI AND HAVE THE THIRD
DISTRICT HEAR IT.

>> I THINK THE ONLY CATCH IS
THIS, GENERALLY SPEAKING, A
NOTICE OF APPEAL ISN'T TIMELY
FILED UNTIL THE INSIDE OF --
[INAUDIBLE]

WELL, IT'S A PREMATURE NOTICE,
AND IT REALLY DIDN'T BECOME
MATURE OR TIMELY UNTIL THE
DEFENDANT WAS SENTENCED, SO,
THEREFORE, IT'S WORDS.

IT'S WHERE THE JURISDICTION
EXISTED AT THE TIME OF
SENTENCING THAT SHOULD BE

DETERMINED, SO I GUESS THAT
WOULD BE ANOTHER POINT ON
APPEAL.

OUR POSITION IS THAT -- AND,
AGAIN, THIS COURT HAS NUMEROUS
OPTIONS.

YES, THIS COURT COULD SAY, FOR
EXAMPLE, THAT WE'RE GOING TO
TREAT THE TRANSFER ORDER BACK TO
MIAMI AS A SUBSTANTIVE TRANSFER
OF VENUE AND, THEREFORE, THE
THIRD DISTRICT COURT OF APPEAL
KEEPS THE APPEAL.

OR THE COURT COULD SAY -- AS, IN
EFFECT, COLE DID AND STANLEY
COUSINS -- WE'RE GOING TO TREAT
IT MERELY AS AN ADMINISTRATIVE
TRANSFER, AND IT'S GOING TO BE
WHERE THE TRIAL ACTUALLY
OCCURRED, THE APPELLATE
JURISDICTION VESTS.

IT'S OUR VIEW THAT THE PROBLEM
WITH THE TREATING THE THIRD AS
THE COURT OF APPEAL IS THAT THE
FACT REMAINS THAT YOU HAVE A
TRIAL THAT HAPPENED IN ORANGE
COUNTY, AND MOREOVER, IF THE
THIRD WERE TO REVERSE, I THINK
WE WOULD BE LITIGATING AN ISSUE
THAT'S A QUITE EXTENSIVE ISSUE
TO RELITIGATE WHICH HAS ALREADY
BEEN DETERMINED, AND NOBODY'S --
>> YOU SEE, BUT THERE'S -- THE
THIRD PART.

I WAS TRYING TO WONDER WHAT WAS
IT THAT, YOU KNOW, WHAT WAS THE

DEFENDANT TRYING TO FIGURE OUT.
BECAUSE YOU DID HAVE TO FILE THE
NOTICE IN THE 11TH CIRCUIT, YOU
KNOW?

SO YOU DIDN'T FILE THE NOTICE IN
THE NINTH CIRCUIT, SO YOU
UNDERSTOOD THE NOTICE FOR APPEAL
HAD TO BE FILED IN THE 11TH
CIRCUIT, CORRECT?

>> WELL, IN ALL CANDOR, JUDGE,
WE SIMPLY DIDN'T FIGURE IT OUT
UNTIL AFTER THE --

>> OKAY.

SO YOU'RE SAYING THAT
SOMEBODY -- YOU'D BE A LITTLE
CONCERNED, I WOULD THINK, THAT
AFTER IT'D GOTTEN TRANSFERRED
BACK AND THE FINAL JUDGMENT IS
ENTERED AND IT SAYS MIAMI,
FLORIDA, THAT IF YOU WENT AHEAD
AND FILED THE NOTICE OF APPEAL
IN ORLANDO, THAT YOU MIGHT HAVE
A PROBLEM JURISDICTIONALLY WITH
THE TIME.

SO I -- ARE YOU -- LET ME ASK
YOU THAT QUESTION.

ARE YOU SAYING THAT WHEN IT GETS
TRANSFERRED BACK, THAT WHAT YOUR
OFFICE SHOULD HAVE DONE WAS
STILL TO HAVE FILED IT, SHOULD
HAVE FILED IT IN THE NINTH
CIRCUIT?

>> WELL, THIS IS THE PROBLEM.
OUR OFFICE DOESN'T HAVE THE
AUTHORITY TO REPRESENT A CLIENT
WHO'S BEEN CONVICTED IN THE

NINTH CIRCUIT.

SO IT PRESENTS ALL SORTS OF PROBLEMS FOR US.

UNFORTUNATELY --

>> BUT WHO IS THE -- THAT'S A VERY INTERESTING THING.

SO THE PUBLIC DEFENDER, THEN, DOES NOT TRAVEL UP TO ORLANDO WITH THE CASE?

>> FOR TRIAL WE WOULD, BUT NOT NECESSARILY FOR APPEAL BECAUSE IF THE APPEAL'S GOING TO BE IN THE FIFTH --

>> SO, OKAY, SO I'M THINKING FROM AN ADMINISTRATION OF JUSTICE POINT OF VIEW THAT THESE CASES ARE LIKE CASES WHERE THERE'S ACTUALLY A TRANSFER BECAUSE THE VENUE WAS IMPROPER. BECAUSE THERE IT'S PRETTY CLEAR IT DOESN'T COME BACK.

BUT BECAUSE THE PRETRIAL -- THIS IS ONLY -- THESE CASES ARE ONLY DEALING WITH A SUBSET WHICH ARE THE PRETRIAL PUBLICITY CASES THAT PRIMARILY OCCUR IN CRIMINAL CASES.

>> YES.

>> CORRECT?

SO YOU'RE TELLING THIS COURT WE CAN MAKE, CAN RENDER A POLICY DECISION BASED ON WHAT IS BEST FOR THE ADMINISTRATION OF JUSTICE?

