

>>> THE NEXT CASE FOR THE DAY IS
CHRISTENSEN VERSUS BOWEN.

>> MAY IT PLEASE THE COURT,
RAOUL CANTERO FOR THE
PETITIONER, ROBERT
CHRISTENSEN.

THE ISSUE IN THIS CASE IS VERY
SIMPLE AND VERY STARK.

WHEN CONSIDERING THE DANGEROUS
INSTRUMENTALITY DOCTRINE, IS
THERE A CONCEPT OF BENEFICIAL
OWNERSHIP OR NOT?

BOTH THE 5TH DCA AND THE
RESPONDENTS HERE WOULD SAY
THERE IS NO SUCH CONCEPT AND I
WANT TO MAKE SURE YOU
UNDERSTAND HOW CLEAR IT IS.

I WANT TO QUOTE FIRST THE
OPINION OF THE 5TH DCA AND
THEN THE ANSWER BRIEF JUST TO
SHOW YOU THAT THAT IS EXACTLY
WHAT THEY ARE ARGUING.

ON PAGE 142 OF THE OPINION IT
SAYS BY VIRTUE OF HIS TITLED
OWNERSHIP APPELLEE RETAINED THE
RIGHT TO EXERCISE CONTROL OVER
THE CAR AT ANY TIME, JUST AS
THE APPELLANT IN METZEL HAD
DONE.

THEY SAY INDEED THE CASES
CITED BY CHRISTENSEN REINFORCE
OUR POSITION THAT BENEFICIAL
OWNERSHIP FOLLOWS TITLE AS A
MATTER OF LAW EXCEPT IN CASES
INVOLVING INCOMPLETE TITLE OR
CONDITIONAL SALE.

IF THE COURT ACCEPTS THIS
PROPOSITION, YOU WOULD BE
RECEDING FROM CASES AS FAR
BACK AS 77 YEARS AGO IN
FARELLI, 1955 IN PALMER, 1971
IN ESCOBAR, 1990 IN KRAMER,
CONSIDERED BENEFICIAL
OWNERSHIP AND FINALLY 2000 IN
ARBECK.

ALL OF THOSE CASES EITHER
DISCUSSED BENEFICIAL OWNERSHIP
OR A REBUTTABLE PRESUMPTION OF
OWNERSHIP.

JUSTICE LEWIS, I DON'T KNOW IF

YOU WERE WAIT TO GO ASK ME A QUESTION.

>> NO.

YOU'LL KNOW IT WHEN I ASK A QUESTION.

>> LET ME ASK YOU ABOUT THIS, THOUGH.

HOW DOES THE ISSUE OF THE RIGHT OF CONTROL ENTER INTO THIS?

AND I NOTICE IN YOUR BRIEF SOMETIMES YOU TALK ABOUT THE RIGHT OF CONTROL, BUT THEN IT KIND OF GOES OVER TO CONTROL. AND WHAT I'M I'M STRUGGLING TO FIND IN THIS CASE IS ANY EVIDENCE THAT WAS PRESENTED TO THE JURY THAT WOULD HAVE BEEN SUFFICIENT TO SHOW THAT ROBERT DID NOT HAVE THE LEGAL RIGHT OF CONTROL WITH RESPECT TO THE AUTO.

I MEAN, SO WHAT WHAT IT SEEMS LIKE TO ME IF YOU'RE GOING TO SHOW THAT HE DOESN'T HAVE THE RIGHT OF CONTROL, YOU'VE GOT TO SHOW THAT THE OTHER PERSON COULD GO TO COURT AND KEEP HIM FROM ASSERTING A RIGHT OF CONTROL.

>> WELL, IF

>> AND WHETHER IT'S IN A GARAGE 500 MILES AWAY OR ALL THAT STUFF, I DON'T UNDERSTAND WHAT THAT HAS TO DO AT ALL WITH THE LEGAL ISSUE OF THE LEGAL RIGHT OF CONTROL.

>> THE RIGHT OF CONTROL HAS TO FLOW FROM SOMETHING OTHER THAN TITLE OWNERSHIP.

THE ONLY THING THAT THEY SHOWED AS FAR AS RIGHT OF CONTROL

>> WELL, WHAT WOULD THAT BE?

>> WHAT WOULD THAT BE?

YOU CAN RIDE YOU CAN USE THE CAR.

YOU CAN CONTROL WHO USES THE CAR.

>> BUT THE RIGHT IT SEEMS

TO ME SUGGESTS A LEGAL RIGHT.

>> IT DOESN'T SAY ANYTHING ABOUT LEGAL RIGHT.

>> AND I DON'T UNDERSTAND WHY THIS IF ROBERT HERE HAD DECIDED THAT IF THINGS HAD GONE DIFFERENTLY AND HE HAD DECIDED, YOU KNOW, I WANT TO TRANSFER THAT CAR OR IF IN THE DIVORCE WE'RE GOING TO SPLIT THE VALUE OF THAT CAR, WHY HE WOULD NOT HAVE HAD A LEGAL RIGHT TO DO THAT.

>> BECAUSE HE GAVE THE CAR TO MARY AND MARY WOULD HAVE SAID YOU CAN'T YOU DON'T HAVE THAT CAR ANYMORE.

YOU GAVE ME THAT CAR.

>> WHAT IS THE EVIDENCE OF THAT?

WHAT IS THE OBJECTIVE EVIDENCE THAT HE EVER TOLD HER THAT THIS IS YOURS?

>> HE TESTIFIED THAT THEY HAD GONE TO A DEALERSHIP TO GET HER A CAR.

HE TESTIFIED THAT HE NEVER DROVE THE CAR EXCEPT FOR THAT DAY AND THE DAY AFTER WHEN HE TOOK IT TO A CAR WASH.

>> THAT'S NEVER BEEN A REQUIREMENT, HAS IT, WITH REGARD TO THE CONCEPTS OF THE DANGEROUS INSTRUMENTALITY LAW. THE THEORY IS NOT THAT THEY HAVE IN FACT CONTROLLED IT, BUT AS JUSTICE CANADY SUGGESTS, IT IS THE LEGAL RIGHT OF CONTROL.

>> YOUR HONOR, IF THAT WERE THE CASE, THEN THEN THE 5TH DCA ARE CORRECT.

>> WELL, IT DOES WITH THE EXCEPTION OF RETAINED TITLE CONTRACTS FOR FINANCING PURPOSES.

