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93-077C

IN THE COURT OF APPEALS OF GEORGIA

ROBERT E. THOMPSON,  
APPELLANT

DOCKET # A93A2140

Vs.

BIBB COUNTY IND. # 32959

THE STATE OF GEORGIA,  
APPELLEE

CONVICTION FOR RICO

APPELLEE

BRIEF OF APPELLEE

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DISTRICT ATTORNEY  
MACON JUDICIAL CIRCUIT  
GEORGIA BAR # 669800

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## TABLE OF CONTENTS

1. PART I. Statement of the Case . . . . .	Page 1
(a) History of the Case . . . . .	Page 1
(b) Analysis of Indictment . . . . .	Page 2
(c) Synopsis of Evidence . . . . .	Page 2
(d) Detailed Statement of Facts . . . . .	Page 3
State's Evidence . . . . .	Pages 3 -- 22
Testimony of Chancellor . . . . .	Pages 22 -- 26
Testimony of Thompson . . . . .	Pages 26 -- 30
2. PART II. Argument and Citation of Authority . . . . .	Page 31
(1) Response to Enumeration 1 . . . . .	Pages 31 -- 36
(2) Response to Enumeration 2 . . . . .	Pages 37 -- 39
(3) Response to Enumeration 3 . . . . .	Pages 40, 41
3. CONCLUSION . . . . .	Page 42

**IN THE COURT OF APPEALS OF GEORGIA**

**ROBERT E. THOMPSON,**  
Appellant

DOCKET # A93A2140

Vs.

BIBB COUNTY IND. #32959

**THE STATE OF GEORGIA,**  
Appellee

CONVICTION FOR RICO

Brief of Appellee

PART ONE: Statement of the Case.

(a) History of the Case.

The Grand Jury of Bibb County returned a true bill of indictment charging appellants Thompson and Chancellor, along with Thomas Rich a/k/a Thomas Sable a/k/a Ron Rich, and James D. Rodriguez, with Violation of the Georgia Racketeer-Influenced and Corrupt Organizations Act (hereinafter RICO) in Count One. The Racketeering count contained 57 predicate acts. The indictment also charged appellants Thompson and Chancellor together and severally with 54 counts of theft by taking, theft by deception, and theft by conversion (Counts 2--55). The case was tried from May 9th to June 4th, 1990. Appellant Chancellor was found guilty on counts 1, 2, 3 (misdemeanor), 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, 19, 20, 24, 49, 50, 51, 52, 53, 54, and 55. He was acquitted on counts 40 and 47. Appellant Thompson was found guilty on counts 1, 2, 3, 4, 5, 6, 7, 8, 13, 14, 15, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 38, 39, 41, 43, 45, 46, 49, 50, 51, 52, 54, and 55. He was acquitted on counts 16, 17, 22, 37, 40, 42, 44, 47, and 48. The appellants' motions for new trial, as amended, were denied May 26, 1993.

(b) Analysis of Indictment.

The indictment charges the appellants and others with a single count of RICO and with 57 predicate acts of theft. The additional 54 substantive counts generally restate the predicate acts of theft as substantive counts. Thus, for example, predicate act (1) alleges an act of Theft by Conversion on 27 October 1988 with regard to a 1987 Ford F-150 truck, property of Geraldine Cullens; these same facts are also alleged in Count #2 of the indictment, charging the substantive crime of theft by conversion. Along the same line, predicate act (2) = Count #3; predicate act (3) = Count #4; and so on.

(c) Synopsis of Evidence.

Appellants Chancellor and Thompson together as partners and with Thomas Rich a/k/a Thomas Sable a/k/a Ron Rich ran Southern Financial Services (SFS), which acquired cars from people having trouble meeting their car loans. The most usual scenario was this: The car owner -- often financially strapped as a result of a recent divorce, family illness, or other setback -- would leave their car with SFS under an agreement whereby SFS would assume responsibility for loan payments, resell the car, and refinance a new loan.

In fact, though, SFS did not keep up the loan payments or in any manner discharge or ameliorate the ongoing debt; instead, the money was drained out of the company for the personal benefit of the co-conspirators. The appellants did not like to get paid by check; they encouraged customers to bring cash only, which did not go on the books.

Meanwhile the car itself would often be resold, typically for \$1,000 or more down and substantial monthly payments to follow. The money thus acquired by the appellants would likewise be pocketed and not applied against the original loan.

Within two or three months, then, the original loan would go into default and the loan company would move to repossess the car. The "buyer" was subject to the loss of the car, the down payment, and all monthly payments. The original owner was subject

to loss of the car, the equity on the car, and sometimes further monthly payments made to SFS. In addition he would still be liable on a deficiency judgment to the loan company.

With some vehicles the work of the appellants was even more insidious. Several of the cars they "resold" were on long-term leases. The cars would be sold to new "buyers" without telling the lessor and without disclosing the fact of the lease to the new buyer. The buyer would then -- contrary to the representations of the appellants -- be left with a car for which, if he was allowed to assume the original lease, he would ultimately be obligated to make a large final "balloon payment" to the leaseholder.

In the wake of the financial devastation caused by their enterprise, the appellants were personally enriched by (a) the monthly payments by the original owner, (b) the down payment of the new "buyer," and (c) the monthly payments made by that new buyer until the car was repossessed.

(d) Detailed Statement of Facts.

**MICHAEL T. HOPKINS**, an investigator for the Bibb County District Attorney's Office, was on January 10, 1989, contacted by Jack McNeil, security officer for C & S Bank in Macon (T-3-6). That same day Hopkins became aware that the Bibb County Sheriff's Office was conducting an investigation of Southern Financial Services. He received some documentary evidence from the Sheriff's Office, and agreed to spearhead an investigation of the business. (T-8)

The next day Hopkins contacted Pam Odom. Ms. Odom told the investigators that twenty-five or thirty vehicles had "passed through" the business and that one of the bosses, appellant Robert "Bob" Thompson, had a "whole stack of car titles in his briefcase." (T-9-12) She said that customers of the business would make payments on vehicles to Southern Financial Services, but that these payments were not being forwarded on to the lienholders on the vehicles. (T-12) Instead, money was being deposited into an account at Bank South and then immediately withdrawn and divided up

among the salespeople that worked at Southern Financial Services. In some cases, cash handed to one would be divided immediately among those present and pocketed. Odom gave Hopkins the following names: Robert Thompson, Wilbur Gil Chancellor, Ron Sable and James Rodriguez.

Soon Hopkins received a telephone call from Appellant Thompson. (T-13-14) Thompson claimed that he had gotten "tied up" with "some guy from Texas" who had "gotten him in a real bind" and requested a meeting with Hopkins. (T-15)

Hopkins and other investigators arrived at the Southern Financial Services offices the following morning, search warrant in hand. Thompson showed Hopkins eleven 8 x 12 manilla envelopes. Hopkins looked through the envelopes and did not find any record of Evie Fleming's vehicle or Sandra Fowler's vehicle, both of which he believed, based on his investigation so far, had been handled by Southern Financial Services. (T-16) Thompson specifically assured Hopkins that the payments on the Fleming vehicle were up to date. Hopkins knew this to be false. (T-17) After asking Thompson again for the remainder of his records and being assured that the eleven envelope were all he had, Hopkins decided to go ahead and serve his search warrant.

The search revealed seventeen more similar envelopes, containing car contracts, payment books and car keys hidden in a cabinet in the rear of the office. (T-17-18). Other records in the SFS offices included loose contracts, car payment books, check books, phone messages and notes, and payment records. (T-17-18). Thompson's briefcase was found by Investigator Jimmy Melvin in a blue Chrysler LeBaron that Thompson was driving. (T-19-20) The brief case contained some twenty car titles (T-20-21)

Hopkins identified State's Exhibits 1-11 as being manila envelopes seized in the search of the Southern Financial Services office, each containing contracts and records for specific vehicles. He recognized State's Exhibits 12 and 13 as contracts seized from the office; State's Exhibits 14-21 were envelopes containing vehicle records

seized pursuant to his search warrant (T-26-46). State's Exhibit 22 was a card file box seized from the business (T-47); State's Exhibit 23 was a notebook seized from the business showing used car records. (T-48)

Hopkins identified State's Exhibit 33 as the briefcase which was found in Thompson's blue Chrysler LeBaron. It contained State's Exhibit 35, an unexecuted document purporting to be a "joint venture, limited partnership agreement" between Ronald Sable, James E. Rodriguez, Robert E. Thompson and Gil W. Chancellor "for the purpose of establishing . . . Southern Financial Services . . . ." (T-55-56) Hopkins noted that State's Exhibits 36 and 37, blank form contracts, were identical to the completed contracts on various cars found inside the manila envelopes. (T-57)

**PAMELA JEAN ODOM** had worked at various car dealerships in Macon for the past five years, and that in late September or early October of 1988 she answered a classified advertisement from Southern Financial Services seeking a receptionist (T-94-95) When she went to the business for an interview, she met with the appellant, whom she knew through a mutual friend. After an interview, appellant Thompson told Odom she was hired, but she would need to meet his "partners" (T-96, 114) Around the end of October, she actually went to work at the SFS office. Thompson showed her a desk where she could work and Thompson and Ron Sable together told her what her duties would be. (T-97)

From the first she noticed that the bookkeeping procedures for the business were almost non-existent. (T-98-99) Eventually she complained to Thompson about the record-keeping process and he told her to make a list of supplies she needed. (T-99) Odom began to keep a card file, State's Exhibit 22, on the customers and cars the business dealt with. (T-100) She opened a checking account for the business at the appellant's instruction (T-100-101), with herself as the only signatory; Thompson told her he couldn't put his name on the account "at the moment" because he'd had some financial

trouble before and Sable couldn't put his name on the account "because he didn't have any credit or anything here."