>> YES, YOUR HONOR.

>> ALL RIGHT.

NOW, WITH THAT WHAT I UNDERSTAND
YOU SAYING IS THAT YOU WOULD
WANT TO KEEP THE TRIAL IN
ORLANDO AND NOT ALLOW THE STATE
A CHANCE TO SAY IT SHOULD GO
BACK TO MIAMI-DADE.

BUT THAT'S NOT, AGAIN, I THINK
THAT EVEN IN ACCORDANCE WITH THE
LAW A DETERMINATION WILL BE MADE
AT THE TIME OF A RETRIAL WHETHER
THERE IS ANOTHER APPROPRIATE
VENUE, OR IT SHOULD STAY IN
MIAMI-DADE.

I DON'T SEE HOW YOU AVOID THAT
DECISION JUST BECAUSE IT WOULD
STAY UP IN THE FIFTH DISTRICT.

>> WELL --

>> AND BEFORE APPEAL.

>> I HAVE, LET ME VOICE MY
CONCERN.

FIRST OF ALL, THE FACT IT
HAPPENED IN ORANGE COUNTY, I
THINK, IS UNCHANGEABLE SIMPLY
BECAUSE THERE WAS A
POSTCONVICTION OR A POSTVERDICT
TRANSFER.

I SO I THINK THERE'S AN ISSUE
THAT NEEDS TO BE CLARIFIED IN
TERMS OF HOW, THEN, DOES THE
JURISDICTION OF THE THIRD
OPERATE IN THAT SITUATION?

>> WELL, THAT'S WHAT WE'RE HERE
TO CLARIFY THAT.

>> SECONDLY, IF WE, IF WE WERE
TO RETRY THE CASE IN ORANGE
COUNTY, THERE WOULD BE NO

PRETRIAL PUBLICITY ISSUE.

>> BUT THAT'S WHERE THE FLAW IS
BECAUSE I DON'T THINK THAT
JUST, EVEN IN THE CASE THAT IS
TRIED IN DADE COUNTY AND IT
GOES BACK TO FOR A RETRIAL, YOU
CAN MAKE A NEW ARGUMENT THAT
NOW THERE'S MORE PRETRIAL
PUBLICITY AND RENEW YOUR MOTION
TO HAVE IT HEARD ELSEWHERE,
CAN'T YOU?

>> ONE CAN ALWAYS FILE A NEW
MOTION FOR CHANGE OF VENUE.

>> WE'VE SEEN THAT IN DEATH
CASES.

SO FROM THE POINT OF VIEW OF
YOUR CLIENT YOU'VE GOT YOUR
PUBLIC DEFENDER'S OFFICE
REPRESENTING THIS DEFENDANT.
YOU'RE IN THE SAME OFFICE, EVEN
THOUGH --

>> WE, HE HAD PRIVATE COUNSEL.

>> IN A NORMAL SITUATION.

>> RIGHT.

>> TO HAVE THE SAME OFFICE BE
ABLE TO REPRESENT THE DEFENDANT
ON APPEAL SEEMS LIKE A BETTER
THING FOR THE DEFENDANT IN MOST
CASES.

IT'S THE, IT'S THE SAME
ATTORNEY GENERAL, GOES FROM THE
STATE ATTORNEY TO THE ATTORNEY
GENERAL IN THAT DISTRICT, NOT
TO A DIFFERENT ONE AND IT GOES
BACK FOR SENTENCING.

SO ANY SENTENCING ERROR IN THE

FUTURE WE WOULD AGREE WOULD
HAVE TO BE FILED IN THE 11th
CIRCUIT?

>> UNDER, AGAIN, IT DEPENDS HOW
YOU TREAT THE TRANSFER ORDER.
IF YOU TREAT IT AS A
SUBSTANTIVE TRANSFER, YES.

>> ARE YOU SAYING THAT YOU
WOULD TELL YOUR CLIENT FOR
POST-CONVICTION PURPOSES THEY
HAVE TO FILE IT UP IN THE NINTH
CIRCUIT AND THAT THE JUDGE THEN
WHO TRIED THE CASE THEN IN THE
11th WOULD HAVE TO COME UP TO
THE NINTH CIRCUIT FOR ANYTHING
TO DO WITH POST-CONVICTION
ISSUES?

>> AGAIN I DON'T THINK IT IS A
MATTER OF GEOGRAPHICALLY MOVING
THE JUDGE AROUND.

FOR ADMINISTRATIVE PURPOSES
WE'LL TREAT THE JUDGE, NOT
FORCE HIM TO TRAVEL TO ORLANDO
BUT WE'LL TREAT HIM AS A NINTH
CIRCUIT JUDGE FOR PURPOSES OF
LIT GATING LET'S SAY A
POST-TRIAL, POST-CONVICTION
MOTION.

OUR CONCERN AND WHAT WE'RE
SEEKING CLARITY, THERE IS THE
LANGUAGE IN VASILINDA TALKS
ABOUT WHEN THE CASE IS
CONCLUDED.

AND COLE AND STANEK COUSINS
SEEMS THE FIFTH DCA HAS
APPELLATE JURISDICTION.

>> SO YOU WANT CLARITY.
BUT DOES THE DEFENDANT HAVE ANY
OTHER POLICY REASON THAT IT
WOULD MAKE SENSE FOR THE FIFTH
DISTRICT TO HANDLE THIS CASE
VERSUS THE THIRD DISTRICT?

