

Reversed and Remanded and Majority and Concurring Opinions filed March 5, 2015.



In The

Fourteenth Court of Appeals

NO. 14-13-00855-CR

ALISHA MARIE DRAKE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 212th District Court
Galveston County, Texas
Trial Court Cause No. 12CR0922**

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

The trial court committed fundamental error by (1) holding a venire panel member in contempt of court when he articulated a religious-based inability to view the graphic evidence in the sexual-performance-of-a-child case; (2) jailing him for such “conduct” in open court before the remainder of the panel; and (3) making charged religious remarks regarding a juror’s role in the process. The fundamental error deprived appellant of a fair and impartial jury trial.

I disagree with my colleagues that appellant has shown harm. However, I conclude that in this context harm need not be shown. Thus, I respectfully concur in the disposition and judgment only.

/s/ Sharon McCally
Justice

Panel consists of Justices McCally, Brown, and Wise. (Wise, J. majority).
Publish — Tex. R. App. P. 47.2(b).