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COURT OF APPEALS  
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,  
  
Respondent,

-against-

STAN XUHUI LI,  
  
Appellant.

No. 86

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20 Eagle Street  
Albany, New York  
October 17, 2019

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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1 CHIEF JUDGE DIFIORE: The next appeal on this  
2 afternoon's calendar is appeal number 86, the People of the  
3 State of New York v. Stan XuHui Li.

4 Good afternoon, counsel.

5 MR. BELAIR: Good afternoon, Your Honors. Before  
6 I begin, I'd like to reserve three minutes for rebuttal.

7 CHIEF JUDGE DIFIORE: Three minutes, sir?

8 MR. BELAIR: Yes, please.

9 CHIEF JUDGE DIFIORE: Please.

10 MR. BELAIR: May it please the court. This  
11 appeal is based upon three brief points which I will now  
12 attempt to state which are that the medications that are  
13 involved in this homicide case were prescribed within  
14 regular therapeutic ranges and which, if taken as  
15 prescribed, would - - - would never have caused death and  
16 were incapable of causing death based upon what my client,  
17 Dr. Li, knew at the time.

18 JUDGE STEIN: Well, isn't there some - - - wasn't  
19 there some expert testimony that contradicts that - - -  
20 that position?

21 MR. BELAIR: No, Judge Stein. As a matter of  
22 fact, Dr. Gharibo, who conceded he was testifying - - -  
23 although he testified many times in malpractice cases, was  
24 looking at this as a malpractice case. And he conceded  
25 that the Food and Drug Administration, which is part of the



1 formulation for the standard of care, said that if you - -  
2 - if you are prescribing, as a starting dose, thirty  
3 milligrams of oxycodone four times, that at least may be  
4 necessary as a starting dose, and you may have to go  
5 higher.

6 JUDGE STEIN: But there are a lot of other things  
7 that he brought into it, and I guess a couple of things  
8 here. One is is that, you know, when we're looking at  
9 legal sufficiency of the evidence, right, we're - - - we're  
10 looking at whether a reasonable jury could have come to the  
11 conclusion that - - - beyond a reasonable doubt, right?

12 But I just want to clarify first, are you arguing  
13 that a physician can never be found guilty of reckless  
14 manslaughter unless the physician administers the drug to  
15 the patient themselves, or are you saying that the elements  
16 of recklessness of manslaughter second were not established  
17 in this particular case?

18 MR. BELAIR: I am saying precisely that, that - -  
19 - that both of those - - - both of those things - - -  
20 neither of those things existed because, although Dr. - - -  
21 although Dr. - - - I'm blocking out his name for just a  
22 moment - - -

23 JUDGE FAHEY: Gharibo.

24 MR. BELAIR: - - - Gharibo said - - - thank you.  
25 Dr. Gharibo said this - - - everybody who came in, he was



1 immediately - - - he or she was immediately at risk of  
2 overdosing, so forth and so on. These were conclusory  
3 opinions. If you go through the records of - - - of Mr.  
4 Rappold and Mr. Haeg, what's the first thing? Mr. Rappold,  
5 I'm going to cut your previous dosages, I'm going to cut  
6 them. And then when he came back early - - -

7 JUDGE FAHEY: But weren't those records  
8 challenged as being manufactured after these events  
9 occurred?

10 MR. BELAIR: Not in these cases, Your Honor. Not  
11 in these cases.

12 JUDGE FAHEY: In Rappold and Haeg, you know, it -  
13 - - it seemed that Dr. Gharibo's testimony went through a  
14 number of steps. First he talked about the trial evidence  
15 as to - - - to all the victims in the case. And then he  
16 talked about Haeg and then about Rappold. I think that's  
17 the way I - - - I saw the evidence going. Would you agree  
18 with that?

