Affirmed and Opinion filed August 1, 2023.

In The

Fourteenth Court of Appeals

NO. 14-22-00508-CR

AUSTIN SHADLE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 16th District Court
Denton County, Texas
Trial Court Cause No. F22-734-16

O P I N I O N

Appellant Austin Shadle appeals his conviction for criminally negligent homicide, arguing in a single issue that there is legally insufficient evidence that he committed any criminally negligent act. After reviewing the evidence in the light most favorable to the jury's verdict, we affirm.

Background

Between midnight and one o'clock in the morning on February 7, 2019, appellant bought lottery tickets at a convenience store and ate inside a fast-food restaurant in Denton, Texas. Surveillance video from both locations showed appellant smoking from "an electronic cigarette or a vape pen." Appellant then left the restaurant to drive to his home in Argyle, heading southbound on Highway 377 in a Nissan Titan truck. Highway 377 is an undivided highway, with one lane of northbound traffic and one lane of southbound traffic. The relevant posted speed limit was fifty-five miles per hour.

According to the restaurant's surveillance video, appellant left the restaurant at 1:13 a.m. Within a few minutes after leaving, appellant veered to the right over a wide shoulder and off the roadway, running into a mailbox and several road signs. His truck slid along the grass and dirt for about 120 feet. Appellant eventually reentered the roadway, where he crossed into the opposite lane of traffic and struck "near head-on" a northbound Mazda sedan driven by Gene Housley. Housley died from his injuries.

Video from a landscaping business captured appellant driving immediately before the crash and showed appellant's truck veering off the roadway, as evidenced by "debris and dust behind it as it moves off of the shoulder." There was no video footage of the accident.

First responders arrived at the scene. Denton Police Department ("DPD") Sergeant Blake Jackson testified that appellant was "bleeding from a cut on his head and had a decent amount of blood on his white shirt. He was having some difficulties standing up straight, was complaining about an injury to his back." Sergeant Jackson noticed that appellant's eyes were "red and glossy and had small pupils." Appellant was disoriented. He initially told officers that he was traveling

toward Denton when he in fact was traveling away from Denton, toward Argyle. He was unsure if he had been wearing his seatbelt. Appellant denied recently drinking alcohol.

Sergeant Jackson performed the horizontal gaze nystagmus ("HGN") test on appellant. According to Sergeant Jackson, law enforcement officers use the HGN test to screen for impairment as a way to determine whether probable cause exists to make an arrest for intoxicated driving.[1] Sergeant Jackson explained to the jury that HGN is "involuntary jerking of the eyes as your eyes go across a horizontal plain [sic]," like windshield wipers on a dry windshield. The presence of HGN can indicate intoxication. HGN is observable in persons who have ingested central nervous system depressants. The test comprises three steps, administered in each eye, leading to a possible maximum six "positive" (HGN present) or "negative" (HGN negative) clues of intoxication. The "decision point" on the test is four out of six positive clues. According to Sergeant Jackson, "[f]our clues indicates that a person is intoxicated."

Sergeant Jackson observed six out of six clues in appellant's eyes. He then requested another officer, DPD Lieutenant Michael Christian, to administer the test a second time. Lieutenant Christian reported that he saw "for sure a solid four clues out of six." He also saw a borderline positive for two additional clues. "[T]he main thing [Lieutenant Christian] wanted to express to [Sergeant Jackson] was that there was the decision point made of the four out of the six." At trial, Lieutenant Christian "believe[d] [appellant] exhibited all six [clues]" and "believe[d] [appellant] was intoxicated."

[1] Due to appellant's apparent injuries, he was not a suitable candidate for two other field sobriety tests—the "walk-and-turn" and "one-leg-stand" tests.

An ambulance transported appellant to a nearby hospital, where he provided blood and urine samples. Testing showed no traces of alcohol in his system. However, he tested positive for alprazolam[2] and THC (the active compound in marijuana). Xanax is a central nervous system depressant that can cause HGN. Marijuana does not cause HGN. Appellant had a prescription for two milligrams of Xanax, to be taken twice daily. Appellant told the emergency room physician that he had taken "an extra Xanax" that night. Appellant also reported that he smoked marijuana the day of the accident, but he did not give a time frame. The medical records from that visit include a note indicating that "[Appellant] denies tobacco use. . . . He does smoke Marijuana, with last use today."