THAT SEEMS TO ME WHAT THE FLORIDA CASE LAW HAS BEEN SINCE THE SOUTHERN THE SOUTHERN CASE, THE SOUTHERN

OIL CASE THAT ADOPTED THE NOTION OF A DANGEROUS INSTRUMENTALITY.

>> THIS COURT HAS NEVER SAID THAT THE EXCEPTIONS TO DANGEROUS INSTRUMENTALITY ARE LIMITED TO CONDITIONAL SALES OR INCOMPLETE TRANSFERS.

>> WELL, OKAY.

I CAN ACCEPT THAT.

YOU'RE ARGUING FOR AN ADDITIONAL EXCEPTION THAT'S NEVER BEEN RECOGNIZED.

>> NO.

WHAT I'M ARGUING FOR IS AN APPLICATION OF THE BENEFICIAL OWNERSHIP EXCEPTION.

>> THAT HAS NEVER BEEN RECOGNIZED AS A BASIS TO ELIMINATE LIABILITY.

>> WELL, THIS COURT HAS NOT, BUT THE FIRST DCA IN PLATTENBURG IN 2001, IT WAS A CASE MUCH LIKE THIS ONE, WHERE IT WAS A GIFT AND THE OWNER OF THE CAR SAID IF YOU TAKE THE CAR FROM MY PROPERTY, YOU CAN HAVE IT.

AND HE TOOK THE CAR FROM THE PROPERTY.

HE PUT THE TITLE SEVER, THE OWNER'S MANUAL, ALL THAT, THE CERTIFICATE THE TITLE HAD NOT BEEN TRANSFERRED AT THE TIME OF THE CRASH AND THE COURT SAID THAT HE INTENDED THAT AS A GIFT AND HE WAS NOT THE BENEFICIAL OWNER ANYMORE OF THAT CAR.

>> SO HOW DO YOU DEAL WITH THE FACT THAT THE DISTRICT COURT SAID THAT CHRISTENSEN THAT'S YOUR CLIENT?

>> YES.

>> PRESENTED NO EVIDENCE THAT HE GIFTED HIS ENTIRE INTEREST IN THE VEHICLE TO TAYLOR AND THAT HIS TESTIMONY OF SUBJECTIVE INTENT WAS LEGALLY IMMATERIAL.

NOW, WAS THAT
>> REMEMBER, YOU SAID THE ENTIRE INTEREST.
AND THEY WERE FOCUSING ON THE FACT THAT HIS TITLE HIS NAME WAS ON THE TITLE JUST AS MARY'S NAME WAS ON THE TITLE. SO THEY'RE SAYING BECAUSE HIS NAME'S ON THE TITLE, HE DID NOT GIVE HER AN ENTIRE INTEREST IN THE CAR.
>> SO IF SHE WENT TO SELL THE VEHICLE, COULD SHE HAVE SOLD IT WITHOUT HIS PERMISSION?
>> ABSOLUTELY.
YES.
>> HOW SO?
>> BECAUSE IT'S HER CAR.
>> SHE CAN'T TRANSFER TITLE.
>> IT WAS TITLED OR.
>> OR.
>> SO HE COULD HAVE SOLD IT, TOO, COULDN'T HE?
>> HE COULD NOT HAVE.
>> WHAT WOULD HAVE KEPT HIM FROM SELLING IT?
>> SHE WOULD HAVE.
FIRST OF ALL, HE HAD NO ACCESS TO THE CAR.
HE HAD NO KEYS TO THE CAR.
HE COULDN'T GET TO THE CAR.
IT WAS IN HER GARAGE.
HE DIDN'T HAVE THE CODE TO HER GARAGE.
THERE'S NO WAY HE COULD GET THERE.
AND THE POINT HERE IS THIS IS

>> WELL, THE FACT IS IF THIS ACCIDENT HAD HAPPENED IN ANOTHER WAY AND MISS†TAYLOR HAD DIED IN THIS CAR, IN THIS ACCIDENT, AND IN HER WILL SHE HAD LEFT THE CAR TO SOMEONE, WOULD MR.†CHRISTENSEN HAVE ANY RIGHT COULD MR.†CHRISTENSEN COME IN AND SAY THIS CAR BELONGS TO ME?
>> I SUGGEST NOT.
I SUGGEST NOT.

>> AND WHY NOT IF HIS NAME THAT'S I GUESS THAT'S THE WHOLE POINT HERE, IS WHY COULDN'T HE ASSERT A RIGHT TO THAT CAR WHEN HIS NAME IS CLEARLY ON THE TITLE AND NOTHING HAD BEEN DONE TO CHANGE THAT?

I MEAN, HE MAY HAVE SAID YOU CAN GIVE YOU CAN HAVE THIS CAR.

I MEAN, IF I BUY MY DAUGHTER A CAR AND THE CAR'S IN MY NAME, I SAY THIS CAR IS YOURS, BUT I'M STILL ON THE HOOK.

>> I THINK AS THE COURT SAID WAY BACK IN FARALY, THE FACT THAT HIS NAME WAS ON THE TITLE ESTABLISHES A PRESUMPTION OF OWNERSHIP.

BUT THAT PRESUMPTION CAN BE OVERCOME.

AND THE WAYS TO OVERCOME IT ARE NOT JUST CONDITIONAL SALES OR INCOMPLETE TRANSFERS.

THERE'S OTHER WAYS THAT YOU CAN OVERCOME THE PRESUMPTION. IT BECOMES A JURY ISSUE.

>> WELL, IF YOU FLIP THAT, MAN, YOU'VE TURNED THE ENTIRE AREA OF MOTOR VEHICLE TITLE AND OWNERSHIP INTO AN ABSOLUTE MISHMASH OF NO LAW AT ALL AND THE WHOLE REASON FOR TITLING MOTOR VEHICLES IS LIKE THE SAME REASON FOR TITLING REAL ESTATE AND THAT IS YOU HAVE CERTAIN CERTAIN THINGS FOLLOW WITH REGARD TO THE FORMAL TITLES.

AND, I MEAN, WE WOULDN'T EVEN NEED TITLES TO MOTOR VEHICLES IF WE FOLLOW THAT LINE OF REASONING BECAUSE YOU CAN ALWAYS COME IN AND UNDERMINE WHAT TITLE IS, IN WILLS, AS JUSTICE QUINCE HAS MENTIONED, IN SALES, IN ALL OF THESE.