19 MR. BELAIR: That's - - - he testified about all  
20 of the cases, that's right.

21 JUDGE FAHEY: Yeah, and so the kind of stuff he  
22 said, like Xanax is highly addictive when combined with  
23 opioids, not really challenged by anybody. I don't think  
24 you've challenged that. That there was no - - -

25 MR. BELAIR: We did, Your Honor, I'm sorry.



1                   JUDGE FAHEY: Let me just finish. There's no  
2 medical justification for the Haeg prescriptions. There  
3 was no medical reason to prescribe - - - prescribe Xanax.  
4 Haeg was returning early to get scripts. Rappold, there  
5 was no medical basis, once again, for him to prescribe for  
6 - - - for these prescriptions. I'm not sure. I think it  
7 was - - - there was a 400-percent increase in Rappold's  
8 prescription, in the last prescription he had before he  
9 passed away. He went through a series of things, and that  
10 seemed to - - - I see how you could challenge them on  
11 weight, but on legal sufficiency, I really struggle to see  
12 that.

13                   MR. BELAIR: Well, if we look at his testimony,  
14 at 3525 and thereafter, he agreed with what the FDA said,  
15 that that's proper care. And the dosages we're talking  
16 about were always within that range. Nobody, including Dr.  
17 Gharibo, said that these were - - - that these would have  
18 produced death if taken - - - would have produced death, if  
19 taken as they were prescribed. And more importantly - - -

20                   JUDGE FAHEY: There was an investigative analyst  
21 too that said he had 21,000, roughly, prescriptions; 55  
22 percent of them, 56 percent of them were for oxycodone.  
23 There were 14,000 prescriptions for opioids; 82 percent of  
24 them were for oxycodone. Everything was paid in cash.  
25 Unless you wanted to get your prescription shorter, on a



1 shorter time frame, then the cash amount was increased.  
2 There were just a series of things in the record that  
3 seemed to establish the requisite conscious intent in this  
4 case, under legal sufficiency, and connect it up to both  
5 Rappold and Haeg. I think that the evidence, though, with  
6 Rappold and Haeg may be thinner than it is overall. But as  
7 far as legal sufficiency goes, it seems to be clearly  
8 there.

9 MR. BELAIR: May I address that?

10 JUDGE FAHEY: Sure, please.

11 MR. BELAIR: Dr. Gharibo talked in broad terms.  
12 Again, the prescriptions were always within the therapeutic  
13 range. More importantly, with respect to the capacity to  
14 produce death, nobody challenged that, as prescribed, these  
15 would not have caused death.

16 JUDGE STEIN: But isn't the question - - -

17 CHIEF JUDGE DIFIORE: Counsel, did you - - -

18 JUDGE STEIN: Go ahead. Excuse me.

19 CHIEF JUDGE DIFIORE: Counsel, did you make a  
20 motion on the basis that if the drugs were taken as  
21 prescribed that they would not be expected to cause death?  
22 Did you make that motion to dismiss based on that?

23 MR. BELAIR: I argued that, and before and during  
24 - - - before and after the trial, I moved on the base - - -  
25 on the basis of Pinckney, that this was remote to the - - -



1 to the actual cause of death which could not have been  
2 foreseen. And if I - - - if that's - - -

3 JUDGE FAHEY: But that doesn't go to sufficiency;  
4 that goes to it as a matter of law, right - - -

5 MR. BELAIR: Yes.

6 JUDGE FAHEY: - - - in your Pinckney motion.

7 MR. BELAIR: Yes.

8 JUDGE FAHEY: But question there, the judge's  
9 question was to sufficiency, the way I understood it.

10 CHIEF JUDGE DIFIORE: Correct.

11 MR. BELAIR: Well, I don't think it's legally  
12 sufficient, and I don't - - - I don't think - - -

13 CHIEF JUDGE DIFIORE: But did you make that  
14 motion to dismiss?

15 MR. BELAIR: I made a motion to dismiss under  
16 Pinckney.

17 CHIEF JUDGE DIFIORE: Um-hum.

18 MR. BELAIR: I probably - - -

19 CHIEF JUDGE DIFIORE: Okay.

20 MR. BELAIR: I don't have an exact memory of  
21 that, but I probably included at that time what we're  
22 talking about right now.