Odom was familiar with the car business and knew what types of forms have to be filled out to sell or finance a car. This business was not using proper forms. Southern Financial Services never gave her a tax form to fill out for withholding or social security. (T-102)

She observed the operation of SFS: If a customer came in to either purchase or consign a car, she would refer them to either appellant Thompson or to Ron Sable. (Chancellor worked at the business for her first couple of weeks, but stopped coming in after that.) (T-104) The customers were told that cash payments were preferred. Thompson and Sable would receive cash from customers, and either divide it on the spot and put it in their pockets, or would have her deposit it into the bank account and turn around and make a quick withdrawal, to be split between Thompson and Sable. (T-105, 121-22) Odom only remembered Chancellor being present one time when cash was divided up. (T-105)

Odom heard both appellant Thompson and Ron Sable tell customers who brought in cars for which they were behind on their payments that SFS would catch up their payments on the vehicles. (T-105-106) The agreements made with the customers were not kept. (T-125)

When payments came into the office from customers who had purchased cars, appellant Thompson and Ron Sable would have Odom either go to the bank and cash the check and return the cash to them or deposit the checks and make an immediate cash withdrawal which she would return to them. (T-106) On one occasion she asked Thompson about this procedure, and he told her he "would put the money back in later on." He never did. (T-106)

Odom wrote numerous checks against the company account for the personal living expenses of Ron Sable. (T-107-108, 112) Three entries in the checkbook were

written by someone other than Odom, even though she was the only signatory on the account. Another entry was identified as being one where a payment came into the office from an Arthur Perry. Odom deposited Perry's check for \$184.00 and wrote out a check to herself, which she cashed, at the instruction of Thompson and Ron Sable, and returned the cash to Thompson and Sable. (T-110) Another entry was for a check for \$450.00 written out by Thompson to himself. (T-110-111) Odom identified a check out of one of the bank statements, State's Exhibit 26, as being the check to Thompson which the entry referred to. Two more entries were for payments on vehicles. (T-111-112) Other entries were for checks to newspapers for advertising for the business. (T-112)

Appellant Thompson and his business associates told Odom SFS was organized as follows: Sable was the president, Thompson was the vice-president, and Chancellor and Rodriguez were secretary and treasurer. (T-113)

Odom testified that neither Thompson nor any of his business partners ever deposited any funds into the business account other than money that came in from customers as payments on vehicles. (T-120) She identified various entries in State's Exhibit 114, the permanent checkbook. Some were for checks written as payments to lienholders on vehicles, and other office and business expenses. Others were not: Check #111 was written to Chancellor for cash after an insurance check was deposited into the business account. (T-118) Check #113 was made out to cash for Thompson because "at that time his father had passed away and he was borrowing out of the checkbook." Check #114 was a payment for a truck that had been consigned to the business that Thompson was buying for his personal use; the payment, however was made out of the business account. (T-119-120) Check #117 was written to Colortype for "Ron's TV." (T-121) Check #118 was a check written for cash to "Ron and Bob" in the amount of \$378. This check immediately followed the deposit of two customer payments totalling \$376.67. (T-121)

On one occasion Chancellor brought in a customer payment check on a Saturday and Chancellor and Thompson instructed her go to "one of those cash places that they cash checks" and attempt to immediately cash it. She was unable to do so. (T-122)

About a month after she began working at the business, Odom started getting telephone calls from lienholders and from the customers who had placed their cars with the business. (T-123, 131) Odom was told to tell the customers that the payments had been made, when in fact they had not. (T-123) Odom told the jury that the few payments which were made to lienholders were only made after several calls had been made from customers. She approached Thompson about the problem:

A Yes. I told him that we needed to start making them as the money came in, make the car payment, and he said, we will, we will, the next check we will.

Q And when the next check came in what would happen?

A Same old stuff, cash it. (T-124)

Thompson took possession of all payments that were received into the office after the service of the search warrant. Odom suggested that these payments be returned to the customers, but Thompson refused, saying he didn't owe the customers anything. (T-138-140)

Neither Thompson nor his co-defendant ever instructed Odom to contact a lienholder and notify it that they were taking possession of or "assuming" any of the vehicles. (T-146)

**EVIE FLEMING FRALEY** (Predicate Act 11) in the latter part of October, 1988, was in a financial bind due to a recent divorce. (Her name at that time was Evie Fleming.) She and her ex-husband Samuel Fleming were co-signers on a lease for a Nissan Sentra through C & S Bank and the ex-husband was threatening to file for bankruptcy. (T-

226) She saw a newspaper advertisement for Southern Financial Services and went to their offices on November 7, 1988, where she met with Thomas Rich. She told Rich that her Nissan was a leased car and that she was behind on the payments. (T-227) She signed a contract with SFS (State's Exhibit #3-A, included in the manila envelope State's Exhibit #3) and turned the car over to them. Rich and appellant Chancellor signed the contract for SFS. Later she began to get delinquent notices from C & S (T-228) and eventually contacted C & S and told them what she had done with the car. Ms. Fraley never did recover her car after it was turned over to SFS, and at the time of the trial she was still indebted to C & S Bank for the lease payments. (T-231)

LASANDRA J. DEAN (Predicate Acts 11, 12, 13) testified that in October and early November of 1988 she was looking for a car to purchase; she heard about a Southern Financial Services advertisement through her sister and called the company on November 10, 1988. (T-239, 242) After getting off work that day she went to the SFS office, arriving well after normal business hours, and met with two men, one of whom was appellant Thompson. (T-240) Thompson took an "application" from her, told her that everything "looked fine" and said he would verify the information on her application the next day. She test-drove, then agreed to buy, a Nissan Sentra. (T-240, 241; State's exhibit 3B) This was the same Nissan Sentra turned over to SFS by Evie Fraley. Miss Dean was permitted to make her \$1,100.00 down payment using a two-party payroll check from her sister and a personal check. (State's Exhibit 3-D) She did not fill in the payee on that check, however when she later received a copy of the check from her credit union, the payee line had been filled in to read "Gil Chancellor." (T-243) The contract identified the Sentra as having belonged to Samuel Fleming. The SFS contract promised to deliver title to the car to Ms. Dean after all her payments were made. (T-242, 250) Thompson never revealed to Ms. Dean that the car was a leased vehicle. (T-242, 247) He told her that her monthly payments of \$178.67 would be forwarded by SFS to C & S Bank and that SFS was holding the title to the car at its "home office in Atlanta." (T-248-49)

Ms. Dean paid three monthly installments on the car in the amount of \$178.67 to the SFS office (T-242, 245). Eventually she was contacted by an investigator for C & S Bank who told her that the car she thought she had purchased was in fact a leased car which she was going to have to surrender. (T-246, 247) At the time of the trial, Ms. Dean had lost her total down payment of \$1,100.00 plus three monthly payments of \$178.67.

**TRACY JONES** (Predicate Act 4) owned a 1986 Ford Thunderbird automobile. (T-260) Ms. Jones had been recently divorced and had gotten the Thunderbird and a truck as a part of the divorce settlement, but had been unable to keep up with payments on both vehicles. (T-261) She saw an SFS advertisement which said "basically . . . if you are having trouble with your car payments and are falling behind, call this number and we'll help you out." (T-261) She called the office and spoke to appellant Thompson (T-261), who told her that someone would come to her home. Appellant Chancellor and another man arrived at her home the next day. (T-262) They rushed her through the process of signing a contract, telling her that they would take over the car for three months and would make the payments on it. If after three months they had not found a buyer for it, then she could get the car back and resume making payments. She was told that if they located a buyer she would be relieved of all responsibilities for the car. (T-262-263) Ms. Jones identified State's Exhibit 40 as being the contract she signed. Chancellor and the other man drove away in her Thunderbird, and she never saw it again. (T-264)

Ms. Jones grew leery of the arrangement and called SFS to make sure that the November payment on the car had in fact been received. She was assured that it had been. Five days after the payment was due she contacted the lienholder, GMAC, and learned the payment had not been received. (T-265) When she got a delinquency letter from GMAC she called Chancellor at home. Chancellor told her that as far as he knew the payment had been made. After another payment was missed, Ms. Jones learned that her Thunderbird was in Huntsville, Alabama, in the possession of either Chancellor's stepdaughter or a friend of the stepdaughter's. (T-266) After SFS missed three payments, the car was repossessed by