I MEAN, IT SEEMS TO ME THAT THERE'S SO MUCH UNCERTAINTY

THAT YOU'D BE THROWING INTO
THE LAW, WOULDN'T YOU?

>> NO, YOUR HONOR.

I BELIEVE THAT THAT THE
DCAs HAVE UNDERSTOOD THIS TO
BE THE LAW.

THE LAW I'M PROPOSING TO YOU,
THE DCAs HAVE UNDERSTOOD THAT
TO BE THE LAW.

PLATTENBURG WOULD NOT HAVE
BEEN DECIDED OTHERWISE.

IF TITLE OWNERSHIP EQUALS
BENEFICIAL OWNERSHIP.

IT BECOMES A JURY ISSUE AND
JUDGE GRIFFIN IN HER DISSENT,
SHE SAID, LOOK, UNTIL NOW IT
WAS VERY EASY TO APPLY THE
LAW.

THIS WAS THE LAW.

IT WAS BENEFICIAL OWNERSHIP.

THAT'S THE ISSUE.

WAS THERE OR WAS THERE NOT.

AND, YES, TITLE OWNERSHIP
ESTABLISHES A PRESUMPTION.

BUT THEN WHEN YOU HAVE
EVIDENCE PRESENTED THAT WOULD
COUNTERACT THE PRESUMPTION IT
BECOMES A JURY ISSUE.

>> BUT THIS COURT HAS NEVER
FOLLOWED THAT.

ARBECK DID NOT FOLLOW CONTROL,
DID NOT FOLLOW WHO HAD THE
RIGHT TO DO ANYTHING.

IT WAS A CAR THAT WAS IN THE
HOUSEHOLD.

ALTHOUGH THE FATHER PUT IT IN
THE DAUGHTER'S NAME, HE

CONTROLLED HER USE OF IT.

HE BOUGHT ALL THE INSURANCE
FOR IT.

HE PAID FOR ALL OF THE
GASOLINE THAT WENT INTO IT.

EVERYTHING TO DO WITH IT, HE
CONTROLLED IT TOTALLY, AND THE
JURY SO FOUND, BUT THIS COURT

SAID NO, THAT THIS IS TITLED
IN THE DAUGHTER'S NAME AND

WE'RE NOT GOING TO GET INTO
THAT.

THAT'S THE FLIP OF THE SAME

QUESTION.

>> YES.

AND THE COURT WENT THROUGH A

>> WHICH YOU AGREED WITH,
RIGHT?

>> YES.

THE COURT WENT THROUGH AN
ENTIRE ANALYSIS CALLED BARE
LEGAL TITLE VERSUS BENEFICIAL
OWNERSHIP.

THAT WAS THE ANALYSIS THE
COURT UNDERTOOK WHICH IF IT
WERE JUST THE FACT THAT IT WAS
LEGAL TITLE, IT WOULD NOT HAVE
GONE THROUGH ALL THAT
ANALYSIS.

THEY HAVE ALWAYS SAID THE
ISSUE IS BENEFICIAL OWNERSHIP.
AND IT BECOMES A JURY
QUESTION.

WE'RE NOT SAYING THAT WE
SHOULD HAVE GOTTEN A DIRECTED
VERDICT.

>> EXCUSE ME.

ARBECK SAYS IT WAS NOT A JURY
ISSUE.

>> IN THAT PARTICULAR CASE.

>> BECAUSE THE JURY FOUND THAT
THERE WAS BENEFICIAL OWNERSHIP
IN THE FATHER IN THAT CASE.

>> RIGHT.

BUT ARBECK SAID THERE HAS TO
BE RIGHT OF CONTROL AND TITLE
OWNERSHIP.

IT HAS TO BE BOTH.

AND IN THE JURY INSTRUCTION
BACK THEN SAID "OR" AND THIS
COURT SAID, NO, UNDER OUR
CASES IT'S GOT TO BE TITLE
OWNERSHIP PLUS RIGHT OF
CONTROL.

NOW, IF AS YOU'RE SUGGESTING
TITLE OWNERSHIP IS THE BE ALL
AND ENDALL, THEN THIS COURT
WAS INCORRECTLY STATING THE
LAW.

>> NO.

THERE ARE EXCEPTIONS WHICH
HAVE BEEN RECOGNIZED FOREVER

AND THOSE ARE RETAINED TITLE CONTRACTS AND THOSE KINDS OF THINGS WHERE THE RETENTION EVERY TITLE IS A FORMALITY. NOT AS LEGAL RIGHT TO CONTROL IT.

>> BUT IF THAT WERE THE CASE, THEN THIS COURT WOULD HAVE SAID TITLE OWNERSHIP EQUALS OWNERSHIP EXCEPT IN TWO LIMITED EXCEPTIONS. THAT'S NOT WHAT THIS COURT HAS SAID.

>> WELL, YOU CAN WRITE AN OPINION MANY DIFFERENT WAYS, BUT THIS COURT HAS NEVER SAID EXCEPT NEVER MADE THE STATEMENT THAT WHAT YOU'RE TALKING ABOUT, THAT THE TITLE IS ONLY THOSE TWO AND CAN NEVER BE IN ANY OTHER CONTEXT.

>> CERTAINLY THAT'S HOW THE DCAs HAVE INTERPRETED IT. IF YOU LOOK AT

>> WELL, THERE ARE ALL KINDS OF OPINIONS OUT THERE, AS YOU'RE WELL AWARE, BUT WHETHER IT'S A CORRECT ANALYSIS IS ANOTHER STORY.

>> AND I BELIEVE THAT IF IT WEREN'T THE CORRECT ANALYSIS, THEN THIS COURT SINCE BACK IN PALMER WOULD NOT HAVE BEEN TALKING ABOUT BENEFICIAL OWNERSHIP.

THEY WOULD HAVE SAID WE'RE JUST GOING TO CREATE AN EXCEPTION IN THESE NARROW CIRCUMSTANCES.

NOT YOU HAVE TO ANALYZE BENEFICIAL OWNERSHIP, WHICH MEANS BOTH TITLE OWNERSHIP AND RIGHT OF CONTROL AND AUTHORITY OVER THE USE.

THAT IS THE TERM THIS COURT HAS USED.