The State indicted appellant on separate counts of intoxication manslaughter and manslaughter, but the State proceeded to trial on only the manslaughter count after appellant pleaded not guilty. The indictment alleged the following manners and means by which appellant committed manslaughter: (1) by driving a motor vehicle into a motor vehicle occupied by Gene Housley; (2) by operating a motor vehicle at an unreasonable speed; (3) by operating a motor vehicle after ingesting drugs; (4) by operating a motor vehicle while tired; (5) by failing to maintain a proper lookout for traffic; (6) by failing to maintain proper control of a motor vehicle; (7) by driving a motor vehicle off of the improved roadway; (8) by driving a motor vehicle into an oncoming lane of traffic; and/or (9) by driving in an unsafe manner with a disregard of the risk of death.

At trial, Sarah Martin, a forensic scientist at the Texas Department of Public Safety Crime Laboratory, testified that appellant's blood sample tested positive for benzodiazepine (the class of drugs including Xanax) and cannabinoid (the class of drugs including marijuana). Sarah Martin acknowledged that the level of THC was

[2] During trial, the witnesses referred to alprazolam by a brand name, Xanax.

a "low concentration" but testified that even low concentrations can affect a person. She explained that, "[b]ecause the Delta-9 THC is an active Component [of marijuana], as long as it is detected, it is going to have an effect. It can be at low concentrations in your blood while being at high concentrations in your brain. So yes, it could still cause an effect on you."

Sarah Martin further testified that "THC does have some depressant effects, where it can cause relaxation, drowsiness, dizziness. It also can have some disorientation or confusion. You also can have some euphoria initially when you ingest it. Regarding driving, you could have a hard time staying inside your lane or be weaving in traffic. It tends to cause a narrowed vision. So you tend to focus on fewer tasks when you do have marijuana inside your body." She agreed that THC affects a user's "reaction times." THC and Xanax are both central nervous depressants, and when "you have two depressants acting together, that can produce what is called an additive effect. So that means that total [central nervous system] depressive effect, drowsiness, dizziness, all of that is going to be greater and possibly more impairing than just one by itself because the effects will add up together."

Eduardo Padilla, another forensic scientist from the Crime Laboratory, testified that appellant's blood sample tested positive for Xanax at 0.050 milligrams per liter, which is within the "therapeutic range" of 0.02-0.06 milligrams per liter. Neither Sarah Martin nor Padilla could say with reasonable certainty when appellant ingested the Xanax or marijuana.

Sergeant Jackson testified that, based on his training and experience, Xanax can cause horizontal gaze nystagmus, which is an indication of impairment. He explained that "[Xanax] would make it visible in the same way that alcohol would because it's simply a member of the depressant category." Lieutenant Christian

similarly testified that depressants "absolutely" enhance nystagmus. However, Sergeant Jackson acknowledged that Xanax would not cause a person's eyes to be red or glossy or cause the pupils to constrict.

Sean Aja specialized in crash reconstruction for DPD. He testified that Housley was driving approximately 50 m.p.h. before the crash. In contrast, according to Aja, appellant's speed reached 108 m.p.h. at some unspecified time before he swerved off the roadway. Aja also testified that appellant was going 51 m.p.h. while sliding across the grass and dirt. When he reentered the roadway, appellant's speed was 47 m.p.h.

Appellant called one witness in his defense, Lisa Martin, who testified as an expert in intoxication investigation and basic crime accident reconstruction. Lisa Martin agreed with Aja's calculations as to appellant's speed after he drove off the roadway (51 m.p.h.) and when he reentered the roadway (47 m.p.h.). She strongly disagreed, however, with Aja's calculations that appellant was driving 108 m.p.h. at any time before leaving the roadway. She estimated that appellant was driving fifty-one miles per hour prior to driving off the shoulder. Lisa Martin also disagreed that appellant's ingestion of Xanax would cause HGN.