Alabama GMAC. (T-267) The car was sold at auction; Ms. Jones ended up owing a deficiency of \$1,400.00 to GMAC, which she was paying at the time of the trial. (T-268)

**MICHAEL ANTHONY YATES**, (Predicate Act 4) answered an advertisement for SFS which appeared in The Atlanta Journal-Constitution (State's Exhibit 41), because he had a 1987 Nissan Pulsar that he was having difficulties making lease payments on. He called the number in the ad and spoke with Appellant Thompson on the telephone. (T-276-77) Thompson told Mr. Yates that he would send somebody the next day to look at his car. The following day, November 1, appellant Chancellor, James Rodriguez, and a woman showed up at Yates' home. Yates showed them the paperwork on his car, including his lease agreement. He and Chancellor signed a SFS contract and Yates was told that SFS would take responsibility for the lease payments, including the next one, due on November 8. Yates was also assured that the individual who assumed his car through SFS would be responsible for the "balloon" payment at the end of the lease period. (T-280)

Several days later, Yates received a delinquency notice from the Trust Company Bank, for the November 8 lease payment. He contacted SFS and James Rodriguez assured him that the payment had been received by SFS, that it was "right here in front of him" and that he would send it to Trust Company Bank. When Yates received a second delinquency notice in December, and a third in January, he tried again to contact SFS, only to learn that the telephone had been disconnected. (T-282-283) A visit to Macon in an attempt to locate the business yielded no better results. In mid-to-late January, Yates finally located his car in Fort Valley, Georgia, where it was in the possession of a Mr. Dobson.

As a result of his dealings with SFS, Yates was without his car for about three months. At the time of the trial, the November, December, and January payments, which should have been made by SFS, had been added to the end of his lease term. (T-284-85)

**CARLTON BRASWELL** (Predicate Act 28) owned a 1987 Nissan Maxima financed through Nissan Acceptance (T-293) that he was having trouble making the payments on. (T-289-90) A member of his church showed him an advertisement in The Macon

Telegraph for Southern Financial Services. (T-290) After calling for information, he went to the SFS office and met with a Mr. Rich. (T-291) Rich told Mr. Braswell that SFS would make the payments on the car until it was sold. (T-294) Rich and Braswell signed a contract (State's Exhibit 9-A) on December 7, 1988 (T-297) and Braswell left his car on the SFS lot. After he received calls from Nissan Acceptance about payments not being made, he telephoned SFS and talked to Thomas Rich. Later, he went to the offices personally and talked to the appellant. Thompson told him that Thomas Rich had skipped town, said he had no idea where his car was, showed no willingness to assist Braswell in any way to find his car. (T-296-98)

**WILLIAM BOB GREEN, JR.**, (Predicate Acts 28, 29, 30) testified that in late 1988 he was looking for a second-hand car to purchase. A co-worker showed him an ad about Southern Financial Services, so Green called the offices of the company. Thompson brought a 1984 Ford Bronco to Buena Vista for Green to see. (T-306) Green had a money order for the \$1000.00 down payment, but Thompson insisted that Green go to the bank and cash the money order so that he could have cash. (T-307, 308).

Later Green gave Thompson another \$550.00 in cash as the balance of his down payment. During this meeting, after he showed interest in a 1987 Nissan Maxima, Thompson allowed him to drive it back to Buena Vista to show his wife. Green left the Bronco that he had just purchased on the SFS lot. The next morning, when Green called Thompson to tell him that he was on the way to Macon to turn the Nissan back, Thompson told him the Bronco had been sold. (T-312) Green said he would keep the Maxima to test-drive it a while longer and Thompson told him he would have thirty days to make a payment on it (T-316). Green made one payment on the Maxima to SFS. A contract signed by Thompson was sent to Green for the Maxima, but Green decided he didn't want the car. That turned out to be a good decision; soon some men from Nissan Acceptance came to repossess it. (T-313)

Southern Financial Services had "serviced" Green out of the \$1,550.00 down payment he made on the Bronco plus the one payment of \$349.53 on the Maxima. (T-322, 317, 318). He had the Bronco in his possession for one week and drove the Nissan from December 21 until around the first of February.

**MICHAEL DOBSON**, (Predicate Acts 5, 6, 7) an employee at Warner Robins Air Force Base, saw an ad in The Macon Telegraph for SFS and contacted their offices. (T-333, 334) He then went to SFS lot on November 3 (T-338) and met with the appellant. (T-335) Thompson told Dobson that if he saw a car that he liked SFS would finance it for him. (T-335, 336). Dobson specifically asked appellant Thompson if any of the cars on the lot were leased cars, and Thompson told him they were strictly repossessed cars. (T-349) A man named Rodriguez then joined Thompson and Dobson and Thompson asked Rodriguez to take over showing Dobson the cars, so that he could get started on "learning how to write up contracts." (T-336) Dobson saw a red 1987 Pulsar that he liked (the same turned in by Yates), signed a contract, and made a \$1,500.00 down payment in cash. Thompson told Rodriguez that he was going to "give him credit or part of the credit" for selling the Pulsar. Chancellor signed the contract as a witness. (T-357) Thompson took possession of Dobson's down payment money. (T-339-340) According to his contract, Dobson was to make monthly payments in the amount of \$312.97. Thompson showed Dobson something that "looked like a title." (T-340) He told Dobson that after he made 44 payments of \$312.97 he would get the title.

Dobson's first payment on the Pulsar was not due until December 3, 1988. During November Dobson reported to Fort Bragg, North Carolina for military reserve duty. While there his wife called and told him that SFS had called and wanted to repossess the car because the November payment had not been made. (T-341, 342) Dobson called SFS from Ft. Bragg and talked to Rich, who reassured him that there had just been a "mix-up." Dobson was told he had to make a November payment, outside of the terms of his contract, as soon as he returned to town, which he did. (T-342, 345) A representative from SFS

picked up Dobson's December payment at Dobson's home. (T-346) Dobson took his January payment in cash to the SFS office and turned it over to the appellant. (T-347)

Thompson never told Dobson the Pulsar he thought he was buying was in fact a leased car, and that there was a balloon payment due at the end of the lease term. (T-350, 351)

**GERALDINE CULLENS** (Predicate Act 1) was the nominal owner of a truck which was actually being driven and paid for by her son Herbert. In late 1988 her son was taken ill and was unable to keep up payments on the truck. She read an ad in The Macon Telegraph for Southern Financial Services and then telephoned the company from her house. On October 27, 1988, appellant Chancellor and James Rodriquez came to her home; Chancellor explained that SFS would find someone to assume the payments on the truck, and that after three payments, the company would pay off the entire note and then refinance the vehicle for the person who assumed it. The company would also be responsible for the payments while the truck was sitting on its lot. (T-362, 363) Ms. Cullens was wary, and requested that the payments be sent to her so that she could personally make sure that the payments got to her lienholder. Chancellor and Rodriquez agreed. After receiving these assurances, Ms. Cullens signed a contract (State's Exhibit 3) which Chancellor and Rodriquez signed for the company. They left with her truck. (T-364) Later that night, she called SFS and spoke with Chancellor. Chancellor assured her that the business was legitimate and they had been in business for seventeen years.

Ms. Cullen did in fact receive a check from SFS (one week late) for the next payment. (T-367) The next check (due December 18) did not arrive. Ms. Cullens made numerous calls to the SFS office. Once she spoke with Thompson, who was rude to her and told her that "they didn't have any money to send . . . . I'd just have to wait my turn." (T-369) Ms. Cullens eventually received another check from SFS, dated January 6, 1989. It bounced. (T-369) Ms. Cullens again called Thompson and he told her that he could not pay her. Later on, Pamela Odom brought her cash to cover the bounced check. (T-370)

Ms. Cullens later learned that a family named Walker had bought her truck from SFS. (T-372) Ms. Cullens eventually had to take out a loan to pay the truck off, and at the time of the trial, the Walkers were paying her back on a payment plan. (T-372, 373)

**JAMES TROY WALKER** (Predicate Acts 1, 2, 3) called the company's office in Macon, where he spoke to appellant Thompson. Thompson told him that the company took in cars that people couldn't afford or were about to lose, that Walker could take one and make payments on it through SFS "until he got me financed." (T-385) Several days later, on November 20, 1988 (T-387) Walker and his wife came to Macon to the SFS office and met with the appellant. He showed them a 1987 Ford F-150 truck. (T-386) This was the same truck turned over to SFS by Geraldine Cullens. (T-387) The Walkers traded in a car and received a \$500.00 allowance toward their down payment of \$1150.00, wrote a personal check for \$250.00, and made arrangements to pay the rest of the down payment in weekly payments of \$50.00. Walker was also to make monthly payments against the balance of the debt. The contract was also signed for SFS by Thompson and Chancellor. Walker did not fill in the payee line on his \$250 check. When the bank returned it, Thompson's name was filled in on the payee line, and the check was endorsed in his name and not by SFS. (T-390)

Walker made two monthly payments to SFS. When Walker's next payment came due, he found the SFS offices deserted. Through Pam Odom he was able to get in touch with Thompson, who told him "that he hadn't forgotten me. He was still trying to get me financed." (T-397)

[Note to Court: because of the similar nature of the testimony of subsequent witnesses, Chancellor and Thompson, subsequent testimony will be presented in a more summary manner.]