IF IT DIDN'T INTEND FOR THAT TO BE APPLIED IN EVERY CIRCUMSTANCE, IT WOULD HAVE SAID IF THE TITLE IS YOURS,

YOU'RE THE OWNER EXCEPT FOR
CONDITIONAL SALES AND
INCOMPLETE TRANSFERS.
AND, BY THE WAY, YOUR HONOR,
THIS CASE CAN BE CONSIDERED AN
INCOMPLETE TRANSFER CASE.
THE CERTIFICATE OF TITLE WAS
NEVER EVEN SENT TO MR.
CHRISTENSEN.

SO THERE'S NO EVIDENCE THAT HE
KNEW HIS NAME WAS ON THE TITLE
AS ONE OF THE OWNERS AND COULD
HAVE DONE ANYTHING TO CHANGE
IT.

>> I THOUGHT THE OPINION READS
THAT HE WENT TO THE DEALERSHIP
AND SIGNED THE PAPERWORK.

>> YES, HE DID.

HE SIGNED THE PAPERWORK.

>> FOR TITLE

>> THE PAPERWORK WAS SENT TO
HER.

SO HE NEVER SAW THE TITLE.
BUT IF THAT PAPER IS OF
PARAMOUNT IMPORTANCE, THEN
CERTAINLY HE SHOULD KNOW HIS
NAME IS ON THERE.

>> NO.

THE PARAMOUNT IMPORTANCE IS
WHAT'S REGISTERED WITH THE
STATE OF FLORIDA.
BECAUSE YOU CAN ALWAYS REPLACE
THE PIECE OF PAPER, CORRECT?
DUPLICATES.

THAT'S WHY WE HAVE TITLES TO
MOTOR VEHICLES AND WHAT'S ON
RECORD WITH THE STATE CONTROLS
WHATEVER PAPER MAY BE FLOATING
AROUND.

ISN'T THAT TRUE?

>> YES, BUT MY POINT IS THAT
HE NEVER RECEIVED THAT A
COPY, SO HE DIDN'T KNOW WHAT
THE TITLE SAID.

>> I CAN ACCEPT THE FIRST
PART.

THE SECOND PART I THINK THE
OPINION SORT OF PUSHES THAT
AWAY.

>> OH, IT DOES, YES.

>> BECAUSE HE WENT IN AND SIGNED IT.
>> CERTAINLY THE 5TH DCA SAYS ALL OF THAT IRRELEVANT AND THE ONLY ISSUE IS WAS HIS NAME ON THE TITLE.
AND IF THAT'S THE LAW, THEN CERTAINLY THIS COURT SHOULD APPROVE THE OPINION.
I PROPOSE TO YOU THAT THAT IS NOT THE LAW AND HAS NOT BEEN THE LAW.
>> GO BACK TO WHAT I ASKED AGAIN.
WHAT IS THERE TO SHOW THAT HE DID NOT HAVE THE LEGAL RIGHT OF CONTROL?
I MEAN, I DON'T THINK TO REACH THE CONCLUSION ADVERSE TO YOUR POSITION WE HAVE TO THROW THAT OUT.
BUT WHAT I SEE HERE IS A LACK OF EVIDENCE TO SHOW THAT HE DID NOT HAVE THE LEGAL RIGHT OF CONTROL.
>> HIS RIGHT OF CONTROL
>> IS THERE EVEN EVIDENCE THAT HE TOLD HER NOT THAT THAT WOULD NECESSARILY BE SUFFICIENT, BUT HE DIDN'T TELL HER THIS IS GOING TO BE YOUR CAR.
YOU'RE GOING TO BE THE OWNER OF THIS.
DID HE TELL HER THAT?
>> YOUR HONOR, THE EVIDENCE

>> AND IF THAT WAS THE CASE, WHY WOULD HE NOT TITLE IT IN HER NAME?
I DON'T UNDERSTAND THAT.
>> YOUR HONOR, THE RECORD IS INCOMPLETE AS TO WHY THAT HAPPENED EXCEPT WHAT HE SAID IS THEY GAVE US PAPERS TO SIGN, WE SIGNED A BUNCH OF PAPERS.
HE NEVER SAID WHY
>> BUT THERE'S NOT EVEN TESTIMONY, IS THERE, THAT HE

TOLD HER THAT SHE WAS GOING TO BE THE OWNER OF THE CAR.

IT'S CLEAR HE WAS GETTING THE CAR SO SHE COULD USE IT.

I MEAN, THAT'S OBVIOUS.

BUT THE FACT THAT YOU GET A CAR FOR SOMEBODY ELSE TO USE DOESN'T MEAN THAT YOU HAVE GIVEN UP THE LEGAL RIGHT OF CONTROL ASSOCIATED WITH THE TITLE.

>> IT'S RIGHT OF CONTROL AND AUTHORITY OVER ITS USE, IS THE TERM, AND HE TESTIFIED

>> BUT THE LEGAL RIGHT OF CONTROL, THE AUTHORITY OVER ITS USE WOULD FOLLOW FROM THE LEGAL RIGHT OF CONTROL, RIGHT?

>> WELL, IT SAYS RIGHT OF CONTROL AND AUTHORITY OVER ITS USE AND COURTS HAVE NOT PARSED OUT WHETHER YOU NEED BOTH OR IT'S ONE PHRASE MEANING ONE THING.

BUT I SUBMIT TO YOU THAT AT LEAST THERE WAS A JURY QUESTION SUBMITTED WITH THE EVIDENCE BECAUSE HE LIVED 500 MILES AWAY, HE NEVER SAW THE CAR, HE NEVER ASKED HER ABOUT THE CAR, HE NEVER PAID FOR THE CAR.

>> AGAIN, I DO NOT SEE HOW THAT COULD HAVE ANY BEARING ON HIS LEGAL RIGHT OF CONTROL.

>> WELL, IF THE LEGAL RIGHT OF CONTROL FLOWS FROM THE TITLE OWNERSHIP, THEN YOU'RE RIGHT. BUT IF RIGHT OF CONTROL FLOWS FROM SOMETHING ELSE, WHICH I THINK IT SHOULD GIVEN THE JURISPRUDENCE AND THE FACT THAT THEY'RE TWO SEPARATE THINGS, THEN, YES, THERE WAS EVIDENCE.