23 JUDGE FAHEY: How about the quality of the  
24 medical histories that were taken, consistently  
25 characterized by the People as insufficient, and any kind



1 of - - - a lack of any confirmation of the plaintiff's  
2 claims as to their conditions. In other words, there were  
3 no tests done on any of these people.

4 MR. BELAIR: Well - - -

5 JUDGE FAHEY: They were just given a prescription  
6 after they paid their hundred dollars.

7 MR. BELAIR: Not talking about these two, Judge.  
8 Haeg brought in a - - - he had been in - - - he had been in  
9 pain and had an injury of seventeen years. He brought in  
10 an MRI which demonstrated a central lumbar disk herniation.  
11 And he had been on high dosages for a very long time. And  
12 Dr. Li cut them and repeatedly cut those dosages and - - -  
13 and he did a physical exam. It's all in the charts. He  
14 elicited trigger-point responses. He made a diagnosis. It  
15 was pain.

16 And with respect to Haeg, he came back early, and  
17 what happens? It's right in his chart. Don't do that  
18 again. And he wouldn't refill it. He wrote it for a much  
19 less powerful drug.

20 The causation aspect here is missing because  
21 there was no scienter. As Judge Fuchsberg in the Cruciani  
22 case, there was no scienter at the time that there was a  
23 prescription written with respect to the - - - the  
24 condition of the plain - - - sorry, the patient at the time  
25 that he actually did something which was unconnected.





1                   JUDGE FAHEY: You know, we go down these legal-  
2                   sufficiency rabbit holes sometimes, and you haven't  
3                   addressed your motion as a matter of law at all. If the  
4                   judge would allow you, maybe you should address that too  
5                   because you had two points there: the sufficiency and the  
6                   - - - the dismissal purely as a matter of law. Do you want  
7                   to say anything about that?

8                   MR. BELAIR: There was no testimony with respect  
9                   to these drugs being able to cause death if taken as - - -  
10                  nobody opposed that argument. Dr. Gharibo didn't, and Dr.  
11                  - - - my expert, Dr. Weingarten, who was a DEA expert,  
12                  reviewed cases for them, said there's nothing unusual here;  
13                  he did what was appropriate.

14                  JUDGE FAHEY: The way I understood the argument  
15                  was that - - - that this statute can't be used in this  
16                  instance as a matter of law.

17                  MR. BELAIR: Because of the remoteness from the  
18                  ingestion, because of the scienter that was missing at the  
19                  time of the prescription, because there was no disorderly  
20                  high over - - - over-prescribed conduct going on at any  
21                  time while these people were in front of him.

22                  In fact, in the case of Mr. Haeg, his - - - the  
23                  fellow who he had known for two years and used to work with  
24                  him said there wasn't anything different about him on his  
25                  last visit than before except he had injured his leg in an



1 auto accident.

2 JUDGE FAHEY: You're asking us to look at  
3 Pinckney, but of course that's not binding on the Court of  
4 Appeals; it's a Second Department case, right?

5 MR. BELAIR: It was affirmed by the court of  
6 Appeals.

7 JUDGE FAHEY: Right, without an opinion.

8 MR. BELAIR: But Cruciani is Court of Appeals,  
9 and so is Galle, and they both had extenuating  
10 circumstances, being present and injecting the person who  
11 died or giving an injection at a time when they knew that  
12 that person would go on and take and use all of the cocaine  
13 that she had already taken until it was all gone.

14 JUDGE RIVERA: Well, let me ask you this, just a  
15 hypothetical. If a doctor realizes that the patient is now  
16 hooked, is addicted to the drugs, and they nevertheless  
17 sign off a prescription within the range, as you say, would  
18 that be perhaps reckless?