The jury did not find appellant guilty of manslaughter as alleged in the indictment but found appellant guilty of the lesser included offense of criminally negligent homicide with an affirmative finding of a deadly weapon, enhancing the state jail felony offense to a third-degree felony.[3] Tex. Penal Code §§ 12.35 (c)(1) (enhancement), 19.05 (offense). Appellant also pleaded true to a prior enhancement for felony possession of a controlled substance, and appellant elected

[3] "Criminally negligent homicide is a lesser-included offense of manslaughter because it includes all the elements of manslaughter except for manslaughter's higher culpable mental state [of recklessness]." *Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013); *see also* Tex. Penal Code § 19.04 (manslaughter).

for the trial court to assess punishment. The trial court sentenced appellant to eighteen years' confinement. Appellant timely appealed to the Fort Worth Court of Appeals, which transferred the case to this court.[4]

Analysis

In a single issue, appellant argues that the evidence is legally insufficient to support the trial court's judgment because he did not commit any act of criminal negligence.

A. Standard of review and applicable law

In determining whether the evidence is legally sufficient to support a conviction, "we consider all the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational juror could have found the essential elements of the crime beyond a reasonable doubt." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)); *see also Braughton v. State*, 569 S.W.3d 592, 607-08 (Tex. Crim. App. 2018). We presume that the jury resolved conflicting inferences in favor of the verdict, and we defer to its determination of the evidentiary weight and witness credibility. *See Braughton*, 569 S.W.3d at 608; *Criff v. State*, 438 S.W.3d 134, 136-37 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd). We consider both direct and circumstantial evidence, as well as any reasonable inferences that may be drawn from the evidence. *See Balderas v. State*, 517 S.W.3d 756, 766 (Tex. Crim. App. 2016). Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *See Hooper*, 214 S.W.3d at 13.

[4] *See* Tex. Gov't Code § 73.001. We are unaware of any conflict between Second Court of Appeals precedent and that of this court on any relevant issue. *See* Tex. R. App. P. 41.3.

A person commits criminally negligent homicide if he causes the death of an individual by "criminal negligence." Tex. Penal Code § 19.05(a). The Legislature defines the mental state for criminal negligence as:

> A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Id. § 6.03(d).

A legally sufficient showing of criminally negligent homicide requires the State to prove that: (1) the defendant's conduct caused the death of an individual; (2) the defendant ought to have been aware that the conduct created a substantial and unjustifiable risk of death; and (3) his failure to perceive the risk constituted a gross deviation from the standard of care an ordinary person would have exercised under similar circumstances. *See Queeman v. State*, 520 S.W.3d 616, 622 (Tex. Crim. App. 2017) (citing *Montgomery v. State*, 369 S.W.3d 188, 192 (Tex. Crim. App. 2012); Tex. Penal Code §§ 6.03(d), 19.05(a)). The circumstances must be viewed from the standpoint of the defendant at the time the allegedly negligent act occurred. *Id.* at 623. "Criminal negligence does not require proof of [a defendant's] subjective awareness of the risk of harm, but rather [the defendant's] awareness of the attendant circumstances leading to such a risk." *Montgomery*, 369 S.W.3d at 193. "The key to criminal negligence is not the actor's being aware of a substantial risk and disregarding it, but rather it is the failure of the actor to perceive the risk at all." *Id.*

Criminal negligence is not simply the criminalization of ordinary civil negligence. *Id.* The "carelessness required for criminal negligence is significantly higher than that for civil negligence," and the conduct "involves a greater risk of harm to others, without any compensating social utility" than does conduct that constitutes ordinary civil negligence. *Id.* The risk created by the conduct must be "substantial and unjustifiable," and the failure to perceive it must be a "gross deviation" from reasonable care as judged by general societal standards by ordinary people. *Queeman*, 520 S.W.3d at 623 (quoting *Montgomery*, 369 S.W.3d at 193). In finding a defendant criminally negligent, a jury is determining that the defendant's failure to perceive the substantial and unjustifiable risk is so great as to be worthy of criminal punishment. *See id.*

B. Application

Appellant bases his legal-sufficiency challenge on the contention that Aja's expert opinion that he was driving at 108 m.p.h. before he drove off the roadway was grounded on an "unknown" formula, "inexplicable math," and the "improper use of a formula that did not make sense." In essence, he contends Aja's opinion in that regard is unreliable.[5] According to appellant, no evidence supports the fact that he was driving 108 m.p.h. before leaving the roadway, and the jury must have rejected Aja's opinion when acquitting him of manslaughter. Further, appellant argues that the remaining evidence is insufficient to sustain the verdict based on appellant's ingestion of drugs because there was no evidence that the drugs "had any effect upon [appellant] or impaired his driving."