Victim: MACK CROWE. (Predicate Act 14) Summary: Dealt with Chancellor first, then Thompson. Left his 1986 Ford Pickup truck with SFS. SFS agreed to make upcoming payments on truck as due, and promised that as soon as the truck was placed

with a buyer that Southern Financial Services would pay off Crowe's note and refinance the truck for the buyer. Effect: SFS did not keep up payments. Was promised by Thompson he could get his truck back, but never recovered it. Truck was lost.

Victim: NOEL CROSBY. (Predicate Act 41) Summary: Took his 1987 Jeep CJ-7 to SFS after seeing advertisement (S-54) saying SFS would help people who "need out of a lease/loan." Chancellor and James Rodriguez came to Chamblee, where Crosby lived, and picked up the Jeep and signed a contract with Crosby. During the discussion, Crosby pointed out to Chancellor that the Jeep was a leased vehicle and that SFS would have to get approval from Ford Motor Credit to transfer the lease. Chancellor assured him that this would be done. That in fact was not done, and Crosby continued to receive monthly bills on his lease. He contacted SFS and was assured that they would make the payments. (T-445) In December he received notice from Ford that the December payment was coming due and that the November payment had not been made. He talked with Thompson by telephone, who informed him that he had no knowledge of the Jeep and that it was not on the lot. (T-446) Several days later, during another conversation, the Thompson reversed his story and said that he had in fact sold the Jeep himself. The appellant promised to honor the contract and send the lease payments to Crosby. Effect: As of the time of the trial, Crosby still had not received any payments for his Jeep.

Victim: TINA MYERS. (Predicate Act 55) Summary: Myers had a Ford Bronco that she was trying to sell, because she had recently gotten a divorce and couldn't afford the payments. Appellant Thompson told her that he could find someone to take over the payments on her Bronco and if that party made timely payments for three months, he would refinance the vehicle and then "it would be out of [her] name completely. Ms. Myers signed the contract (State's Exhibit 11-A) and appellant Thompson signed it in her presence. (T-480) She left her Bronco with the appellant. Effect: Truck resold to Jeanie Cummings. SFS did not make payments as promised to Ford Motor Credit. State's Exhibit 11-B was introduced as a document which was a "Month to Month Assumption" contract which

purported to assign her Bronco to co-conspirator. State's Exhibit 11-C was likewise a "Month to Month Assumption" contract which purported to assign her vehicle to William Green. State's Exhibit 11-D was a purported assignment to Michael Cummings. Ms. Myers told the jury that she had no knowledge of her truck being assigned to anyone other than the Cummings, and that as of the time of the trial her truck was missing and that she had no idea where it was.

Victim: LARRY D. THOMAS. (Predicate Act 34) Summary: Called SFS; appellant Thompson called back and left his home and work phone numbers. After numerous phone calls, Thomas made the decision to place his Camry with the company. Thomas was told that SFS would be responsible for payments on the car until they sold it to someone else and that they would probably have his car sold in thirty days. Appellant Thompson and the other man (probably Sable, according to the signature on the contract, T-492) specifically told Thomas they would take care of informing his lienholder. Effect: One payment to the lienholder was missed, then another, then Thomas learned that the business was shut down. (T-495) As of the time of the trial, Thomas had no idea what ever happened to his car. (T-495) His insurance company paid off on the car as a stolen vehicle. (T-496)

Victim: NATHAN PERRY. (Predicate Act 38) Summary: Perry, based on advertisement, called SFS and discussed selling his Buick Skylark with appellant Thompson. During subsequent discussions, Perry told the appellant that the December payment was due on the vehicle. The appellant told him the company would take care of it. Appellant Thompson also told Perry that the buyer of the car would have to make payments for three to nine months and then after that SFS would refinance the car and pay Perry off completely.

During the first week of January, Perry got a notice from his bank, C & S, that a payment was past due for December. (T-507) He contacted Thompson, who put him off by saying that he had sent the payment, but it probably hadn't been posted at the bank yet. (T-508) Perry got another late notice from C & S dated January 12. He called

Thompson again, and was given the same excuse. (T-510) Eventually the appellant told Perry that a person named Charles Smith in the Atlanta area had his Skylark. In spite of the terms of his contract with SFS, Perry had to make the payments for December--March himself. Charles Smith reimbursed him for some of those payments. Perry eventually recovered his car.

Victim: LORETTA PERRY, (Predicate Act 38) wife of Nathan Perry.

Summary: Mrs. Perry remembered that appellant Thompson specifically agreed to make the December payment on the vehicle. (T-518) He also assured them that if the person they sold the car to didn't keep up the payments then SFS would repossess the car. (T-519)

Effect: They were without their car for about three months, but still ended up having to pay their lienholder for those three months.

Victim: CHARLES SMITH. (Predicate Act 38) Summary: Smith responded to an advertisement for SFS. He called and spoke with appellant Thompson. Appellant Thompson described a 1987 Buick Skylark which Smith took an interest in, (T-527) so arrangements were made for appellant Thompson to meet Smith at the Waffle House south of McDonough, Georgia. Smith signed a contract with Thompson and Thomas Rich. (State's Exhibit 12 and 12-A, T-528-29) Smith handed over \$1000.00 in cash and a check for \$500 to make up his down payment and another check for \$276.16. Thompson and Rich also agreed to mail Smith the information he would need to get a 1989 tag for the vehicle. (T-536) Effect: Smith made three payments to the Perrys, the true owners, and then eventually turned it back over to them. Smith lost \$2300.00 and had possession of the Skylark for three months. As he told the jury, "That's an expensive rental rate." (T-538)

Victim: JAMES JONES. (Predicate Act 39) Summary: Jones owned a 1986 Toyota truck. After reading an SFS advertisement he called their number and spoke with appellant Thompson. Jones later drove the truck to the SFS office where he met with appellant Thompson and Thomas Rich. Jones was told that the truck would remain in his

name for ninety days (T-548) and that SFS would make the payments for that time period. (T-548)

Subsequently, Jones returned to the SFS office to discuss the financing of a Volvo that he wanted to buy. He noticed that his truck was gone from the lot. Appellant Thompson told him that Wilbur Chancellor was trying it out. (T-550) Jones contacted Chancellor who told him to tear up the contract he had received from SFS, that from that point the two of them would deal together independently of the company. Chancellor agreed to make the payments on Jones' truck. (T-551) This never happened. Later, Jones tried repeatedly to contact Chancellor about his truck, but his number had been disconnected. Jones finally located his truck through the District Attorney's Office and had it in his possession at the time of the trial. Jones ended up having to file for bankruptcy. Effect: In bankruptcy, Jones had to make payments on his truck for the time it was in possession of SFS and Chancellor.

Victim: RAMOND HARRELL. (Predicate Act 40) Summary: Harrell and his wife owned a 1986 Chrysler LeBaron that they wanted to sell because of financial difficulties having to do with the illness of one of their sons. (T-564-65) He saw an ad for SFS and called the company. During this first telephone conversation, Harrell talked with a man who gave his name as Ron Sable. (T-567) Sable told Harrell that the company would take his car, make the payments on it, find a buyer, pay the loan off for Harrell and then refinance the car for the buyer. (T-567) Harrell and his wife took their car to the SFS office, where they met with Ron Sable. Thompson was there briefly, and was introduced to the Harrells by Sable as his "co-partner." Sable assured Harrell that the company would make that payment and any others over the next ninety days until a buyer was found. Several weeks later Harrell learned from Ford Motor Credit that no payment had been made. (T-570) Thompson apologized and claimed that the company was in the process of getting their business organized. In mid-January, Harrell received another delinquency notice from Ford Motor Credit. Harrell ultimately came to Macon and recovered his car from appellant

Thompson, who told Harrell that he had been driving the vehicle. (T-573) The odometer showed that approximately five thousand miles had been put on the car since Harrell left it with SFS on December 15. (T-574) Effect: Harrell lost the car and became delinquent on the loan; he was unable to make the two payments due on the car by the time he got it back; he and his wife were forced to file bankruptcy.

[The judge removed from the jury the predicate acts involving **LANCE ALLEN RUSSETT**, we therefore omit his testimony from this summary.]