>> WELL, ACCORDING TO YOUR VIEW THEN, IF HER NAME HAD NOT BEEN ON THIS TITLE, THAT SHE HAD FULL RIGHT TO DO EVERYTHING WITH HIS VEHICLE,

IS WHAT YOU'RE SAYING.
>> YES.
>> AND I DON'T THINK THAT'S
FOLLOWS WITH FLORIDA LAW HERE.
I MEAN, IT'S CLEAR WHAT WAS
GOING ON IS THAT HE WAS TRYING
TO RECONCILE, WEREN'T THEY?
>> YES.
>> ISN'T THAT'S WHAT
HAPPENING?
>> YES.
>> HE'S THERE AND HE'S TRYING
TO BE THE GOOD GUY.
>> CERTAINLY.
>> AND HE'S BUYING THIS CAR.
>> FOR HER.
>> BUT AGAIN HE PAID ALL THE
PRICE, DIDN'T HE?
>> YES.
>> SO ALL THE OWNERSHIP, HE
COULD VERY EASILY HAVE PLACED
THE CAR IN HER NAME IF THAT IS
WHAT WAS DESIRED, BUT IT
WASN'T.
>> AND THERE IS NO EVIDENCE
ABOUT WHY IT ENDED UP BEING
THERE'S NO EVIDENCE THAT HE
INSTRUCTED THE DEALERSHIP TO
PUT HIS NAME ON IT.
>> THAT'S NOT THE BURDEN OF
THE OTHER PARTY.
IF YOU ALL WANT TO PUT OUR
EVIDENCE, YOU CERTAINLY CAN
PUT ON WHATEVER EVIDENCE YOU
WANT TO DO.
THERE'S A GREAT DEAL OF
EVIDENCE PUT ON IN ARBECK
ABOUT ALL THAT.
WHAT WE HAVE IS TITLE IN HIS
NAME AND THEN PAROLE EVIDENCE
WITH REGARD TO EVERYTHING
ELSE.
>> WELL, IF TITLE WOULD NOT
EVERYBODY IN HIS NAME THEN WE
WOULDN'T BE HERE.
>> AGREED.
>> RIGHT?
OTHERWISE THIS DOESN'T EVEN
COME INTO PLAY IF TITLE'S NOT
IN HIS NAME.

>> IF INSTEAD OF HAVING TITLED IT JOINTLY HE SAID, YOU KNOW, I KNOW YOU NEED A VEHICLE, HE PUTS IT IN HIS NAME, SAYS BUT IT'S YOURS, BUT ON THE DAY BUT WHAT SHE DOES IS SHE USES IT, BUT SHE GIVES IT TO HER DAUGHTER TO USE.

SO NOW YOU HAVE THE ACCIDENT. THE WIFE, THE MOTHER, DOES NOT HAVE SHE HAS NOTHING TO DO WITH THE ACCIDENT.

ALL RIGHT.

AND THERE'S A LAWSUIT AGAINST THE DAUGHTER.

WHO'S THE OWNER?

IS IT DO YOU THINK UNDER ARBECK YOU COULD GET THE VICARIOUS LIABILITY OF THE WIFE IF SHE'S NOT ON THE SHE'S NOT ON THE TITLE OF THE VEHICLE?

>> IF SHE'S NOT ON THE TITLE AT ALL, THEN NO.

IT'S THE DAUGHTER THAT WOULD BE

>> AND REALLY FROM AN INSURANCE POINT OF VIEW IS THERE GOING TO BE AN AUTOMOBILE INSURER THAT'S EVER GOING TO WRITE INSURANCE FOR SOMEBODY THAT'S QUOTE THE BENEFICIAL OWNER BUT DOESN'T HAVE LEGAL TITLE?

>> YOUR HONOR,

>> I MEAN

>> I BELIEVE THE ANSWER IS YES.

I BELIEVE THE ANSWER IS YES.

AND THAT HAS HAPPENED.

THEY DO WRITE INSURANCE FOR SOMEBODY WHOSE NAME IS NOT ON THE TITLE.

BUT I CAN'T GUARANTEE THAT FACT.

>> WELL, THAT WOULD COME UP AT A CONDITIONAL SALE, RIGHT?

>> YES.

>> THAT WOULD BE WHERE THEIR NAME IS NOT ON THE TITLE,

BECAUSE IT'S A CONDITIONAL SALE.

>> YES.

>> WHAT IF THE WIFE HAD DIED, NOT AS THE ACCIDENT IN THE CAR BUT SOME OTHER REASON AND THE CAR IS THERE.

WHO OWNS THE CAR ONCE SHE'S DEAD?

>> YOUR HONOR, I AM NOT AN ESTATE PLANNING ATTORNEY, BUT I WOULD THINK THAT IT WOULD FALL IN TESTATE, AND IF SHE CHILDREN

>> HIS NAME IS SO THE TITLE.

>> YES.

AND IF HE CONTESTED IT WAS HIS CAR THERE WOULD BE A PROBATE PROCEEDING AND EVIDENCE WOULD BE INTRODUCED THAT HE HAD GIVEN THE CAR TO HER AND HAD NEVER USED THE SAME EVIDENCE ESSENTIALLY THAT WAS PRODUCED HERE AND THAT THEREFORE HE GAVE UP ANY RIGHT TO THE CAR.

I'VE USED UP ALMOST ALL MY TIME.

>> ANOTHER MINUTE FOR REBUTTAL.

THANK YOU.

>> MAY IT PLEASE THE COURT, MY NAME IS TOM SLATER ALONG WITH MY PARTNER STEVE WE REPRESENT THE PLAINTIFF IN MARY JO BOWEN.

>> THERE WAS A JURY INSTRUCTION GIVEN.

>> YES, THERE WAS.

>> AND WAS THE JURY INSTRUCTION A CORRECT STATEMENT OF THE LAW?

>> IT WAS A CORRECT STATEMENT OF THE LAW AND IT WAS THE STANDARD JURY INSTRUCTION, SLIGHTLY MODIFIED TO INCLUDE THE NAMES OF THE PARTIES IN THE CASE.

>> AND THE JURY FOUND WHAT WITH REGARD TO HIS LIABILITY?

>> THEY IN THEIR VERDICT
CHECKED THAT MR.†CHRISTENSEN
WAS NOT THE OWNER OF THE CAR.

>> SO WHY ISN'T IT A FACTUAL
QUESTION?