A party may object to expert testimony on three specific grounds: (1) qualifications; (2) reliability; and (3) relevance. *Williams v. State*, 531 S.W.3d 902, 920 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (citing *Vela v. State*, 209

[5] He does not challenge Aja's testimony in any other respect.

S.W.3d 128, 131 (Tex. Crim. App. 2006)); *Shaw v. State*, 329 S.W.3d 645, 655 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd). Appellant did not object to Aja's testimony on unreliability grounds at any time. He did not request to voir dire Aja about the facts or data underlying his opinion that appellant drove 108 m.p.h. before veering off the roadway, as the rules of evidence permit. *See* Tex. R. Evid. 705(b). Appellant did not move to strike Aja's opinion after he expressed it.

A claim regarding sufficiency of the evidence, however, need not be preserved for appellate review at the trial level, and it is not forfeited by the failure to do so. *See Moff v. State*, 131 S.W.3d 485, 489 (Tex. Crim. App. 2004). The Court of Criminal Appeals has considered the reliability of scientific evidence when answering whether that evidence could be legally sufficient to support a conviction. *Winfrey v. State*, 323 S.W.3d 875, 882-84 (Tex. Crim. App. 2010). In *Winfrey*, the court refused to rely on "bad science" within a legal-sufficiency analysis because the evidence was based upon unreliable methodology. *Id.*[6]

We accept appellant's position for argument's sake and presume that Aja's opinion that he was driving 108 m.p.h. before leaving the roadway is unreliable. We conclude nonetheless that the jury's criminal negligence finding has sufficient evidentiary support.

Criminal negligence precedent provides helpful guidance. In *Queeman*, a driver rear-ended another vehicle, resulting in the death of a passenger in the other vehicle. *Queeman*, 520 S.W.3d at 619. After a jury found the driver guilty of criminally negligent homicide, the court of appeals reversed the judgment, holding that the evidence was legally insufficient to sustain the conviction. *Id.* at 621. The

[6] Since *Winfrey*, the court has held in a non-authoritative, unpublished opinion that "a conclusory expert opinion based upon insufficient facts is not probative evidence." *Walker v. State*, Nos. PD-1429-14, PD-1430-14, 2016 WL 6092523, at *15 (Tex. Crim. App. Oct. 19, 2016) (not designated for publication).

Court of Criminal Appeals affirmed. Although the State proved that the driver was speeding at the time of the crash, there was no evidence that the driver was excessively speeding. *Id.* at 624-25. The law enforcement officer in charge of the accident investigation was unable to ascertain the driver's specific pre-impact speed based on the facts that were available to him. *Id.* at 625. Similarly, the State proved that the driver was inattentive but failed to prove the reason for or the length of the inattention. *Id.* at 626. Because the evidence did not show that the driver's failure to maintain a safe driving speed and keep a proper distance from other vehicles was a "gross deviation" from the standard of care that an ordinary driver would exercise under all the circumstances as viewed from the driver's standpoint at the time of his conduct, the Court of Criminal Appeals affirmed the judgment of acquittal. *Id.* at 631.

The court in *Queeman* distinguished the circumstances in that case from *Montgomery*, in which the court upheld a conviction for criminally negligent homicide. In *Montgomery*, the court observed that the defendant was driving slower than surrounding traffic, was past the safety barrier when she abruptly changed lanes, did not signal her lane change or look for surrounding traffic, and attempted to enter an on-ramp past its entrance. *Montgomery*, 369 S.W.3d at 194. The court held that a jury could have reasonably concluded that, under those circumstances, Montgomery was criminally negligent in that she "ought to have been aware of the substantial and unjustifiable risk created by her actions." *Id.* The court noted that it was "common knowledge that failing to maintain a proper lookout and making an unsafe lane change without signaling or checking for upcoming traffic poses a great risk to other drivers on that road and that anyone sharing the general community's sense of right and wrong would be aware of the seriousness of doing so." *Id.* Further, the court held that a jury could have

reasonably found that Montgomery's failure to appreciate that substantial and unjustifiable risk, given the circumstances known to her at the time, was a "gross deviation" from a standard of care that an ordinary person would exercise under the same circumstances. *Id.*