[To avoid unnecessary repetition and to keep this brief within the 50-page limit required by this court, the state now will list the victims who testified that they placed a car with either or both appellants under assurances that SFS would make payments on the note, only to have those promises not kept and to suffer financial consequences therefrom:]

**ANITA GAIL JONES.** Car: Ford Pickup Truck. Predicate Act: 51 (T-599)

**JEFF PHILLIPS.** Car: Jeep CJ-7. Predicate Act: 45 (T-618)

**ROBERT BARKER DONALD, JR.** Car: 1986 Toyota Pickup Truck.

Predicate Act: 48 (T-633)

**BRANDI ARLENE BARTON.** Car: 1988 Nissan Pulsar. Predicate Act: 49 (T-649)

**CHARLES PACE.** Car: 1987 Toyota Corolla Predicate Act: 52 (T-725)

**TERESA TRAWICK.** Car: 1988 Ford Escort Predicate Act: 50 (T-755)

**JOHN RICHARD LESLIE.** Car: 1987 Toyota Corolla Predicate Act: 8 (T-767)

**DAVID SWANN.** Car: Two vans and a 1988 Mercury Sable. Predicate Act: 55 (T-796)

**WILLIE ALLEN.** Car: 1988 Chevrolet Corsica. Predicate Act: 20 (T-841)

**KENNETH MONTJOY.** Car: 1988 Mustang GT. Predicate Act: 31 (T-883)

**MARIE PINKERTON.** Car: 1986 Spectrum. Predicate Act: 27 (T-894)

**STEVE COLEMAN.** Car: 1988 Toyota Camry. Predicate Act: 17 (T-915)

**PHILLIP YOUNG.** Car: 1987 Ford Mustang. Predicate Act: 44 (T-671)

**JOANNE JENKINS.** Car: 1988 Ford Bronco II. Predicate Act: 24 (T-948)

**CHERY L. FOWLER.** Car: 1988 Hyundai GL. Predicate Act: 23 (T-1044)

[The following witness bought cars, expending large down payments, only to end with an undisclosed cloud on title, owing payments promised but not made by SFS, etc.:]

**AMANDA MARIE TRAWICK.** Car: Ford Bronco. Predicate Acts: 24, 25, 26 (T-703)

**EUGENE HORNE.** Car: 1987 Toyota. Predicate Acts: 8, 9, 10 (T-781)

**GREGOREE ANN SIMMONS.** Car: 1987 Toyota. Predicate Acts: 52, 53, 54 (T-861)

**JOANNE ROSS.** Car: 1988 Toyota Camry. Predicate Acts: 17, 18, 19 (T-949)

[The following witnesses were credit managers, loan officers, etc., testifying as to various loans which defaulted, cars which had to be repossessed, futile efforts to contact SDS for payments, etc.]

**FAYE CREWS,** Assistant Vice-President and Manager of Bookkeeping and Customer Service at Bank South in Macon. (T-464)

**LILLIAN CULVER,** an assistant cashier and loan officer with the Bank of Hancock County in Sparta, Georgia. (T-594)

**DAVID WOODRUM,** a credit manager for Nissan Motor Acceptance Cooperation out of Atlanta. (T-661)

**WILLIAM L. NICHOLS,** an assistant branch manager and loan officer with Trust Company Bank of Macon. (T-682)

**AL MIDDLEBROOKS,** a bank officer and credit supervisor for Trust Company Bank of Atlanta.(T-743)

**PAUL BARNES**, the credit representative for General Motors Acceptance Corporation in Macon. (T-810)

**ALLEN CHILDS**, a loan officer for the Bank of Gray. (T-879)

**JEAN HARDWICK**, collections supervisor for Ford Motor Credit. (T-961)

The state rested its case at T-1147.

Appellant **WILBUR GIL CHANCELLOR** testified that when Ron Sable and James Rodriquez first came into Macon, they asked Chancellor if they could stay with him at his home until they found another place to live. Chancellor reluctantly agreed. The men told Chancellor they had been in the assumption business in Houston for years. Chancellor understood that Sable had an assumption business in Houston and decided to come to Macon because of marital problems in Texas. Sable offered to pay Chancellor 25% commission, and Chancellor started working out of his home with the two men. Sable had a phone installed in Chancellor's home and started running newspaper ads. Sable also drew up the contracts for the assumption business. (T-1147 -- 1157)

Appellants Chancellor and Thompson acquired a copy of one of the contracts, and Thompson called the Attorney General's Office to check into the legality of the business. After the phone call, both Chancellor and Thompson believed that there was nothing at all illegal about the assumption business. They also took the contract they had gotten to a Warner Robins attorney and called an assumption business in Atlanta to compare operations. (T-1157 -- 1160)

In November, 1988, Sable signed a lease for Southern Financial Services for the building at 4019 Chambers Road. During the first or second week of November, Pam Odom was hired as a secretary, and she and Chancellor shared a desk when he was in the office. (T-1160 -- 1162)

On October 27, 1988, he and Rodriquez and Thompson went to the home of Geraldine Cullins. Rodriquez explained to Cullins how the operation was to work and went

over the contract with her. Cullins agreed that she wanted them to take the truck. An agreement was drawn up, and Rodriquez wrote in the figures. Cullins signed the agreement which listed Ford Motor Credit Co. as the name of the lienholder. (T-1163 -- 1169)

Rodriquez gave Appellant Chancellor the keys to the pick-up truck, and Chancellor drove it to his home in Lake Wildwood. He denied promising that the down payment received by SFS would be applied against the debt. (T-1169, 1170)

Later James and Kathy Walker came to the SFS office in response to an ad, and appeared interested in the Cullins' F-150 truck. Chancellor was present when the contract was explained to them by Thompson. The Walkers agreed to a down-payment of \$1,150 and a monthly payment of \$310.38 for 48 months. The contract provided that when the last payment was made, ownership would pass to the Walkers, free of all liens. Chancellor testified that when Cullins signed the original consignment agreement to give up the truck, she signed a power of attorney giving SFS the authority to transfer title to the owner. Chancellor denied getting any of the money from the Walkers. (T-1172 -- 1176)

That same month, Sable set up an appointment with Tracy Evans Jones for Rodriquez and Chancellor. Rodriquez and Appellant Chancellor went to Jones' apartment, where Thompson explained the contract to her. Jones agreed to the terms of the contract and Chancellor witnessed the signatures. The contract listed GMAC as lienholder. (T-1182) Jones' contract also contained a paragraph describing that the property would be owned by the consignee until such time as the sale and finance and/or assumption of said property has been effected to the mutual interests of all parties and all indebtedness on such property has been satisfied to the lien holder. At no time, according to Chancellor, did Jones say that she expected any money from an assignment or sale of the vehicle. (T-1184)

Chancellor sold the Jones Thunderbird to Tracy Michelle Conner, who took the car to Huntsville, Alabama. Chancellor said that he forwarded the money to GMAC in Decatur sometime in January. Money orders went to Jones, who called the defendant and

told him to come and pick them up. She gave Chancellor four money orders sent to her from GMAC, and he forwarded them to Conner. (T-1184 -- 1186)

Also in November, Chancellor and Rodriquez went to the home of Michael Yates in Covington. Again, Rodriquez went over the contract with Yates, and Chancellor witnessed the signatures. Chancellor testified that Yates never indicated that his vehicle, a 1987 Nissan Pulsar, was leased, although he did hand some documents over to Rodriquez. (State's Exhibit 2-B.) Rodriquez never mentioned to Chancellor what the document, a lease agreement between Yates and Trust Co., was. (T-1186--1194)

On November 3, 1988, Michael Dobson came to SFS looking for a car. Dobson went inside the office with Rodriquez and Sable where Rodriquez filled out a Month To Month Assumption Agreement for Dobson, and Chancellor witnessed the signatures. The balance owed on the car was \$13,709.68, and the monthly payment was \$312.97 for 44 months. This agreement with Dobson also contained the same property ownership clause found in the aforementioned agreements, and Chancellor denied having anything to do with failing to inform Dobson that there was a lien on the property. (T-1194 -- 1200)

Count Nine of the indictment charged the witness with theft by conversion of a 1987 Toyota Corolla belonging to John and Judy Leslie. The Leslies and SFS reached a conditional consignment agreement. The terms as set out in the agreement were: \$11,382 financed, 39 payments of \$285 remaining, and Toyota Motor Credit as the lienholder. (T-1201) The document was executed by the Leslies on December 3, 1988, where John Leslie signed the power of attorney for sale or assumption. Chancellor and his wife then went to pick up the car. The Leslies were behind on the November payment, but agreed to make it if Chancellor made the December payment. Chancellor admitted he sold the car in December, but said he was no longer with SFS at that time. (T-1200 -- 1203)

Chancellor left the company around Thanksgiving because of a personality conflict with Ron Sable. One day around Thanksgiving, Chancellor found some books on how to change identities on Sable's desk, along with a seal to make his own birth certificate.