>> BECAUSE IT NEVER SHOULD
HAVE BEEN SUBMITTED TO THE
JURY IN THE FIRST PLACE.
MR.†CHRISTENSEN'S TESTIMONY
ABOUT HIS INTENT OF MAKING A
GIFT WAS COMPLETELY
IMMATERIAL.

>> SO WHAT COULD HE HAVE DONE
TO ESTABLISH THAT ALTHOUGH HE
DIDN'T HE NEVER HIS
INTENT WAS THAT SHE OWNED IT
FULLY, HE DOESN'T SEE THE
TITLE ACCORDING TO MR.
CANTERO, HE NEVER SEES IT, HE
NEVER HAS A CHANCE TO INSURE
HIS INTEREST, WHICH IS REALLY
THE CRITICAL PART, AS JUDGE
GRIFFIN IS TALKING ABOUT.
HE'S ON THE HOOK FOR A VERY
LARGE VERDICT.

AND WE'RE LOOKING USUALLY FOR
VICARIOUS LIABILITY.
THE REASON IS YOU WANT TO HAVE
SOME STABILITY AND FINANCIAL
RESPONSIBILITY.

SO WHAT COULD HE HAVE DONE IF
HE DIDN'T KNOW THAT HE WAS
STILL ON I MEAN, COULD HE
HAVE HOW WOULD HE HAVE
ESTABLISHED OR COULD HE
ESTABLISH I NEVER KNEW THAT I
WAS STILL ON THE TITLE.
AND WOULD THAT HAVE MATTERED?

>> WELL, HE COULD HAVE
ESTABLISHED THAT, BUT HE NEVER
DID.

HE PURPOSEFULLY AVOIDED
HIMSELF HE SIGNED UNDER
PENALTY OF PERJURY THE
APPLICATION FOR TITLE AS THE
COOWNER UNDER PENALTY OF
PERJURY AND HE LISTED HIS DATE
OF BIRTH, HIS DRIVER'S LICENSE
NUMBER.

HE FILLED OUT FOUR OTHER

DOCUMENTS THAT THE DEALERSHIP
THAT EITHER COOWNER,
COPURCHASER, COBUYER.

>> DID HE EVER EXPLAIN HE HAD
TO DO THAT?

HOW MUCH DID THE CAR COST?

>> APPROXIMATELY \$26,000,
\$28,000.

>> HE PAID CASH FOR IT?

>> HE WROTE A CHECK.

>> NICE GIFT.

>> YES.

YES.

>> HYPOTHETICALLY, LET'S SAY
YOU HAVE A 16YEAROLD SON AND
YOU DECIDE TO BUY A CAR FOR
YOUR SON.

OBVIOUSLY YOU'RE GOING TO BE
MAKING ALL THE PAYMENTS.

THE SON HAS NO JOB.

HE WOULD NEVER QUALIFY FOR
FINANCING.

ISN'T IT THE PRACTICE OF
FINANCING COMPANIES TO REQUIRE
WHOEVER'S PAYING FOR THE CAR
TO BE ON THE TITLE?

>> I'M NOT FAMILIAR WITH THE
PRACTICE OF THE FINANCING
COMPANIES BECAUSE I'VE NEVER
HAD THAT SITUATION BEFORE, BUT
I WOULD SUSPECT THAT THE
FINANCING COMPANIES WOULD WANT
SOME SORT OF A GUARANTOR ON
WHATEVER THE REASON IS FOR THE
VEHICLE, WHETHER IT'S THE
PERSON WHO IS TITLED OWNER OR
SOMEONE ELSE.

>> IN THIS CASE I DON'T KNOW
IF HE PAID CASH OR JUST MADE
PAYMENTS AND FINANCED IT.

WHAT IF A FINANCE COMPANY IN
THIS CASE REQUIRED HIM, MR.
CHRISTENSEN, TO BE ON THE
TITLE?

WOULD THAT CHANGE ANYTHING AS
FAR AS HIS INTENT?

>> IT WOULDN'T CHANGE THE
RESULT BECAUSE IF HE
PURPOSEFULLY MAKES THE
DECISION THAT I'M GOING TO BE

RESPONSIBLE FOR FINANCING THE CAR AND I'M GOING TO GO ALONG WITH THE FINANCING COMPANY BY PUTTING MY NAME ON THE TITLE, HE HAS ASSUMED RIGHTS HE'S ASSUMED LIABILITIES, BUT AT THE SAME TIME HE'S ALSO GOTTEN RIGHTS.

HE HAS A RIGHT TO CONTROL THE CAR.

HE HAS PROPERTY RIGHTS.

HE HAS AN IDENTIFIABLE PROPERTY INTEREST, WHICH IS WHAT THE COURT TALKED ABOUT IN THE ARBOCK DECISION.

>> BUT IN THIS CASE YOU'RE SAYING THE RECORD'S CLEAR THERE WAS NO FINANCING, SO HE PAID THE WHOLE AMOUNT?

>> THEY PAID THE CAR ENTIRELY.

>> AND WE DON'T KNOW WHY WHETHER IF HE TESTIFIED IT WAS A REQUIREMENT THAT HE BE ON AND THERE WAS BUT THERE'S NO TESTIMONY.

>> THERE WAS NO TESTIMONY OF THAT.

>> AND SO THAT'S WHAT THE 5TH DISTRICT'S TALKING ABOUT AS FAR AS SAYING, LISTEN, THERE IS REALLY NOT SUFFICIENT EVIDENCE THAT THERE WAS A GIFT?

OR WAS THE ISSUE OF GIFT RAISED AT THE TRIAL COURT?

>> WELL, HE DISCUSSED IN MR.†CHRISTENSEN IN HIS TESTIMONY SAID THAT IT WAS MY INTENTION TO GIVE A GIFT. YET THEY GO DOWN TO THE DEALERSHIP AND HE SIGNS THE PAPERWORK.

HE SIGNS THE APPLICATION FOR THE TITLE AS A COOWNER.

SO HE ESTABLISHED FOR HIMSELF A COOWNERSHIP OF THE CAR WITH MARY CHRISTENSEN, WITH THE RIGHT TO CONTROL THE VEHICLE IN CERTAIN IDENTIFIABLE PROPERTY RIGHTS.

>> WHAT HAPPENS AFTER HE LEAVES THERE UNTIL THE TIME OF THE ACCIDENT?

IT'S TWO YEARS?

>> ALMOST TWO YEARS.