19 MR. BELAIR: It might be, but there's no  
20 indication that he had any reason to think that he was  
21 addicted. We know in fact that Rappold was addicted, but  
22 that was a different time, Your Honor, in that we didn't  
23 have - - - we didn't even have CSI, controlled substance  
24 information. We certainly didn't have I-STOP. You didn't  
25 have the way to understand all of this as a physician.



1           JUDGE STEIN: But can you shield yourself from  
2 having reason to believe by not asking the questions, by  
3 not looking at the records, by not doing physical  
4 examinations to verify what the patient says is the injury  
5 by essentially, you know, putting blinders on and then  
6 saying, well, I didn't have any reason to believe that  
7 there was an addiction problem.

8           I think, to me, that's - - - that the core of the  
9 issue here is, given his training, his professional  
10 responsibilities, and what he did or didn't do, did he act  
11 recklessly, because he should have had reason to believe  
12 that - - - that an ordinary person in his position would  
13 have realized that there was a problem here with the - - -

14           MR. BELAIR: Plaintiff's own expert, Judge Stein,  
15 said that there was no indication in anything that he  
16 reviewed that this patient ever presented in a way of  
17 intoxicated, disorderly, high, or anything else. And the  
18 records - - -

19           JUDGE STEIN: The problem, though, as I  
20 understand it, was that he didn't do the reviews that he  
21 should have done. He didn't do the examinations. He  
22 didn't ask the questions, and he - - -

23           MR. BELAIR: Quite the contrary, if I may, if - -  
24 - I urge you to look at these records. He performed a  
25 physical examination on both of these patients. He found



1 trigger points. He found that there was a decreased range  
2 of motion. There was loss of rotation, flexion, and  
3 extension in all these things. It's all documented.

4 JUDGE FAHEY: Let me ask you this because - - -  
5 if we're going to get into the details of the proof again.  
6 Rappold, which I thought was the thinnest of the proof, his  
7 last visit to the doctor, am I correct in saying that he  
8 increased his daily amount of oxycodone by 400 percent and  
9 doubled his Xanax prescription on the last visit before he  
10 passed away? Because the testimony was after that, by the  
11 People's expert, I believe, that these prescriptions  
12 resulted in a high probability of overdose and death.

13 MR. BELAIR: No. No, Your Honor. On - - - on  
14 the next to last visit he had thirty milligrams of  
15 oxycodone, eighty-four pills. On the next visit, it was  
16 increased thirty milligrams, again, to only 120. That's  
17 four. That's within a starting dose on all of these  
18 things. That's why Dr. Weingarten said these are standard  
19 - - - I wouldn't say garden-variety, but these are well  
20 within the therapeutic range. And this person never  
21 indicated or presented in such a way as to indicate that he  
22 was an addict. There was absolutely no evidence of that.

23 JUDGE FAHEY: Of course you're aware that the  
24 Xanax prescriptions are always sought because they increase  
25 the effect of the oxycodone.



1 MR. BELAIR: Again, these are standard Xanax  
2 prescriptions, two milligrams, only two milligrams. The  
3 autopsy indication was that that would never have caused  
4 anything at all including - - -

5 JUDGE RIVERA: I'm sorry, but I thought the  
6 question was the combination, the effect that the Xanax has  
7 on the other drugs.

8 MR. BELAIR: Absolutely not.

9 JUDGE RIVERA: Is what you're referring to taking  
10 into consideration that the - - - the Xanax may have  
11 affected the - - - the impact of the other drugs on - - -  
12 on the patient's system?

13 MR. BELAIR: Dr. Gharibo said that everything had  
14 an interaction with every other thing. But as he was  
15 forced to concede, the FDA says that the dosage of  
16 oxycodone is fine. With respect to the Xanax, it's  
17 actually not a very high dosage at all, and Dr. - - -

18 JUDGE RIVERA: No, no, no, but my question is - -  
19 -

20 MR. BELAIR: Yeah.

21 JUDGE RIVERA: My question is: your reference to  
22 what the federal government says, is that taking into  
23 consideration the combination of the drugs?