Suspicious, Chancellor left the company. In December, Mr. Leslie called Chancellor at home. Chancellor used forms he still had from the office to draw up a Month To Month Assumption Agreement between Leslie and Eugene Horne, who had been in touch with Chancellor and was looking for a car himself. The Leslies' Toyota was still located at the lot at the SFS building. Mr. Horne and Chancellor went up to the lot where Chancellor testified he told Horne there was a lien against the car and that if Horne made the payments on time it would be possible to get him refinanced. (T-1204 -- 1213)

When Horne made the December payment on the car, Chancellor took it down to Butler Toyota. For the January payment, Chancellor instructed Horne to make the payments directly to Toyota and gave him the necessary payment book and paperwork. Later, an individual from World Omni Toyota in Atlanta called the appellant and told him to have the Hornes fill out a credit application at Butler Toyota. Chancellor testified that no one lost out on that particular transaction; Leslie called him and told him that he was satisfied with the transaction and that he had told Toyota to repossess the car because he was unable to afford the payments. (T-1212 -- 1214)

Chancellor denied having any knowledge of a transaction that occurred involving Samuel and Evie Fleming and Sandra Dean. (T-1214) The reason that the check was made out to him was that when trying to cash the check he realized that it was not made out to anyone. Instead of returning to the office and having to stand in line again, he made it to himself; then, as instructed, he returned to the office and gave the money to Sable. (T-1224)

Rodriquez had been in contact with Steve Coleman by telephone and set up an appointment to meet with Rodriquez at Coleman's home. Chancellor accompanied Rodriquez to Coleman's house in Covington; heard no conversation regarding a leased vehicle, although Chancellor left the other two men alone together for a moment when he went outside to smoke cigarettes. When Chancellor went back inside, he witnessed the signatures.

Chancellor denied having any dealings with Joanne Harden Ross, to whom Coleman's car was sold. (T-1226 -- 1231)

Chancellor also testified, as to count 24 of the indictment, that Jeff and Sharon Fowler came to Southern Finance Services looking for someone to help them out with their vehicle due to financial difficulties. Chancellor explained the program to them, and filled out the paperwork for them. Chancellor told the Fowlers two things would happen to their vehicle: It would be put up for sale, and if a sale could not be effected, then it would be put out for assumption. (T-1231 -- 1235)

Chancellor denied significant involvement in the James Jones case. (T-1234, 1235) He denied any part in any theft regarding Brandi Barton, except calling her as a private person possibly interested in buying her car. (T-1239) He did buy a Ford F-250 truck as a customer from SFS; that was the truck belonging to Anita Jones. (T-1239 -- 1242) He brought it back to the lot a week later and asked that they find another buyer. (T-1242) As to the Charles Pace vehicle, he signed the contract as a witness; he denied Pace was told that the down payment money would go toward retiring the pre-existing note. (T-1243, 1244) He witnessed the Simmons contract but was otherwise not involved in the sale. (T-1245)

[The balance of Chancellor's testimony went on in this vein. (T-1245 -- 1277)]

**ROBERT E. THOMPSON**, testified that in the latter part of 1988 he and Gil Chancellor both worked with a company called Credit Co-op out of Albany, Georgia. (T-1349, 1354). Thompson was to put together an arrangement with a local bank or GMAC which would allow the appellants to buy automobiles and pay them off as they were sold. (T-1354) Thompson and Chancellor stayed with Credit Co-op about 10 days before the company fell apart. (T-1355) In the 10 day interim, appellant met Ron Sable who was a district manager with the company. (T-1355, 1356)

Thompson and Chancellor then attempted for several months to open up a finance brokerage business for those with marginal credit but could not accumulate adequate capital. (T-1358) Soon thereafter, Ron Sable contacted Thompson and Chancellor and told

them he wished to provide the capital to begin their venture. (T-1359, 1360) Sable came to Georgia and explained to Thompson and Chancellor how the assumption business worked. (T-1361-1362) Sable showed Thompson and Chancellor how you took the vehicle in from the person on assumption or sale. (T-1362) Sable indicated that the payments had to be up to date at the time the vehicle was taken in from the original owner. (T-1362) The buyers had to sign an agreement with them that they would keep the car for ninety days and that as long as the vehicle was in their hands they would maintain the payments on it after thirty days. (T-1362) This was the identical contract that appellant and Chancellor would later use. (T-1362) Thompson said he called the Attorney General's Office, the Secretary of State's office, and the office of Consumer Affairs verifying the legitimacy of this business. (T-1363) Appellant had an attorney, Ken Lucas in Warner Robins, look over the consignment contract and the assumption contract. (T-1363) Thompson the checked with an Atlanta company which was in the same business. (T-1364)

The business was initially started out of Chancellor's house. (T-1365) Just before the first of November, Sable leased a space on Chambers Road in Macon, Georgia. (T-1365) Sable said they could run finance out of one end of the building and assumptions out the other. (T-1366) Thompson also had the leased buildings electricity hooked up in his name. (T-1367) He acquired a credit bureau machine whereby individuals could be rated as their payments were made. (T-1368) Thompson made contact with five finance companies to operate as refinanceers. (T-1368, 1369) Chancellor and Rodriguez were to be sales persons and acquire vehicles. (T-1369, 1370) Thompson was told by Sable that pay was by strict commission, twenty-five percent of the down payment on an automobile. (T-1370) No agreement was reached between Thompson and Sable as to payment if the finance end of the business procured a loan for an individual. (T-1370)

Thompson testified he received no proceeds from the sale of Geraldine Cullens truck under Count 2 of the indictment. (T-1390) Chancellor and Rodriguez picked the truck up and appellant had nothing to do with it. (T-1390, 1391) Appellant Thompson did not

apply this money toward Ms. Cullens debt and was aware of no agreement whereby he was supposed to. (T-1391) Thompson Appellant stated at no time did he lead Mr. Walker to believe that his down payment would be put toward reducing the debt on the truck. (T-1392) Thompson filled out all the paperwork on the sale of the Cullen's car to the Walkers and Chancellor was the witness. (T-1393)

Thompson was not included with the allegations in Count 5 in any capacity (T-1394, 1395) Chancellor's signature did appear on several of the documents in this count. (T-1394) He said he was not involved with the allegations in Count 6 or 7 in any capacity. (T-1395 -- 1398) Chancellor's name did appear, however, on some documents. (T-1397) Appellant testified that he was not involved with the allegations in Count 13 in any capacity. (T-1399, 1401)

As to Count 15, Thompson testified he went to Mr. Crowe's home, went over the contracts at the SFS office with Mr. Crowe, and took Mr. Crowe's car. (T-1402, 1403) Later, Mr. Crowe and a man from Ford Motor Credit come to appellant complaining that payments on the vehicle had not been made. (T-1404)

As to Count 19, he admitted selling Mr. Coleman's vehicle to Ms. Ross, (T-1406, 1407) but denied knowing that the vehicle was a leased automobile. (T-1407) As to Count 21, he admitted taking in Willie Allen's car. (T-1410) Appellant sold this car to Vincent Bass and the down payment was not applied toward the lien. (T-1411, 1412) Mr. Bass was notified there was a lien against the car. (T-1411) No party was led to believe the down payment would go towards the lien. (T-1411, 1412)

As to Count 23, Thompson said he did inform Mr. Bass there was a lien on the automobile. (T-1413) As to Count 24, Thompson admitted being present when the conditional consignment contract was signed but denied that anything was promised which was not in the contract. (T-1414) As to Count 25, Thompson admitted going to the home of Joanne Jenkins and acquiring her car but denied ever telling her any of the proceeds would be applied to her debt. (T-1415)

As to Counts 26 and 27, Thompson said that Ms. Trawick made a down payment on Mrs. Jenkins car. (T-1415) Mrs. Jenkins was never told that any portion of the payment would reduce her indebtedness. (T-1415) Thompson admitted he and Sable worked out the details of the sale of Jenkins car to Trawick but said Sable typed up the agreement. (T-1417) Trawick made one payment on the car. (T-1418) Thompson was not sure who received that payment but said Pam Odom was responsible for receiving the mail and handling the books. (T-1418, 1419)

As to Count 29, Thompson denied taking in Carlton Braswell's car. (T-1419, 1420) He stated that Braswell's car just appeared one day. (T-1422) The car was later sold to Willie Green. (T-1422) As to Counts 30 and 31, appellant admitted being involved in the sale of a car to Willie Green. (T-1423) Sable drew up the contract. (T-1423) Thompson signed the contract as a witness. (T-1423) Thompson denied advising Green that the lien holder had not given consent to the conveyance. (T-1424)

As to Count 32, Thompson took in Kenneth Montjoy's automobile. (T-1425) Sable sold the automobile to Brent McWilliams. (T-1425) Thompson drew up the sales contract. (T-1425) Brent McWilliams assumed Kenneth Montjoy's loan and paid \$2,000.00 down. (T-1426) There was nothing in the contract to indicate the \$2,000.00 down payment would reduce the balance. (T-1427) McWilliams was notified there was a lien against the property. (T-1429) McWilliams was not advised either way as to the lien holder giving consent to transfer. (T-1429)

As to Count 36, Thompson admitted taking in Tina Myers Bronco II and selling the automobile to Mr. and Mrs. Cummings. (T-1429)