>> DOES HE EVER

>> HE DOES NOTHING TO VEST HIMSELF OF HIS PROPERTY INTEREST IN THE VEHICLE.

>> BUT DID HE EVER GET THE TITLE?

>> NO, BECAUSE THE TITLE WAS MAILED TO APPARENTLY TO THE ADDRESS THAT WAS LISTED ON THE APPLICATION, WHICH IS APPARENTLY THE ADDRESS THAT MRS.†CHRISTENSEN WAS LIVING AT AT THE TIME THEY PURCHASED THE CAR.

HE COULD JUST HAVE EASILY HAVE TOLD THE DEALER MAIL IT TO MY HOME ADDRESS.

>> THEY WERE ALREADY DIVORCED?

>> THEY HAD HAD THE DIVORCE TRIAL.

THE JUDGE HAS ANNOUNCED HIS RULING BUT HAD NOT ENTERED AN ORDER.

>> SO I'M ASSUMING THAT FOR WHATEVER REASON HIS DIVORCE ATTORNEY HAD NOT DEALT WITH THIS PIECE OF PROPERTY?

>> ONE CAN ONLY SPECULATE ABOUT THAT.

>> PROBABLY.

IF HE'S HELD LIABLE, PROBABLY A GOOD CAUSE OF ACTION AGAINST HIS ATTORNEY.

>> CORRECT.

>> BECAUSE IT REALLY COULD HAVE BEEN RESOLVED AT THAT POINT, RIGHT?

>> RIGHT.

>> AS FAR AS WHO OWNS WHOSE CAR.

>> THAT'S RIGHT.

>> NOW, DID HE HAVE HOPES OF RECONCILING WITH HER IN SPITE OF THIS?

>> YES, HE DID.

>> IS THERE A REASON
>> HE WAS THERE TO RECONCILE
WITH HER.
>> SO THIS IS HIS
>> AND HE CAME BACK SEVERAL
MONTHS LATER, THE TESTIMONY
WAS, IN JULY, AGAIN, IN
ANOTHER ATTEMPT TO RECONCILE
WITH HER AND IT DIDN'T WORK.
BUT MR.†CHRISTENSEN DID
NOTHING IN THOSE 22 MONTHS
AFTER THE CAR WAS PURCHASED TO
DIVEST HIMSELF OF HIS PROPERTY
INTEREST IN THE VEHICLE.
>> I GUESS IT JUST GOES BACK
TO THESE ARGUMENTS WERE MADE
TO THE JURY AND THE JURY FOUND
AGAINST YOU ON THESE ISSUES.
>> I THINK WHAT REALLY THE
VERDICT CAME DOWN TO, WHAT THE
JURY FOUND, WAS THAT HE DIDN'T
EXERCISE CONTROL.
>> THIS COURT HAS RECOGNIZED
IN THE SECOND PALMER.
HE HAD PROPERTY INTEREST IN
THE VEHICLE.
>> WAS THE JURY INSTRUCTION
INCORRECT?
>> NO, IT WAS NOT INCORRECT.
IT WAS RECOGNIZED IN THE
SECOND PALMER DECISION IN
1995.
THERE IS ONLY TWO EXCEPTIONS
TO TITLE THEORY.
ONE'S A CONDITIONAL SALE OR
CONDITIONAL TRANSFER AND
INCOMPLETE SALE.
>> ISN'T IT CLEAR, AUERBACH
IS SO CLEAR, YOU COULD NOT
HAVE MORE EVIDENCE IN A
RECORD OF ACTUAL CONTROL IN
THAT CASE?
BUT THIS COURT CLEARLY HELD,
BECAUSE LEGAL TITLE WAS
SOMEWHERE ELSE, THAT'S WHERE
THE ULTIMATE LIABILITY UNDER
DANGEROUS INSTRUMENTALITY
WOULD HAVE TO LIE.
AND GOING BACK, WHAT THE
APPELLANTS ARE ASKING FOR IS

THAT THE THEY'RE CONFUSING
AND CONFLATING THE RIGHT OF
CONTROL WITH THE EXERCISE OF
CONTROL.

HE DIDN'T EXERCISE CONTROL,
BUT HE HAD THE RIGHT.

HE HAD THE RIGHT TO ENCUMBER
THE CAR AND SELL THE CAR
BECAUSE THE TITLE WAS JOINTLY
HELD IN THE SITUATION.

>>†WHY ISN'T IT A BETTER
RULE?

IT SEEMS TO ME THAT PART OF
THE ARGUMENT IS THAT SHE HAD
THE ACTUAL POSSESSION OF A
CAR.

SHE ACTUALLY HAD THE KEYS TO
THE CAR.

SO HOW IN THE WORLD COULD HE
HAVE EXERCISED ANY CONTROL
OVER THE CAR?

NOT ONLY WAS HE 500 MILES
AWAY, BUT AS I REMEMBER THE
EVIDENCE, HE HAD NO KEYS TO
THE CAR OR ANYTHING LIKE
THAT.

WHY ISN'T IT A BETTER RULE,
IT SEEMS -- BECAUSE SHE HAD
THE POSSESSION OF THE CAR, HE
HAD NO RIGHT OF CONTROL.

>> WELL, HE DID -- HE COULD
GET POSSESSION OF THE CAR IF
HE WANTED TO.

HE COULD HAVE EASILY GONE TO
THE DEALER AND SAID, I'M A
CO-OWNER OF THE CAR.

PLEASE MAKE ME MY OWN KEY.
AND IF THE CAR HAD BEEN
SITTING IN A PARKING LOT
SOMEWHERE IN MELBOURNE BEACH,
HE COULD HAVE GONE WITH HIS
NEW KEY AND DRIVEN THE CAR
AWAY.

HE HAD THAT RIGHT TO DO THAT
BECAUSE HE WAS THE CO-OWNER
OF THE VEHICLE.

>> HE COULD HAVE HAD THE CAR
TOWED BACK.

>> THAT'S EXACTLY RIGHT.

>> AND SHE WOULD HAVE HAD NO

RECOURSES.

>> NO.

>> SHE COULD TOW IT BACK.

>> SHE COULD TOW IT BACK?

>> THEY COULD TOW IT BACK AND FORTH.

>> BACK AND FORTH!

PROBABLY BETTER TO GO COURT.

[LAUGHTER]

>>†THAT'S RIGHT.