>> NO, I DON'T THINK THE
DEFENDANT HAS A COMPELLING
INTEREST IN EITHER HAVING THE
FIFTH OR THE THIRD.

>> BECAUSE I COULD SEE A
SITUATION WHERE THE LAW IS
DIFFERENT IN THE TWO DISTRICTS
AS ON A CRITICAL ISSUE
AFFECTING A DEFENDANT.

>> THAT'S, AS FAR AS I KNOW
THAT'S NOT THE CASE HERE.
AGAIN, OUR CONCERN IS THAT WE
WANT TO MAKE SURE THAT IF THE
THIRD HAS JURISDICTION, THEN WE
HANDLE THE APPEAL AND WE MOVE
FORWARD.

WE DIDN'T WANT TO PROCEED WITH
AN APPEAL AND LATER FIND OUT IT
WAS A NULLITY BECAUSE IT TURNS
OUT THE APPELLATE COURT DIDN'T
HAVE JURISDICTION TO BEGIN
WITH.

THE OTHER ISSUE, ALBEIT,
THEORETICALLY ONE CAN MOVE FOR
CHANGE OF VENUE BASED ON
ADVERSE PUBLICITY.

THERE IS NO INDICATION OF THAT
HERE.

BUT IF IT WENT BACK TO THE
THIRD, IF IT WENT BACK TO THE

11th CIRCUIT CERTAINLY THAT
WOULD PROBABLY BE AN ISSUE AND
YOU WOULD HAVE TO RELITIGATE
THAT ENTIRE ISSUE AGAIN AND
THAT IS GENERALLY SPEAKING
FAIRLY EXTENSIVE LITIGATION.
YOU HAVE TO ENGAGE IN
PROTRACTED ATTEMPTS TO PICK A
JURY BEFORE YOU EVEN GET TO THE
QUESTION OF CHANGING VENUE.
UNLESS THE COURT HAS ANY
QUESTIONS I WILL YIELD THE
PODIUM.

>> THANK YOU.

>> MAY IT PLEASE THE COURT,
RICHARD POLIN ON BEHALF OF THE
STATE.

THE STATE BELIEVES THAT THE
CONTROLLING PRINCIPLES WERE SET
FORTH BY THIS COURT IN THE
VASILINDA DECISION AND THIS
CASE CAN COMPLETELY BE VIEWED
IN THOSE TERPS AND THAT THE
THIRD DISTRICT REACHED THE
RIGHT CONCLUSION ON THE BASIS
OF VASILINDA AS THE CASE
CLEARLY CONCLUDED IN MIAMI
AFTER A RETRANSFER OF VENUE
BACK TO MIAMI.

THAT'S WHERE THE SENTENCING
PROCEEDINGS WERE.

THAT IS WHERE THE JUDGEMENT OF
CONVICTION WAS FILED.

MOTION FOR NEW TRIAL, MOTION TO
REDUCE THE DEGREE OF THE DEGREE
OF THE VERDICT, ALL OF THAT WAS

DONE IN MIAMI AFTER THE TRANSFER BACK TO MIAMI AND THEREFORE THE CASE PROPERLY CONCLUDED IN MIAMI AND IT IS THE SIMPLE WAY OF LOOKING AT THE CASE AND VIEWING IT AND THE THIRD DISTRICT CAME TO THE RIGHT CONCLUSION.

>> WHAT ABOUT THIS THING, THIS HYPOTHETICAL, DID NOT OCCUR IN THIS CASE BUT DURING THE TRIAL THERE IS AN EVIDENTIARY ISSUE AND THE TRIAL JUDGE IS ASKED TO RULE A CERTAIN WAY AND AT THAT PARTICULAR POINT IN TIME THE THIRD AND THE FIFTH ARE, ARE IN CONFLICT ON THE ISSUE?

THE 11th CIRCUIT JUDGE SITTING IN THE NINTH CIRCUIT, WHAT CASE PRECEDENT DOES THE THAT JUDGE HAVE TO FOLLOW?

>> IF, AT THE TIME OF TRIAL THE EVIDENTIARY RULING IS BEING MADE IN THE CASE, WHICHEVER JUDICIAL CIRCUIT AT THAT TIME IS GOING TO BE GOVERNED BY THE DISTRICT COURT OF APPEAL FOR THAT TERRITORY.

>> SO IF IT'S A SITUATION, THE THIRD THEORETICALLY COULD BE IN A SITUATION SAYING ALTHOUGH THE TRIAL JUDGE WOULD HAVE ERRED UNDER OUR LAW AT THE TIME, THE JUDGE DIDN'T ERR BECAUSE THE FIFTH DISTRICT HAD A DIFFERENT RULE?

THAT IS HOW THEY WOULD HAVE TO
LOOK AT IT?

>> I --

>> I'M TRYING TO THINK OF
ANYTHING THAT WOULD BE A
FACTOR AND WHAT IS NOT PRACTICAL
FOR THE ADMINISTRATION OF
JUSTICE?

THE RULE TO ME MAKES SENSE.
GOES BACK TO THE THIRD AND GOES
UP THERE BUT --

>> I GUESS AS UNUSUAL THAT
HYPOTHETICAL WAS TO THE EXTENT
THAT --

>> IT IS NOT THAT UNUSUAL THAT
APPELLATE COURTS DIFFER ON A
RULE OF LAW.

>> I THINK, I DON'T THINK IT
WOULD REACH THAT POINT.
I THINK IT WOULD PROBABLY BE ON
A SIGNIFICANT PIECE OF EVIDENCE
THAT THE ATTORNEYS WOULD
FORESEE THE POSSIBILITY BEFORE
THE CASE WAS EVEN TRANSFERRED
OUT OF MIAMI IN THE FIRST
PLACE.

