

Affirmed and Memorandum Majority and Concurring Opinions filed June 29, 2021.



In The

Fourteenth Court of Appeals

**NO. 14-19-00980-CR
NO. 14-19-00981-CR**

CHARLES BERNARD BAXTER JR., Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause Nos. 1487829 & 1487830**

MEMORANDUM CONCURRING OPINION

I agree with most of the majority's analysis, including (1) its recognition that Appellant's appellate argument alleged fundamental error with respect to the State's jury argument and (2) said argument (under these facts) does not constitute fundamental error. Therefore, we should analyze and reject Appellant's contention

on its merits (*see* Tex. R. App. P. 47.1) instead of analyzing whether Appellant waived an unwaivable fundamental error. *See Carriera v. State*, 663 S.W.2d 1, 1 & n.1 (Tex. Crim. App. 1983) (en banc) (noting unassigned fundamental error concerning prosecutorial misconduct and reversing defendant’s conviction); *FDIC v. Roberson*, 603 S.W.2d 278, 279 (Tex. App.—Houston [14th Dist.] 1980, no writ) (intermediate courts of appeal are tasked with the duty to examine record for fundamental errors, even without briefs) (citing *Ramsey v. Dunlop*, 205 S.W.2d 979, 982 (Tex. 1947)). Because the jury argument at issue does not constitute fundamental error, I concur.

/s/ Meagan Hassan
Justice

Panel consists of Chief Justice Christopher and Justices Wise and Hassan. (Wise, J., majority).

Do Not Publish — Tex. R. App. P. 47.2(b).