I DON'T HAVE ANY OTHER ARGUMENT TO MAKE.

>> THANK YOU FOR YOUR ARGUMENTS.

REBUTTAL?

>>> WHAT DO I HAVE FINALLY? A MINUTE?

>> YOU HAVE A MINUTE AND 17 SECONDS.

>> THANK YOU.

TWO THINGS.

NUMBER ONE, HERE WAS THE JURY INSTRUCTION.

YOU SHOULD CONSIDER THE DEFENSE RAISED BY ROBERT CHRISTENSEN ON THE DEFENSE, THE ISSUE FOR YOUR DETERMINATION ON THE CLAIM WITH MARY JO BOWEN IS WHETHER ROBERT CHRISTENSEN WAS AN OWNER OF THE PT CRUISER? AN OWNER HAS LEGAL TITLE TO THE VEHICLE AND WHO HAS BENEFICIAL OWNERSHIP WITH THE RIGHT OF CONTROL AND AUTHORITY OVER ITS USE.

YOU HAVE TO SHOW BOTH THINGS, AND THE POLICY BEHIND THIS EXCEPTION OF BENEFICIAL OWNERSHIP IS WE'RE GOING TO IMPOSE LIABILITY OF SOMEBODY WHO CONTROL WHAT THE DRIVER IS DOING.

SO IF THE DRIVER GETS IN AN ACCIDENT, YOU'RE RESPONSIBLE. IF YOU CAN'T CONTROL WHAT THE DRIVER IS DOING, THEN WE'RE NOT GOING TO†--

>>†HOW DO YOU DEMONSTRATE THAT YOU HAVE CONTROL OF WHAT

THE DRIVER IS DOING?
SEEMS TO ME THAT IT WOULD BE
VERY DIFFICULT TO SHOW THAT
IN ANY SITUATION WITH ANY
DRIVER.
HOW DO YOU CONTROL?
>> IN AUERBACH THEY SHOWED
THEY HAD CONTROL, BUT THEY
DIDN'T HAVE TITLE.
>> HOW?
>> THEY COULD HAVE TAKEN AWAY
THE KEYS TO THE CAR.
YOU CAN INSURE THE VEHICLE.
YOU CAN ADVISE THE DRIVER,
DON'T LET SOMEBODY ELSE DRIVE
IT.
>> MY WIFE AND I OWN A CAR
JOINTLY, AND I'VE GOT A KEY,
SHE'S GOT A KEY.
I CAN'T TAKE AWAY HER KEY.
>> THAT WOULD BE A JURY
ISSUE, YOUR HONOR.
[LAUGHTER]
>> OKAY, IF YOU SAY SO!
I'LL TAKE YOUR WORD FOR IT!
>> HAVEN'T WE -- I MEAN
BASICALLY, THE CONCEPT OF THE
TITLE HAS FLOWN FROM MOTOR
VEHICLE REGISTRATION LAWS.
THE AUTOMOBILES ARE SO
INVOLVED IN COMMERCE.
IF NOT, THEN WE'RE GOING TO
HAVE A SWEARING MATCH IN
EVERY CASE, AND WE FLIPPED
THIS AND THE LAW SAID THAT IT
FOLLOWS THE OWNERSHIP, AND
THE OWNERSHIP WILL LOOK TO
WHAT THE STATE REGISTRATION
LAWS ARE.
>> WE HAVEN'T HAD THAT
SWEARING MATCH, AND IF THAT
WERE THE LAW, THEN THE RULE
WOULD BE VERY SIMPLE.
OWNERSHIP FOLLOWS TITLE,
EXCEPT ON CONDITIONAL SALES
AND INCOMPLETE TRANSFERS.
>> IT'S PRETTY CLEAR.
I'M REREADING AUERBACH HERE,
AND IT'S PRETTY CLEAR TO ME
THAT WE WERE ESSENTIALLY

SAYING THERE'S A NARROW
EXCEPTION FOR BENEFICIAL
OWNERSHIP.

AND INT--

>>†AND I AGREE WITH THAT, BUT
IT'S A NARROW EXCEPTION BUT
BENEFICIAL OWNERSHIP.

IT'S NOT TITLE OWNERSHIP
EXCEPT CONDITIONAL SALES OR
INCOMPLETE TRANSFERS.

IT'S WHATEVER BENEFICIAL
OWNERSHIP IS.

THAT WAS THE JURY INSTRUCTION
IN THIS CASE.

ESSENTIALLY, THEY'RE ASKING
THIS COURT TO IMPOSE A LAW
DIFFERENT FROM WHAT THE JURY
DETERMINED, AND THE
INSTRUCTION, THE UNOBJECTED
TO INSTRUCTIONS WERE IN THIS
CASE.

THE INSTRUCTIONS WOULD HAVE
SAID, IF YOU FIND ROBERT OWNS
TITLE, THEN YOU MUST HOLD FOR
ROBERT, UNLESS YOU FIND THIS
WAS A CONDITIONAL SALE OR
INCOMPLETE TRANSFER.

THAT'S NOT WHAT THE JURY
INSTRUCTION SAID.

MAYBE FOR ANOTHER CASE, THEN,
YOU CAN SAY THAT WE'RE
NARROWING IT FURTHER.

THEY AGREED TO THIS
INSTRUCTION.

>> YOU'RE REALLY SAYING IT
WAS A COMPLETE GIFT AND HE
RETAINED NO TITLE, NO
INTEREST, AND NO RIGHT TO
CONTROL.

AND I GUESS GOING BACK TO
WHAT THE FIFTH -- IN ANOTHER
CASE WHERE THAT COULD BE
PROVED, THEY SAID THERE WAS
INSUFFICIENT PROOF THAT THAT
WAS THE CASE.

WE GET BACK TO THIS ISSUE, IF
IT WAS A COMPLETE GIFT, AND
HE RENOUNCED ANY RIGHT TO IT,
THAT MIGHT BE A NARROW
EXCEPTION.

THAT MIGHT BE DIFFERENT THAN
THE CASE.

>> THAT IS THIS CASE.

IT'S A COMPLETE GIFT, EXCEPT
HIS NAME WASN'T ON THE TITLE.
YOU WOULD REACH THAT QUESTION
BECAUSE HIS NAME WASN'T ON
THE TITLE.

>>> THE COURT WILL BE IN
RECESS FOR 10 MINUTES.

>> ALL RISE.