Here, considering all of the evidence a rational jury could have reasonably accepted, we conclude the jury could have found beyond a reasonable doubt that: appellant lost control of his truck and veered over a wide shoulder and off the roadway; he skidded at 51 m.p.h. across 120 feet of grass and dirt; he struck several road signs and a mailbox while in a "four-wheel slide"; and he re-entered the roadway at 47 m.p.h., where he over-corrected and almost immediately crashed head-on into Housley's car. During this event, there was no indication that appellant ever stopped or applied his brakes, as a reasonable person would have done. There was no evidence that any road or weather conditions contributed to appellant's loss of vehicle control or leaving the roadway. While Lisa Martin explained that appellant had decelerated after he veered off the roadway, the jury could have found nonetheless that appellant lost control of his car and that his loss of control caused the crash.

Additionally, the jury could have found that appellant recently ingested an amount of Xanax above his prescribed dosage and had used marijuana before driving, and that these substances affected his ability to drive safely and remain in his lane of travel.[7] There is no dispute that appellant caused Housley's death. Regarding the risk of death, the State presented evidence that, prior to the accident, appellant took "an extra Xanax," above his prescribed dosage. The jury also saw video footage of appellant smoking from a vape pen shortly before driving on

[7] When the charge authorized the jury to convict on more than one theory, as it did here, the verdict of guilt will be upheld if the evidence is sufficient on any of the theories. *See Hooper*, 214 S.W.3d at 14.

Highway 377. Because appellant's medical records indicated that he denied being a tobacco user, coupled with appellant's admission of marijuana use ("with last use today") and his positive test results, the jury reasonably could have inferred that appellant's vape pen contained marijuana. Sergeant Jackson and Lieutenant Christian testified that appellant displayed at least four, and likely six, positive clues for impairment. Sergeant Jackson testified that appellant did not show signs of a brain stem injury but was nonetheless disoriented and confused after the crash. Both officers believed appellant was intoxicated.

Sarah Martin testified that marijuana can cause drowsiness, disorientation, or confusion. A driver who has ingested marijuana can have difficulty staying within the lane of travel because THC tends to cause narrowed vision. THC also affects a user's reaction times and causes the user to be able to focus on fewer tasks than normal. Based on the undisputed evidence that appellant veered off the roadway and overcorrected when reentering the roadway, the jury reasonably could infer that appellant's ingestion of marijuana affected his ability to drive safely or to stay within his lane of travel.

The Tyler Court of Appeals upheld a conviction for criminally negligent homicide in similar circumstances. In *Fulton v. State*, the State presented evidence that the defendant drank four to five beers during the day, followed by drinking approximately forty-four more ounces of beer at dinner, prior to driving and being involved in a fatal vehicular accident. *Fulton v. State*, 576 S.W.3d 905, 914-15 (Tex. App.—Tyler 2019, pet. ref'd). A responding officer administered the standard field sobriety tests and noted two clues on the HGN test but did not detect any clues on the other tests. *Id.* at 910. The defendant did not provide a blood or breath sample following the accident. *Id.* After a jury convicted the defendant of criminally negligent homicide, the court of appeals affirmed the conviction,

reasoning that a rational jury could have found that the defendant was criminally negligent because he should have been aware that drinking a substantial amount of alcohol prior to driving could cause him to be impaired. *Id.* at 915-16.

This court's decision in *Williams v. State*, 531 S.W.3d 902 (Tex. App.—Houston [14th Dist.] 2017), *aff'd*, 585 S.W.3d 478 (Tex. Crim. App. 2019), is also comparable. This court affirmed a manslaughter conviction against a legal sufficiency challenge when the defendant, after having ingested controlled substances, veered onto the shoulder and struck and killed a jogger. In that case, there was evidence that the defendant left the roadway and travelled onto the shoulder of the road and drove his car on the shoulder; that he failed to maintain a proper lookout to avoid hitting the victim with his car; that he failed to properly steer and brake to avoid hitting the victim; and that he ingested carisoprodol, in the form of Soma, before driving his car. *Id.* at 912. As we noted, proof that a person drove after having ingested controlled substances is sufficient to show recklessness. *Id.* (citing *Rubio v. State*, 203 S.W.3d 448, 452 (Tex. App.—El Paso 2006, pet. ref'd) (holding that driving under the influence of alcohol demonstrates a conscious disregard of substantial risk). Recklessness involves a more culpable mental state than required for criminal negligence. *See* Tex. Penal Code § 6.02(d); *Wasylina v. State*, 275 S.W.3d 908, 910 (Tex. Crim. App. 2009).