As to Count 38, Thompson admitted drawing up a conditional agreement for the sale or assumption between Tina Myers and SFS on a late 1988 Ford Bronco. (T-1430) The agreement showed that there was a lien with Ford Motor Credit. (T-1430) Southern Financial Services made one payment on December 3, check no. 104 for \$284.23 to Ford Motor Credit. (T-1431-1432) On December 30, 1988 the Bronco was sold to the Cummings

for \$1600.00 down. (T-1431, 1434) Payments were up to date on the Bronco when SFS was closed down. (T-1435)

As to Count 39, Thompson took Loretta Perry's 1987 Buick Skylark in for SFS. (T-1436) Mrs. Perry and Southern Financial signed a conditional contract on the vehicle. (T-1436) The lien on the vehicle was with C & S Bank. (T-1436) The Buick was sold to Charles Smith. (T-1436-1437) Sable drew up the month to month assumption between Perry and Smith. (T-1437) Thompson signed the agreement as the seller. (T-1437) Mrs. Perry was never told the down payment made on the vehicle would go toward the reduction of her debt. (T-1439)

Thompson had no involvement with count. (T-1440-1441) As to Count 41, Thompson's only involvement was witnessing the contract when the vehicle was brought in by Raymond Harrell. (T-1441-1443) As to Count 42, Thompson knew of Phillip Young's car being picked up in Atlanta and some work being done on it. (T-1443, 1444) Thompson also called Mr. Young and told him to pick up his vehicle when Southern Financial closed. (T-1444) As to Count 43, Thompson met with Jeff Phillips and discussed the sale of Mr. Phillip's Jeep. (T-1444, 1445) Mr. Phillips met with his banker and decided to sale. (T-1445) Thompson rode to Lake Wildwood and picked up the Jeep. (T-1445) Thompson drew up the contract between Jeff Phillips and SFS. (T-1445) Mr. Phillips was never led to believe that any down payment on the automobile would inure to his benefit. (T-1446) Thompson and Sable put the automobile out on consignment to Danny Birchfield. (T-1446) As to Count 45, Mr. Birchfield was never led to believe his down payment would go towards the reduction of the note. (T-1447) Mr. Birchfield was aware that there was a lien against the property and the bank had authorized the transfers. (T-1447-1448)

With that the defense rested. (T-1631)

PART II. Argument and Citation of Authority.

(1)

THE EVIDENCE WAS SUFFICIENT TO SHOW THAT BOTH APPELLANTS WERE FULL AND KNOWING PARTICIPANTS IN THE RACKETEERING ACTIVITY. THE EVIDENCE WAS SUFFICIENT TO CONVICT.

In his first enumeration of error the appellants urge the general ground, and make several specifications with regard to the sufficiency.

In response we rely primarily upon our statement of facts, supra, which in exhaustive detail shows the proof against both appellants. We have, however, certain matters to add as to each sub-specification, which we answer in order.

**A. The Finding of Predicate Acts.**

Appellant Thompson contends that the verdict was defective in that it did not affirmatively disclose that the jury found the appellants committed at least two predicate acts, the minimum necessary to constitute a RICO violation.<sup>1</sup>

This may be dispatched easily. In effect the appellant says the verdict was improper because it was a general verdict only. But OCGA §17-9-2 requires that form of verdict:

The jury shall be the judges of the law and the facts in the trial of all criminal cases and shall give a general verdict of "guilty" or "not guilty" . . . . Verdicts are to have a reasonable intendment, are to receive a reasonable construction, and are not to be avoided unless from necessity.

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<sup>1</sup> OCGA §16-14-3 (8).

The appellant was thus entitled to a general verdict only. (Moreover, if the appellant thought he was entitled to a special verdict, he should have requested it, or at least objected to the general verdict that was returned. He did neither.)

The trial court charged the jury that in order to return a verdict of guilty of RICO they must find beyond a reasonable doubt that the enterprise with which the appellants were associated committed at least two predicate acts. (T-1674--1676) Thus a "reasonable intendment" concerning this verdict is that the jury followed their instructions in finding the general verdict of guilty and found at least two predicate acts beyond a reasonable doubt.

Moreover the jury found each appellant guilty of numerous substantive crimes which were identical in allegation and proof to the predicate acts. If predicate act (1) is alleged identically to substantive Count #2, and based on sufficient proof the jury found the appellants guilty beyond a reasonable doubt as to substantive Count #2, then it can be safely assumed that the jury based its RICO conviction at least in part on the facts alleged in predicate act (1). Since the two appellants were found guilty beyond a reasonable doubt on literally dozens of substantive counts which were also alleged as predicate acts, there seems no doubt that the jury found at least two predicate acts.

It does not matter that the trial judge found that the substantive counts merged into the RICO conviction. All that means is that the proof of these thefts was used up as predicate counts on the RICO. See *Martin v. State*, 189 Ga. App. 483, 376 SE2d 888 (1988). Being thus used, they support the general verdict of guilty.

The contention is without merit.

**B. Sufficiency of Proof of Theft by Taking.**

**C. Sufficiency of Proof of Theft by Conversion.**

**D. Sufficiency of Proof of Theft by Deception.**

The appellants contend that the various predicate acts of theft by taking, conversion, and deception were insufficiently proved.

In answering these contentions we will rely generally upon our statement of facts, supra. We will examine, however, a representative count of theft by deception, that being predicate act (3), which is the same factual allegation as substantive Count #4, for which both appellants were convicted. The predicate act is alleged as follows:

(3) For that the said accuseds ROBERT E. THOMPSON, WILBER GIL CHANCELLOR AND JAMES V. RODRIGUEZ, in the county of Bibb, did commit the crime of THEFT BY DECEPTION, in that the said accuseds, on or about November 3, 1988, did then and there obtain more than \$500.00, property of James T. Walker and Kathy Walker, with the intention of depriving Michael Dobson of the property, by deceitful means and artful practices, in that the said accuseds delivered possession of a 1987 Ford F-150 truck, VIN # 1FTDF15Y2HNA36209, to James T. Walker and Kathy Walker, promising that clear title would be delivered to James T. Walker and Kathy Walker at a later date without disclosing the legal impediment to delivery of such title, to wit: that the existing lienholder had not given consent to a transfer of the vehicle . . . .

This allegation was proved with the following evidence: The Walkers "bought" a truck which had been left at SFS by Geraldine Cullen. They were told by appellant Thompson that they only needed to make a down payment and pick up the monthly installments, and that SFS would see to it that the loan was refinanced; and that at the end of the prescribed time, if all payments were made, title would be transferred. The contract was signed by the Walkers and by appellants Thompson and Chancellor. Pursuant to OCGA §16-8-3 (b),

A person deceives if he intentionally:

\*\*\*\*

(4) Sells or otherwise transfers or encumbers property intentionally failing to disclose a substantial and valid known lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not a matter of official record . . .

This was a theft by deception because of two factors which the appellants wilfully withheld from the victims: first, that the lienholder had not consented to the transfer to the Walkers, thereby making any legal and proper transfer impossible; and second, that no one at SFS had the slightest intention of refinancing the loan. The appellants' true intent, as evinced in theft after theft, was to take the money and run.

Here the Walkers were just two of many victims of the exact same scheme executed in an excruciatingly similar manner over and over again. Without so much as a nod toward the rights of the lienholder, the appellants would resell cars to persons who were told these were repossessed cars and they would eventually have title. SFS gained the "down payment" from the new buyers for "selling" a car whose title they had absolutely no right to sell, against the rights of lienholders who gave no permission, under circumstances that showed not the slightest actual intention by the operatives of SFS to settle titles, pay off loans, or otherwise carry through with their promises.

In some predicate acts the appellants' actions were even more egregious, as when they "resold" leased cars and did not tell the good-faith buyers that the cars were leased and that a "balloon" payment would eventually be due.

Virtually none of the money gained through this illicit enterprise appeared to go toward honoring obligations such as making payments on notes as promised; it all went to line the pockets of appellants Thompson and Chancellor and missing co-conspirator Sable. In

fact the "profits" of this business were split three ways, among appellants Thompson and Chancellor, and with Sable. (T-102--105)

Appellants Thompson and Chancellor assure this court that they were mere salesmen. Anyone who believes that might also be interested in one of the nice "repossessed" cars they have for sale.

Evidence that Thompson and Chancellor were no mere hirelings is abundant. Thompson hired the business secretary, Pamela Odom, and referred to having to get approval from his "partners." (T-96; 114) Thompson when talking to customers also referred to himself and others as "partners." (T-706) Thompson told customers he preferred cash, and often once cash was obtained simply divided it with the other partners and put his share in his pocket. (T-104, 105) In fact, as between the four principles of the business, the appellants gave themselves corporate names: Sable was "president" of SFS, appellant Thompson was vice president, and appellant Chancellor and Rodriguez had the offices of treasurer and secretary. (T-113) Not only did Chancellor split profits, he was at one time accused of stealing from the thieves: Thompson told Pam Odom that Chancellor had gotten some money which he had refused to share with his "partners." (T-127)

From the start this was simply an unlawful scheme; under the guise of assisting people in financial straits, the appellants obtained and resold cars which they did not have the right to resell and which they never intended to secure the rights to. This was a fraud of the whole cloth, and both appellants were schemers, scammers, and profiteers. It was a "take the money and run" operation. The appellants, unlike missing codefendant Sable/Rich, got caught before they had the chance to run. Rarely have so few people done so many people so wrong. The appellants' larcenous machination preyed on people with money problems, making their plight all the worse, while the appellants prospered. Witness after witness ripped away any remaining pretense of legitimacy, revealing Southern Financial Services for the illicit enterprise it was.