AND AS A RESULT OF THAT THEY
WOULD PROBABLY DEBATE BETWEEN
THEMSELVES WHETHER THAT WAS A
FACTOR WHERE THE CASE SHOULD
GO, NOT JUST TO THE
DEMOGRAPHICS OF TRANSFEREE
JURISDICTION AND PERHAPS A
SOLOMON-LIKE TRIAL JUDGE SAY WE
SEND IT TO CIRCUIT COURT WHERE
THE DISTRICT COURT OF APPEAL

HAS NOT RULED ONE WAY OR THE OTHER AND IT WOULD BE A FREE GAME FOR EVERYONE AND GET RESOLVED BY A NEW DISTRICT COURT OF APPEAL.

>> AS YOU SAID THAT I REALIZE THERE IS ANOTHER ISSUE HERE. MANY OF THESE CASES THERE IS EXTENSIVE PRETRIAL MOTIONS GOING ON.

SO IN ANY SITUATION, A DISTRICT COURT, A DISTRICT COURT IN ONE OF THESE CASES IS GOING TO BE RULING ON ISSUES THAT MAY NOT HAVE HAPPENED IN THEIR CIRCUIT, RIGHT?

IN THIS CASE IT COULD BE ALL THE PRETRIAL ISSUES AND THEN THE POST-TRIAL ISSUES OR THE THIRD DISTRICT IS RULING ON THE TRIAL.

SO THERE'S NEVER GOING TO BE A PARODY OF WHEN YOU HAVE THESE VENUE CASES?

>> TRUE. AND CONSISTENT WITH THAT, NO MATTER HOW MUCH ANYONE WOULD LIKE TO TRY AND DRAW A LINE THAT IS GOING TO BE A BRIGHT LINE THAT IS GOING TO REASONABLY, FAIRLY COVER EVERY SINGLE SITUATION, IT IS JUST NOT GOING TO BE POSSIBLE BECAUSE THERE ARE SO MANY HYPOTHETICAL SCENARIOS WITH CROSSOVERS BETWEEN RULINGS FROM

ONE TRIAL COURT OR THE OTHER
GOING TO THIS DISTRICT COURT OF
APPEAL OR THAT ONE WHERE
THERE'S A MISMATCH BETWEEN
THEM.

IT'S JUST IMPOSSIBLE TO AVOID
THOSE SITUATIONS, NO MATTER, NO
MATTER HOW MUCH YOU TRY.

I THINK, YOUR HONOR, I ALSO
MADE A VALID POINT PREVIOUSLY
WHEN YOU SAID THAT WE ARE
TALKING ABOUT A SUBSET OF VENUE
CASES BECAUSE THERE ARE OTHER,
OTHER VENUE TRANSFERS WHERE
THERE IS NOT GOING TO BE A
REASON TO TRANSFER THE CASE
BACK.

PERHAPS THE JUDICIARY IN THE
ORIGINATING CIRCUIT HAS A
CONFLICT OF INTEREST WHICH IS
NOT GOING TO BE RESOLVED BY
MERELY CONDUCTING THE TRIAL IN
THE NEXT VENUE.

SO IT IS GOING TO REMAIN THERE
FOR ALL PURPOSES.

BUT WHERE THE TRANSFER IS
BECAUSE OF PRETRIAL PUBLICITY,
THE ONLY INTEREST THAT THE
DEFENDANT HAS AT THAT POINT IN
TIME IS GETTING A FAIR TRIAL IN
A FAIR CIRCUIT WHERE YOU CAN
GET A JURY FROM AN UNTAINTED
POOL.

THAT'S EXACTLY WHAT THE
DEFENDANT GOT IN THIS CASE AND
EVERY PRACTICAL AND POLICY

REASON FOR COMMITTING THE CASE TO RETURN TO THE ORIGINATING CIRCUIT EXISTS AFTER THAT HAS BEEN ACCOMPLISHED.

>> DO YOU AGREE WITH THAT, THE IDEA THAT IF THERE'S A NEW TRIAL ORDERED IN ANY CASE, THAT THE ISSUE OF PRETRIAL PUBLICITY IS LOOKED AT A TIME, NOT RETROSPECTIVELY.

>> ABSOLUTELY.

THERE IS NO MANDATE THAT THE CASE ON REMAND IF THERE WOULD BE A REVERSAL WOULD EVEN BE TRY TRIED IN ORANGE COUNTY.

THERE WAS A 2 1/2 WEEK TRIAL IN MAJOR MURDER CASE A TEENAGE DEFENDANT KILLED A TEENAGE FRIEND IN A MIDDLE SCHOOL.

IT UNDOUBTEDLY RECEIVED EXTENSIVE PUBLICITY WHEN IT WAS BEING TRIED THERE AND PERHAPS THE PRETRIAL PUBLICITY PROBLEMS WILL TAINT ORANGE COUNTY A YEAR OR TWO IF THERE IS REVERSAL AND REMAND FOR RETRIAL.

THE SAME PRESIDING JUDGE GOES WITH THE CASE BACK AND FORTH IS THE SAME JUDGE, WHETHER DECIDING THE VENUE QUESTION SITTING IN MIAMI OR IN ORLANDO BUT IT IS GOING TO BE THE SAME QUESTION WHERE WILL WE CONDUCT THE NEXT TRIAL?