Appellant argues that his case is more analogous to *Thedford v. State*. In that case, the defendant took his normal, prescribed dose of prescription medication (which he knew could cause drowsiness) later than usual one night. *Thedford v. State*, No. 05-18-00884-CR, 2020 WL 5087779, at *7 (Tex. App.—Dallas Aug. 28, 2020, pet. ref'd) (mem. op., not designated for publication). The next morning, he took two of his three children to daycare and then returned home. *Id.* He forgot his third child was in her car seat in the car, and he went inside his

house where he fell asleep. *Id.* When he awoke several hours later, he realized that the child was not in the house and discovered her dead from hyperthermia in the car. *Id.* Although a jury convicted him of criminally negligent homicide, the Dallas Court of Appeals reversed, reasoning that the case presented "no legally significant differences from a situation where a parent drives his child to day care after being up all night with a teething or colicky infant or after taking cold medicine." *Id.* at *8. The court held that the evidence presented did not rise to the level of serious blameworthiness necessary to establish criminal negligence. *Id.* at *9.

Thedford is distinguishable. Whereas Thedford took his normal, prescribed dose of medication known to cause drowsiness, appellant took more than his prescribed dose. He also combined that excess prescription medication with another central nervous system depressant, marijuana, before driving his car. In *Thedford*, the record did not support a finding that the defendant "had any reason to suspect that taking the medication late and driving the children to daycare anyway would create a substantial and unjustifiable risk of death to [the decedent], or that his failure to perceive the risk constituted a gross deviation from the standard of care an ordinary person would have exercised under similar circumstances." *Id.* at *7. Here, the record supports an inference that appellant ought to have known that combining excess legal medication with an illegal depressant—even if both of those drugs were taken in low concentrations—would cause him to be impaired while driving. *See, e.g.*, *Fulton*, 576 S.W.3d at 915 (noting that other courts have held that driving after consuming alcohol or controlled substances without establishing legal intoxication can establish recklessness, a higher mens rea than criminal negligence); *accord also Rubio v. State*, 203 S.W.3d 448, 452 (Tex. App.—El Paso 2006, pet. ref'd) ("The fact that

one may legally drive after consuming alcohol does not prevent the State from alleging the driver was reckless in doing so.").

These circumstances present the type of egregious conduct sufficient to demonstrate a gross deviation from the usual standard of care in driving. *See Queeman*, 520 S.W.3d at 628, 630; *Williams*, 531 S.W.3d at 912; *see also Thompson v. State*, 676 S.W.2d 173, 178 (Tex. App.—Houston [14th Dist.] 1984, no pet.) (holding evidence legally sufficient to support criminally negligent homicide conviction when defendant drove her car at excessive rate of speed in residential neighborhood near bus stop when children normally would be on their way to school). The above evidence is legally sufficient to support beyond a reasonable doubt several of the alternative means alleged in the indictment, including that appellant caused Housley's death: by driving a motor vehicle into a motor vehicle occupied by Gene Housley; by operating a motor vehicle after ingesting drugs; by failing to maintain a proper lookout for traffic; by failing to maintain proper control of a motor vehicle; by driving a motor vehicle off of the improved roadway; by driving a motor vehicle into an oncoming lane of traffic; and/or by driving in an unsafe manner with a disregard of the risk of death.

Based on all the evidence presented at trial, the jury reasonably could have found that: (1) appellant's conduct caused Housley's death; (2) appellant ought to have been aware that his conduct created a substantial and unjustifiable risk of death; and (3) his failure to perceive the risk constituted a gross deviation from the standard of care an ordinary person would have exercised under similar circumstances. *See Montgomery*, 369 S.W.3d at 194. Viewing the evidence in the light most favorable to the verdict, we hold the evidence is legally sufficient to support the jury's verdict of criminally negligent homicide.

We overrule appellant's sole issue.

Conclusion

We affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Chief Justice Christopher and Justices Jewell and Spain.

Publish — Tex. R. App. P. 47.2(b).