24 MR. BELAIR: That, in particular, didn't talk  
25 about Xanax, but the testimony from Dr. Weingarten was that



1 that is not a high dosage at all, and it would not have  
2 produced death if taken. It was taken in - - -

3 JUDGE FAHEY: That's not the question. I concede  
4 Dr. Weingarten didn't say that. But the People's expert  
5 did say something different, didn't they?

6 MR. BELAIR: In a conclusory fashion only, Your  
7 Honor.

8 JUDGE FAHEY: I get that, but we're talking legal  
9 sufficiency here. Was there a legally sufficient basis for  
10 him to give that opinion?

11 MR. BELAIR: Not based upon the concessions he  
12 made on cross-examination that he didn't even know, one way  
13 or the other, whether any of these patients, but certainly  
14 these two, had ever overdosed, had ever had any indication  
15 of being overprescribed. There was nothing - - -

16 JUDGE RIVERA: No, no, no, but the statement of  
17 the way the drugs interact in combination, doesn't that  
18 provide a basis - - -

19 MR. BELAIR: No.

20 JUDGE RIVERA: - - - for a jury perhaps to make  
21 an inference?

22 MR. BELAIR: No, because there was no reason not  
23 to prescribe them at the time. And Dr. Wein - - - Dr.  
24 Weingarten said that there was no such interaction that  
25 would risk, if taken as prescribed, such - - - such a - - -



1 such a result as death. There was no indication whatsoever  
2 of that.

3 CHIEF JUDGE DIFIORE: Thank you, counsel.

4 Counsel?

5 MR. BELAIR: Thank you, Your Honor.

6 MR. RIVELLESE: Good afternoon. Vincent  
7 Rivellese for the People.

8 I think the People here proved beyond a  
9 reasonable doubt that the defendant recklessly caused the  
10 deaths of Haeg and Rappold.

11 JUDGE FAHEY: And one of the things - - - forget  
12 about the general charges and - - - and just concentrate on  
13 - - - on Haeg and Rappold at the end, and the Haeg proof  
14 seems to be separate. As to Rappold, I'd like you to focus  
15 on that for a second. When he passed away, what's the  
16 connection - - - I see the connection to Xanax. What's the  
17 connection to the oxycodone?

18 MR. RIVELLESE: Well, we didn't find the  
19 oxycodone bottles in the car with the Xanax bottles. This  
20 is - - - the Xanax was right in his car, there were fifty-  
21 five pills missing of the Xanax. And they'd only been  
22 prescribed a couple of days before, I think it was two days  
23 before.

24 JUDGE FAHEY: I understand, yeah.

25 MR. RIVELLESE: And that was a contributory cause



1 of his death. It wasn't the sole cause of his death. It  
2 was in combination with oxycodone.

3 JUDGE FAHEY: Well, it was a factor; it wasn't  
4 the only factor - - -

5 MR. RIVELLESE: Correct.

6 JUDGE FAHEY: - - - from a causation point of  
7 view.

8 MR. RIVELLESE: Correct.

9 JUDGE FAHEY: And what about oxycodone?

10 MR. RIVELLESE: We didn't prove that the  
11 oxycodone was specifically the defendant's oxycodone in the  
12 car. We didn't prove that it wasn't either; it's just  
13 there was no oxycodone bottle discovered in the car.

14 But the combined effect of the two drugs did kill  
15 him. And Dr. Gharibo did testify that the two drugs  
16 interacted together to make them even worse than their  
17 combined - - - than their separate effects.

18 JUDGE FAHEY: And how is that?

19 MR. RIVELLESE: That they each depress the  
20 respiration, and so that having that happen from both drugs  
21 would be worse than having it happen from either one or the  
22 other.