IF THE THIRD DISTRICT WERE TO GO AHEAD WITH THE APPEAL AND IF

THEY WERE TO REVERSE IT FOR
RETRIAL, THEY WOULDN'T BE
SAYING THAT THE TRIAL GOES HERE
OR THERE THEY WOULD JUST BE
SAYING THAT TO REVERSE AND
REMAND IT TO THE TRIAL COURT
FOR FURTHER PROCEEDINGS AND THE
TRIAL COURT WILL THEN PICK IT
UP AND DETERMINE WHERE THE
TRIAL IS GOING TO --

>> IF WE WERE TO DRAFT THE
BRIGHT-LINE RULE, HAVING BEEN A
TRIAL JUDGE, I LIKE THIS
BRIGHT-LINE RULE.

I WANT TO BE TOLD WHAT TO DO.
WOULD IT BE THAT THE PLACE
WHERE THE DEFENDANT IS
SENTENCED WILL BE THE PLACE
WHERE JURISDICTION OF THE
APPELLATE COURTS TAKE PLACE?
THAT'S WHAT HAPPENED HERE?

>> I WOULD SAY THAT THAT IS
GENERALLY, ALMOST ALL OF THE
TIME GOING TO END UP BEING
CORRECT BECAUSE THAT'S WHERE
THE CASE IS GOING TO BE
CONCLUDED.

BUT AGAIN, I'D SAY GENERALLY
BECAUSE I THINK THERE ARE
ALWAYS GOING TO BE POSSIBLE,
UNFORESEEN CONSEQUENCES AND
SITUATIONS THAT CAN ARISE THAT
THERE STILL MIGHT BE SOME
FURTHER TWIST THAT MIGHT NOT
FALL UNDER THAT RULE.

>> IN THIS CASE, HAD THE JUDGE,

SAY, DECIDED TO GO AHEAD AND
AJUDICATE THE DEFENDANT RIGHT
AFTER THE VERDICT WAS
ANNOUNCED, AND SENTENCE HIM
RIGHT THERE ON THE SPOT, THEN
REALLY THERE IS NOTHING TO
TRANSFER BACK TO DADE COUNTY.

>> AT THAT POINT IN TIME YOU'VE
GOT A FINAL, WELL, PERHAPS YES,
PERHAPS NO.

YOU STILL HAVE THE POSSIBILITY
OF MOTIONS FOR NEW TRIAL AND
OTHER RELATED POST-TRIAL
MOTIONS THAT CAN BE FILED ONE
10 DAYS AND THAT MIGHT BE
TRANSFERRED BACK TO MIAMI AT
THAT POINT IN TIME.

>> OR THEY COULD BE HEARD IN
MIAMI BUT, I GUESS THE ORDER
COULD SAY, IN THE NINTH CIRCUIT
OR WHATEVER?

>> IT IS A POSSIBILITY THAT,
THAT GIVEN THE DIMINIMUS NATURE
OF SUCH FURTHER PROCEEDINGS AT
THAT, AT THAT POINT IN TIME,
BUT, I, THEN AGAIN MIGHT BE
SOMETHING THAT IS MORE
SUBSTANTIAL.

COULD BE A MOTION FOR MISTRIAL
BASED UPON JURY MISCONDUCT THAT
WOULD REQUIRE EVERY
TRIPROCEEDINGS WITH JURORS
INTERVIEWED IN ORLANDO.

>> OR YOU SAY THERE CAN BE NO
BRIGHT-LINE RULE?

>> I THINK ANY BRIGHT-LINE RULE

IS GOING TO TURN OUT TO BE NOT
A BRIGHT-LINE RULE SOMEWHERE
DOWN THE LINE.

>> BUT GENERALLY SPEAKING A
CRIMINAL PROSECUTION IS
CONCLUDED ONCE YOU HAVE ENTERED
A JUDGEMENT OF SENTENCE?
NOTWITHSTANDING THERE IS
POST-SENTENCING, OR, ISSUES
THAT MIGHT ARISE.

BUT GENERALLY SPEAK, THAT WOULD
BE WHEN THE, WHEN A CRIMINAL
PROSECUTION IS CONCLUDED?

>> IN A PRACTICAL SENSE I THINK
WE WOULD AGREE THAT THE, THE
TRUE SUBSTANTIVE WORK OF THE
CASE HAS CONCLUDED WITH THE
JUDGMENT AND SENTENCE BUT, I'M
RELUCTANT TO WRITE OFF THE
MOTIONS FOR NEW TRIAL AS
MINISTERIAL?

>> I BELIEVE IT IS THE
VASILINDA CASE WHICH TALKS
ABOUT, YOU KNOW, WHERE IT HAS
BEEN CONCLUDED.

AND GENERALLY THAT WOULD BE --

>> GENERALLY.

>> WHAT IS IN THIS CASE THE
FINAL JUDGEMENT AND SENTENCE
SAYS, WHAT DOES IT SAY AS TO,
IS IT THE 11th CIRCUIT OR THE
NINTH CIRCUIT?

>> THE, STARTING IN SEQUENCE
THE VERDICT FORM SAY THE 9th
JUDICIAL CIRCUIT.

THE JUDGEMENT OF CONVICTION

SAYS THE 11th JUDICIAL CIRCUIT
AND THE SENTENCING DOCUMENTS
SAY THE 11th JUDICIAL CIRCUIT.

>> BECAUSE IT DOES SEEM THAT
WHEN WE PASSED THIS RULE OF
JUDICIAL ADMINISTRATION TO SAY
IT GOES BACK TO THE ORIGINAL
CIRCUIT, THAT IT COULD HAVE
BEEN LOOKED AT JUST AN
ADMINISTRATIVE CONVENIENCE,
SINCE THE WHOLE STAFF GOES UP
THEY NOW GO BACK.