Compare these facts with *McNeil v. State*, 159 Ga. App. 441 (2), 283 SE2d 658 (1981). There the defendant was convicted for two counts of theft by deception when he merely sold two cars without disclosing prior existing liens, under far less damning circumstances than in the present appeal.

Since the evidence is absolutely overwhelming as to numerous counts of theft by deception, theft by taking, and theft by conversion, only two of which are needed as predicate counts to sustain conviction for RICO, the evidence was sufficient.

**E. Sufficiency of Evidence of Appellants' Knowledge.**

Evidence of the appellants' knowledge is addressed by the previous few paragraphs of this brief. The evidence is overwhelming that these appellants joined together with others in an ongoing scam by which they profited enormously at the expense of others. For appellants Thompson and Chancellor under the circumstances to attempt to portray themselves as "mere salesmen" is an affront to the good sense of the factfinder, or of anyone conversant with the facts.

The evidence was overwhelming.

(2)

IT WAS NOT PROSECUTORIAL MISCONDUCT TO INTRODUCE A PURPORTEDLY ALTERED CONTRACT WHERE THE STATE DID NOT KNOW OF THE ALLEGED ALTERATION UNTIL THE DEFENSE PRODUCED A COPY OF THAT CONTRACT WITH DIFFERENT PROVISIONS. THE APPELLANT FOREWENT THE OPPORTUNITY TO INTRODUCE, IF HE COULD, PROOF OF ALTERATION. THE ALLEGED HARM WAS IN ANY EVENT CURED WHEN THE TRIAL COURT REMOVED FROM THE JURY'S CONSIDERATION OF THE PREDICATE ACT TO WHICH THE WITNESS TESTIFIED.

In his second enumeration of error the appellants contend the state was guilty of prosecutorial misconduct with regard to a document introduced in connection with the testimony of Lance Russett. They contend that this should be the basis of a complete dismissal of all charges.

Here is what happened. The state put Lance Russett on to testify beginning at T-580. During that testimony, Russett identified a copy of the contract he signed with the appellants. The state introduced that contract as State's Exhibit 70. That was the only copy the state had seen to that point, and the prosecutors were unaware that another copy bore different provisions.

On cross-examination, counsel for the defense attempted to question Russett about a second copy, but did not want to introduce the document itself. (T-589 et. seq.) That was the first the state knew of a second document. Without introducing his copy, counsel challenged Russett about whether Russett's copy had been altered, and Russett denied it.

Russett left the witness stand but was kept available. He reappeared to testify at T-616, but neither the state nor the defense asked him about the allegedly altered document. He was kept around at the request of defense counsel, who said, "Your honor, I'm going to have to possibly call him back later." (T-617) He was not recalled by either state or defense.

The state did not know of the alleged alteration at the time Russett was called. The defense wanted to prove Russett's copy was an alteration, but did not want to tender and introduce their own allegedly unaltered copy. Said the trial court later, when counsel complained that the state had not introduced the defense's copy on behalf of the defense:

No sir, they didn't. The reason they didn't is because you could have done it but you didn't want to because you didn't want to lose the closing argument. I'm not going to let you put it on the state. All right, sir, let's be honest. Isn't that the truth, what I just stated?

MR. RALEY [defense counsel]: That is partly the truth, yes, sir.

THE COURT: That is the whole truth.

MR. RALEY: Well, except that I wasn't even sure I could get into evidence that document because it was not an original of any kind and we couldn't testify that it was. As a matter of fact, we didn't even know where it came from except it was in an envelope or in a folder that was by mistake put in another folder. [T-1702; emphasis added.]

The appellants are apparently miffed that the state would not, out of fundamental fairness, introduce their unauthenticated and inadmissible evidence for them. (To this day the state does not know whether Russett's copy or the appellants' copy of the contract is the accurate

one.) When prosecutor Shumate said the state was not at fault, the trial court said, "I certainly agree with you." We suggest this court carefully scan T-1694--1709.

If Russett's copy was altered, the court cured the problem by dismissing the Russett predicate acts and removing them from the consideration of the jury. (T-1708, 1709) As the court said, "And that ends it" (T-1705), meaning that took care of any possible prejudice arising out of the Russett testimony. The court instructed the jury as follows:

You're not to consider any testimony by Mr. Russett or any testimony, any evidence, concerning the facts and surroundings of the assignment to him. You're not to consider that in any way, any testimony, any evidence in regard to that. [T-1710]

There was thus no prosecutorial conduct in not introducing, on behalf of a defendant wishing to retain closing argument, a document which counsel could not verify or authenticate, and which even defense counsel believed to be inadmissible. If the evidence was admissible and the defense thought it important, let them put it in. That is what the adversarial system is for. There is nothing that says the state is obligated to introduce evidence for the defendant which is in the defendant's exclusive possession.

Moreover by removing the testimony from the jury's consideration the court cured any asserted error. The appellants cannot possibly contend with a straight face that the jury's consideration of more than 50 predicate acts proved by an awesome amount of testimony was irreparably prejudiced by a single, stricken witness.

This hyperbolic enumeration should be rejected.

(3)

THE TRIAL COURT CORRECTLY INSTRUCTED THE JURY BOTH THAT THEY WERE TO CONSIDER ALL COUNTS AGAINST EACH DEFENDANT INDIVIDUALLY, BUT THAT TO CONVICT AS TO RICO THE JURY HAD TO FIND THAT EACH DEFENDANT WAS A PARTY TO TWO PREDICATE ACTS.

In his final enumeration of error the appellants contend that the trial court erred in giving the following charge:

Members of the jury, in your consideration of this verdict, your consideration of each count, you are not bound in a finding as to any count by what your finding may or may not be as to any other count. In other words, because you find a defendant not guilty of Count X doesn't mean you can't find a defendant guilty of Count Y because if both defendants are named in Count P, you can find one defendant guilty and the other not guilty. What I'm saying is the finding on any particular count, and I'm talking about now 2 through 55, you are not bound to return the same verdict against both defendants. What your verdict is, in other words, as to each defendant as to any particular count depends on your view of the evidence as it applies to that defendant and to that particular count.

The exception is this and that is to count one because in order, as I have told you, to find a defendant guilty as to count one, you must find that the defendant engaged in, aided and

abetted, did a predicate act beyond a reasonable doubt, at least two predicate acts. So that is the only limitation. [T-1681, 1682]

The appellants contend that in the second paragraph, by calling the RICO count an exception, the trial court has somehow intimated that the jury had to return the same verdict as to both defendants on Count 1.

That, however, is patently not what the court told them. What the court said in the second paragraph was that the "exception" was this: As to Count 1 to be convicted a defendant had to be principle or party to at least two predicate acts. The only way the jury could have understood this charge as the appellants argue is for all twelve to have gone suddenly, mysteriously, temporarily deaf after hearing the first line of the second paragraph. The charge viewed as a whole made the law clear. The trial court charged that they were to consider each count against each charged defendant separately. (T-1650, 1651) The court also made it clear that as to the RICO count before convicting a defendant they must find beyond a reasonable doubt that he knowingly participated in the enterprise alleged and in at least two predicate acts. (T-1674--1676) The court instructed that "it is incumbent upon the state to prove each essential element of any offense charged against any defendant . . . beyond a reasonable doubt," or else the jury must acquit. (T-1676, 1677)

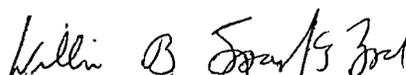
"The charge to the jury is to be taken as a whole and not out of context when making determinations as to the correctness of same." *Bartlett v. State*, 196 Ga. App. 174, 175--176, 396 SE2d 31 (1990). The jury was well instructed. There is no danger that they convicted one defendant on evidence exclusively against the other.

The enumeration is without merit.

CONCLUSION.

This case was tried exhaustively and well. The evidence of the appellants' guilt is massive and undeniable. The appellants ran, directed, and profited from an unlawful enterprise in which many innocent and often financially desperate people were duped into an illicit transfer of automobiles; many lost money, cars, good credit, and peace of mind. The appellants lined their pockets, knowing the larcenous nature of their trade but indifferent to the consequences. There was no error of law. Verdict and judgment should stand.

RESPECTFULLY SUBMITTED this September 28, 1993

  
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CERTIFICATE OF SERVICE

I, Thomas J. Matthews, Assistant District Attorney, Macon Judicial Circuit, certify that I have this day served a copy of this brief upon the appellant's counsel by placing it in the United States Mail, postage prepaid, addressed as follows:

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This September 28, 1993.

  
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