23 JUDGE FAHEY: Follow up on the question that  
24 Judge Rivera was asking.

25 MR. RIVELLESE: Yeah.





1 JUDGE FAHEY: You understand that?

2 MR. RIVELLESE: Yeah.

3 JUDGE FAHEY: Okay.

4 MR. RIVELLESE: Okay. So with Rappold, there was  
5 also a question that you asked about four times the dosage  
6 from the previous time to his - - - to his most recent time  
7 before he died. Well, what happened there is Rappold had  
8 come in a week later from his previous full dosage and said  
9 he'd lost his prescription.

10 So the doctor then gave him this additional  
11 prescription which was different from his previous position  
12 - - - prescriptions. So that one was a lower dosage than  
13 the previous one. So then the four-times dosage next time  
14 was going back to his previous prescription, although he  
15 had gotten this extra prescription in between.

16 JUDGE FAHEY: I see.

17 MR. RIVELLESE: The extra prescription was one of  
18 the reasons that the doctor should have known that this was  
19 an addict who was trying to come in and get more drugs. He  
20 was coming back early as - - - as Haeg also did, to get  
21 more prescriptions before he should have run out of his  
22 previous prescription.

23 Dr. Gharibo did also testify that some of these  
24 prescriptions were dangerous just taken as prescribed. He  
25 didn't say that you would definitely die from them, but he



1 did say, on supplemental appendix, pages 972 to 976, that  
2 there was a high probability of overdose or death even as  
3 directed.

4 JUDGE FAHEY: What about - - - leaving the legal  
5 sufficiency issue aside for a second, what about the  
6 argument the defendant makes that, as a matter of law, the  
7 People are - - - have made the wrong argument here and that  
8 the charge should have been different?

9 MR. RIVELLESE: Well, the Pinckney case - - -

10 JUDGE FAHEY: Maybe, say, criminally-negligent  
11 homicide.

12 MR. RIVELLESE: Are you referring to Pinckney's  
13 discussion?

14 JUDGE FAHEY: Yeah, the Pinckney/Caricco (ph.)  
15 argument.

16 MR. RIVELLESE: Well, in the Pinckney case, the  
17 court first discussed that heroin is not always fatal, and  
18 also that there was no statute saying that heroin overdose  
19 would be a manslaughter charge.

20 You have to look at that together. There's no  
21 way that the court could have meant that you can never  
22 prove manslaughter even if you've proved the elements of  
23 manslaughter in a case where a drug dealer sells drugs. It  
24 couldn't have meant that that's never possible.

25 And Cruciani, which was this court's case, does



1 affirm a - - - a conviction for manslaughter where it was  
2 by drugs.

3 JUDGE FAHEY: That was the ingestion case - - -

4 MR. RIVELLESE: Yes, where the - - -

5 JUDGE FAHEY: - - - Cruciani?

6 MR. RIVELLESE: - - - person injected the - - -

7 JUDGE FAHEY: So is there a distinction that  
8 should be drawn between ingestion and someone who just  
9 prescribes the drugs?

10 MR. RIVELLESE: That's just a causation and a  
11 foreseeability question.

12 JUDGE FAHEY: Well, I'm thinking of it as a  
13 public policy question. I mean, how far back can you go to  
14 - - - to claim that someone's a defendant in the chain?

15 MR. RIVELLESE: I don't think it would be  
16 appropriate to say that there's a definite cutoff no matter  
17 what because there are going to be different surrounding  
18 factors, some of which you alluded to before, where for  
19 example, you have a doctor with a pill mill, with a hundred  
20 people lined up coming and asking for extra prescriptions,  
21 charging them extra if he gives them extra pills.

22 JUDGE FAHEY: No, I understand that.

23 MR. RIVELLESE: Right.

24 JUDGE FAHEY: But let's say - - - let's say, in  
25 this case the proof's a little easier, but a drug

1 manufacturer, a drug distributor, the pharmacist who gives  
2 out the drugs. And he sees this person all the time, and  
3 these people aren't stupid; they recognize that there's a  
4 pattern here. Are they then eligible to criminal charges?