BUT IT STRIKES ME IF WHEN, HOW
WE DECIDE THIS CASE, THAT WE
ALSO SHOULD PROVIDE CERTAINTY
FOR THOSE CASES WHERE THERE ARE
INEVITABLY GOING TO BE
POST-CONVICTION IN THIS DAY AND
AGE ATTACKS ON THE JUDGEMENT,
SENTENCE, IN TERMS OF, YOU
KNOW, COMPETENCY OF COUNSEL OR
ANY SENTENCING ERROR AND IT
WOULD BE, IN TRYING TO GET TO
JUSTICE LABARGA'S BRIGHT-LINE
RULE, WOULDN'T IT BE BETTER TO
SAY THAT THIS RULE CONTEMPLATED
ALTHOUGH THE TRIAL OCCURS IN
ANOTHER VENUE, FOR ALL INTENTS
AND PURPOSES IT REMAINS A CASE
OF THE ORIGINATING
JURISDICTION?

WHEN IT IS ONLY TRANSFERRED
BECAUSE OF PRETRIAL PUBLICITY
SO THAT ALL SUBSEQUENT MOTIONS
ARE PROPERLY FILED IN THE
COURT, THE ORIGINATING COURT,

RATHER THAN TRYING TO FIGURE OUT, BETTER FILE THIS ONE IN THE NINTH CIRCUIT AND THIS ONE IN THE 11th CIRCUIT OR WHATEVER IT MIGHT BE?

>> TO MANDATE THAT --

>> BUT TO CLARIFY THAT WOULD MEAN THEN ONCE IT GOES BACK THERE THAT COURT, THAT CIRCUIT, BECOMES THE CIRCUIT WHERE ALL FURTHER MOTIONS AND ANY ATTACKS, THAT'S THE PROPER PLACE.

>> I GUESS THERE COULD BE SOME, SOME POTENTIAL FACTUAL SITUATIONS WHERE, WHERE SENTENCING IS GETTING DEFERED.

MOTIONS FOR POST-TRIAL MOTIONS ARE BEING FILED.

AND, PERHAPS, NECESSARY WITNESSES ARE FROM, ARE FROM THE TRANSFEREE VENUE SO THAT THERE MIGHT BE SOME REASONS FOR KEEPING THE CASE THERE AS OPPOSED TO ALWAYS SENDING IT BACK.

BUT ALSO I THINK THERE'S ANOTHER POINT THAT MIGHT, SOME VARIABLE FACTORS HERE THAT MIGHT CREATE FURTHER PROBLEMS WITH THAT AND I THINK IT TOUCHES ON A QUESTION FROM JUSTICE QUINCE BEFORE AS TO THE ORIGINATING JUDGE GOING WITH THE CASE.

THAT'S NOT ALWAYS SO.

THE ORIGINATING JUDGE MAY GO WITH THE CASE OR MAY NOT.

IT IS DISCRETIONARY.

THE TWO CIRCUITS ARE SUPPOSED TO DECIDE AMONG THEMSELVES AND I THINK IT IS GOING TO DEPEND UPON A LOT OF FACTORS IN ANY GIVEN CASE.

HOW LONG THE CASES BEFORE THE TRANSFER IS BEING MADE.

WHETHER THE STATE ATTORNEY'S OFFICE, WHETHER THE ORIGINAL STATE ATTORNEY'S OFFICE IS GOING TO GET CROSS-DESIGNATED IN THE NEXT VENUE OR WHETHER THE STATE ATTORNEY FROM THE NEXT VENUE IS GOING TO TAKE OVER THE CASE AND DEPENDING UPON HOW YOU PLAY AROUND WITH THOSE FACTORS --

>> WE'RE ONLY, SO IN THE CASES WHERE IT IS TRULY A TRANSFER UP, AND IT STAYS, WHEREVER IT IS, THAT, AND THEN THAT CIRCUIT GETS TO COUNT THAT CASE, THINKING OF ALL THE DIFFERENT ADMINISTRATIVE ISSUES, THEN THAT CASE, STAYS IN THAT CIRCUIT.

AND I THINK WE'D ALL AGREE THE APPEAL DOESN'T -- EXCUSE ME.

>> I'M SORRY.

>> THEN THE APPEAL STAYS IN THAT APPELLATE, IN THE APPELLATE COURT THAT HAS

JURISDICTION OVER THE
TRANSFEREE COURT.

>> EVEN WITH A PRETRIAL
PUBLICITY SITUATION IT MIGHT BE
POSSIBLE FOR ONE REASON OR
ANOTHER THAT, THAT THE ORIGINAL
JUDGE WILL NOT STAY WITH THE
CASE.

THAT THE JUDGE IN THE NEXT
VENUE WILL TAKE THE CASE OVER.
SO TO SAY IN A CASE LIKE THAT --

>> THEY KEEP THE CASE THOUGH,
DON'T THEY?

>> I WOULD CERTAINLY EXPECT
THEM TO.

>> I WOULD NOT THINK ANOTHER
JUDGE WOULD --

>> TRANSFERSING IT BACK.

IF WE'RE TALKING ABOUT A
BRIGHT-LINE RULE THAT SAYS ONCE
SENTENCE IS IMPOSED IT MUST GO
BACK TO THE ORIGINATING
CIRCUIT, IT IS IGNORING THE
SITUATIONS WHERE --

>> YOUR BRIGHT-LINE RULE ISSUE
STARTED OFF BY SAYING WE SHOULD
JUST FOLLOW VASILINDA AND
AFFIRM, RIGHT?

