



**IN THE COURT OF CRIMINAL APPEALS
OF TEXAS**

NO. PD-0123-15

JAMES FERNANDEZ, Appellant

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE FOURTH COURT OF APPEALS
VAL VERDE COUNTY**

JOHNSON, J., filed a concurring opinion.

C O N C U R R I N G O P I N I O N

I concur only in the judgment of the Court. I would find that Mojica is only the appellant's clerk, is not an agent of the county, and has no authority to consent to anything for the county. She merely did what her boss told her to do; she purchased the ticket, but she apparently also provided to the county auditor documentation of the original purchase that established that the requested travel was for legitimate county business. After appellant failed to use the original ticket, Mojica again merely did what her boss told her to do. She gave the reservation number to appellant's son, but did not seem to know why she had been asked to do so, and she did not directly purchase the second

ticket. And this time, she did not provide documentation to the county auditor, possibly because either she did not realize that she should or that she did not know that appellant intended to divert the voucher for travel on personal business.

Nor can appellant give himself consent. (“Instead, appellant obtained the county’s consent to use the voucher when he instructed Mojica to pass along the voucher number . . .” *Fernandez v. State*, No. PD-0123-15, slip op. at __ (Tex. Crim. App. delivered _____)). The person who had the authority to grant or deny approval, and who should have been consulted for approval, seems to be the county auditor, Frank Lowe, who discovered the diversion and testified that he had received documentation for only the originally requested travel.

The county agreed to pay for a ticket for a legitimate function. The voucher was therefore county property and, when appellant received it, he should have given it into the custody of the proper county official. When he failed to both tell the proper county official that he had not used the original ticket for the approved purpose and surrender the voucher—or at least to inform the county that he had it—he failed to correct the impression of appropriate travel on county business that he had previously created. His failure to inform the county official who possesses the authority to approve travel expenses for county employees (which does not include his clerk) was the deception that is required to support a conviction.

Filed: January 13, 2016

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