>> YES.

>> SO WHY DOESN'T THAT CASE
ITSELF PROVIDE THE BRIGHT-LINE
RULE?

>> IT PROVIDES THE CONTROLLING
PRINCIPLES AND IT PROVIDES THE
CONTROLLING PRINCIPLES FROM
WHICH THIS PARTICULAR CASE CAN

CLEARLY BE, CAN CLEARLY BE
DECIDED.

I GUESS THERE ARE SOME
SITUATIONS WHERE SOMEONE MIGHT
DEBATE AS TO WHERE SOMETHING
CONCLUDES WHEN YOU'RE TALKING
ABOUT POST-TRIAL MOTIONS
VERSUS, VERSUS SENTENCE.

IF THERE'S A DISCREPANCY
BETWEEN THE TWO VENUES ON THOSE
TWO POINTS, SINCE IT IS NOT A
FACTUAL SITUATION DECIDED BY
VASILINDA.

BUT FOR PURPOSES OF OUR CASE
AND THE FACTS OF OUR CASE THE
CONTROLLING PRINCIPLES OF
VASILINDA ARE CLEAR BECAUSE THE
CASE TRULY DID CONCLUDE IN
MIAMI.

THERE IS NO WAY YOU CAN COME TO
A CONTRARY CONCLUSION WITH THE
CONVICTION, SENTENCE,
SENTENCING PROCEEDINGS AND ALL
POST-TRIAL MOTIONS.

>> MR.^ALVAREZ, AT LEAST WHAT
HE'S SAYING WE DON'T WANT ONE
SIDE OR THE OTHER TO EVER PLAY
A GOTCHA GAME ABOUT THE, THIS
ISSUE OF A WELL THE THIRD
DIDN'T HAVE JURISDICTION OR YOU
FILED IT IN THE WRONG COURT.
HOW DO WE PREVENT THAT?
BECAUSE I KNOW YOU'RE TRYING TO
SHOW US ALL THESE DIFFERENT
PERMUTATIONS AND WE'RE TRYING
TO, KIND OF GIVING YOU SOME

SOFTBALL QUESTIONS, GIVE US A BRIGHT LINE.

NO, NO, WE CAN'T DO THAT.

THAT LEADS ME TO BE CONCERNED WHAT WE DON'T WANT TO HAVE ON THE^THE OTHER EXTREME SOMEBODY THINKING THEY'RE FOLLOWING THE RULE AND THEN IT SAID, NO, YOU FILED IT IN THE WRONG CIRCUIT OR THE COURT, IN FACT DOESN'T HAVE JURISDICTION.

HOW DO WE PREVENT THAT FROM HAPPENING?

>> I'M VERY HARD-PRESSED TO SEE ANY KIND OF REALISTIC SITUATION WHERE THERE IS GOING TO BE SOME KIND OF FORUM SHOPPING BASED ON THE TIMING OF THIS AND WHERE YOU TRANSFER IT.

>> I'M NOT TALKING ABOUT FORUM SHOPPING.

I'M TALKING ABOUT SOMEONE MAKING AN ARGUMENT THAT THAT PARTICULAR CIRCUIT OR THE APPELLATE COURT DIDN'T HAVE JURISDICTION.

CAN WE SAY IT IS NOT A JURISDICTIONAL ISSUE?

IT IS SIMPLY THE ISSUE WHEN IT IS, SOMETHING IS GOING ON DURING TRIAL, THAT THE PETITIONS, IF THERE'S A MID TRIAL PETITION IT GETS FILED IN THE CIRCUIT WHERE IT IS BEING TRIED BUT THAT IF IT IS GOING TO BE, IF IT IS ONLY A

TEMPORARY TRANSFER, THEN THE TRANSFEREE COURT IS THE COURT THEN WHERE THE, AND THEN THE APPELLATE COURT IN THAT JURISDICTION IS THE PROPERTY COURT?

>> I GUESS I WOULD PREFACE, RECONSIDER ONE THING THAT I HAD SAID BEFORE IN A LOT OF YOUR QUESTIONS IS.

ONCE YOU DO, ONCE YOU REACH THE POINT IN TIME OF THE, OF THE SENTENCE, SINCE JURISDICTION IS DETERMINED BY THE TIME, AT THE TIME OF THE NOTICE OF APPEAL BEING FILED WHERE THE CASES AND THE SENTENCE IS ISSUED AND THAT'S THE CONCLUSION OF THE CASE, EVEN, EVEN A FURTHER RULING SHOULD NOT AFFECT THE DETERMINATION OF WHICH APPELLATE COURT, WHICH APPELLATE COURT GETS IT. PERHAPS THAT, PERHAPS THAT IS THE ANSWER TO THE QUESTION.

>> NOW YOU'RE SAYING ONCE THE SENTENCE IS IMPOSED THAT WOULD BE THE APPELLATE COURT?

>> IT WOULD PROBABLY, I DO HAVE A LITTLE HESITATION ON THIS BECAUSE OF POSSIBILITIES BUT I THINK IT'S GENERALLY, IT IS GENERALLY GOING TO BE A WORKABLE --

>> WHAT YOU'RE SAYING, YOU'RE ENVISIONING A SITUATION WHERE

THE JUDGMENT'S ENTERED IN DADE,
BUT THERE IS ISSUE SAY OF JUROR
MISCONDUCT SO MOTION FOR NEW
TRIAL.

IT IS FILED UP, IT IS HEARD UP
IN ORLANDO AND THEN THE JUDGE
DENIES THE ORDER IN ORLANDO.
AT THAT POINT THEN IT IS FINAL.
SO THAT'S THE HYBRID SITUATION
YOU'RE SORT OF HESITATING ABOUT
IS THAT CORRECT?

>> RIGHT. YES.

BUT AGAIN, FOR OUR CASE IT'S
NOT A FACT PATTERN THAT EXISTED
IN OUR CASE. IT IS CLEAR.

SO I THINK THAT FOR PURPOSES OF
THIS CASE THAT ALL THE COURT
CLEARLY NEEDS TO DO IS REACH
THE DECISION ON OUR FACTS AND
PERHAPS BECAUSE THERE ARE SOME
UNCERTAINTIES AS TO WHAT FACT
PATTERNS MIGHT ARISE AND HOW
THEY MIGHT PLAY OUT PERHAPS
UTILIZING A CASE SUCH AS THIS
WHERE THOSE FACTS ARE NOT AT
ISSUE IS NOT THE BEST FORUM FOR
TRYING TO PREDICT THE FUTURE
AND CREATE THAT BRIGHT-LINE
RULE AND JUST LIMIT THE
DISPOSITION OF THIS.

>> WHAT SORT OF BOTHERS ME, WE
ARE THE SUPREME COURT.

WE ARE ABLE TO MAKE RULES OF
JUDICIAL ADMINISTRATION AND
ALSO, IF THERE IS NOTHING
CONSTITUTIONAL ABOUT THIS,

WE'RE NOT OFFENDING ANYTHING,
WHY WOULDN'T WE WANT TO TRY TO
CREATE CERTAINTY AS OPPOSED TO
THE NEXT TIMING IS LIKE THIS
HAPPENS, EVERYONE IS LOOKING
AND GOING, GEE, THEY FILED A
MOTION FOR NEW TRIAL.

WHAT'S THE CIRCUIT WHERE IT IS
ENTERED AND JUST SORT OF TRY TO
GET THIS STRAIGHT?

WHAT'S THE PROBLEM WITH THAT?

>> I THINK PERHAPS IT IS MORE
APPROPRIATE FOR A RULE
COMMITTEE TO STUDY A QUESTION
LIKE THAT AND TAKE INTO
CONSIDERATION ALL THE VARIOUS
FACTORS AND INPUT FROM THE
VARIOUS STATE ATTORNEYS AND
PUBLIC DEFENDERS.

>> AND HOW MANY YEARS WILL IT
BE UNTIL WE GET THAT BACK?

>> ON THE OTHER HAND, THIS IS
NOT AN EVERYDAY SITUATION WHERE
IT OCCURS WEEK IN, WEEK OUT.

>> DO WE KNOW HOW MANY TRIALS
OF THIS, WHERE IT IS
TRANSFERRED HOW MANY WE'RE
TALKING ABOUT A YEAR?

>> WELL WE DON'T, WE DON'T KNOW
THAT. I THINK WHAT WE DO KNOW THE
NUMBER OF TIMES WHERE YOU CAN
FIND VASILINDA CITED IN
SUBSEQUENT CASES CAN BE
PROBABLY COUNTED ON TWO HANDS.
THAT HAS BEEN CLOSE TO 20
YEARS.

THAT IS PRETTY COMPELLING
SITUATION THIS IS NOT A
SIGNIFICANT STATEWIDE PROGRAM
FOR TWO DECADES NOW.
UNLESS THERE ARE ANY FURTHER
QUESTIONS, AGAIN, ON THE FACTS
OF THIS PARTICULAR CASE, I
THINK IT IS CLEAR THAT THE,
THAT THE CASE CONCLUDED IN 11th
JUDICIAL CIRCUIT AND THE APPEAL
SHOULD THEREFORE PROCEED IN THE
THIRD DISTRICT. THANK YOU.

>> THANK YOU.

>> VERY BRIEFLY.

I THINK IF THE COURT IS LOOKING
FOR A BRIGHT-LINE RULE I THINK
THERE ARE TWO OPTIONS.
ONE IS, BASICALLY THE WAY THE
COLE, WHEN YOU TRANSFER TRIAL
VENUE, TRANSFER THE VENUE AND
APPELLATE COURT HAS
JURISDICTION OVER THE TOTALITY
OF THE CASE REGARDLESS WHAT
HAPPENS POST-VERDICT.
OR, WHEREVER THE JUDGMENT OR
SENTENCE IS ENTERED THAT
APPELLATE COURT HAS JURISDICTION
OVER THE TOTALITY OF THE CASE.

>> THAT WOULD ALSO APPLY TO
POST-CONVICTION?

>>> ABSOLUTELY.

>> FROM A, I'M TRYING TO SEE,
YOU THINK FOR THE,
ADMINISTRATION OF JUSTICE IN
THAT BRIGHT-LINE RULE WOULD BE
BETTER FOR THE LITIGANTS?

>> ABSOLUTELY.

OF COURSE AS THE COURT POINTED
OUT THIS IS A VERY RARE
SITUATION ESPECIALLY IN
NONCAPITAL CASES.

IN CAPITAL CASES WE DON'T HAVE
THIS ISSUE BECAUSE THE APPEAL
COMES DIRECTLY HERE.

I THINK IT IS POSSIBLE TO
FASHION A BRIGHT-LINE RULE AND
CREATE CLARITY AND I WOULD HOPE
THE COURT DOES THAT.

THANK YOU.

>> THANK YOU. THANK YOU BOTH.