5 MR. RIVELLESE: You would have to have more  
6 background evidence to - - -

7 JUDGE FAHEY: See my question is - - -

8 MR. RIVELLESE: Yes?

9 JUDGE FAHEY: - - - how much discretion does a  
10 prosecutor have, in the context of these charges, if - - -  
11 if the statute is as broad as this - - - as this  
12 interpretation would have it be?

13 MR. RIVELLESE: I think it's going to go back to  
14 the simple elements. You're going to have to be able to  
15 convince a jury beyond a reasonable doubt that this person  
16 knew about the risks - - -

17 JUDGE FAHEY: Right.

18 MR. RIVELLESE: - - - disregarded the risks, and  
19 should have foreseen it.

20 JUDGE FAHEY: There was a gross deviation here  
21 too, I'm assuming.

22 MR. RIVELLESE: Right, right. And you might not  
23 be able to do that, the further away you get, without a lot  
24 more evidence to show that the person had a lot of  
25 knowledge and had a lot of ability to disregard the



1 knowledge and affect the result. But in this case you had  
2 a doctor who is caring for patients, charged with caring  
3 for patients, should know how they're doing and what  
4 they're being affected by the medications he's giving them,  
5 giving them more and more to - - -

6 JUDGE FEINMAN: So to what extent then does his  
7 convictions, which are not being challenged, on the Penal  
8 Law 220.65 of the sale of the prescription to all of these  
9 other people, how does that bear on the elements of the  
10 manslaughter convictions?

11 MR. RIVELLESE: Well, all of those convictions  
12 were found to have been medically unjustified prescriptions  
13 which shows that he is routinely - - - he was routinely  
14 prescribing things without medical justification. That has  
15 to go into his frame of mind in disregarding risks. If  
16 he's going to do that, he didn't really care; he just took  
17 the money and put it in his pocket. That was - - - that  
18 was his real motive for doing what he was doing, not the  
19 basis for the - - - the need for the medication or its  
20 relevance to pain. And in fact, he was prescribing opioids  
21 for twenty-five percent of his prescriptions when that's  
22 supposed to be the drug of last resort for pain  
23 medications. So he was making money off of that and he  
24 prescribed that and that - - - that - - -

25 JUDGE FEINMAN: Did you say twenty-five percent?



1 I actually thought it was fifty?

2 MR. RIVELLESE: I think it was twenty-five  
3 percent of all of his prescriptions, but fifty percent of  
4 his controlled substances.

5 JUDGE FEINMAN: Okay. I - - -

6 MR. RIVELLESE: But it's in the brief.

7 JUDGE FEINMAN: Whatever.

8 MR. RIVELLESE: The precise numbers are in the  
9 brief. But he - - - he was doing a lot more than just  
10 prescribing the opioids. He was asking for more money for  
11 more prescriptions. He was asking for more money if they  
12 saw multiple doctors. He was asking for more money if they  
13 came back early. And it was always about money. He even  
14 had signs posted in his office as to how noncompliant  
15 behavior would be treated. This is someone who is  
16 anticipating that people are going to come back and take  
17 more drugs than they're supposed to take. He didn't care  
18 what they were doing; he just wanted the money, and that's  
19 why he was reckless and why he disregarded the risk. It's  
20 not because of one mistake in prescription or one  
21 accidental death.

22 If there are no other questions, I'll rest on the  
23 brief.

24 CHIEF JUDGE DIFIORE: Thank you, counsel.

25 MR. RIVELLESE: Thank you.



1 CHIEF JUDGE DIFIORE: Counsel?

2 MR. BELAIR: He was not running a pill mill  
3 because he gave letters to all these other people. I don't  
4 - - - I shouldn't even be talking about these other cases  
5 that are not part of this case. He would give letters, if  
6 you don't do this, stop. Haeg, he actually discharged  
7 because he said I want Oxycontin, I used to take it before  
8 you took me off it, I want the Oxycontin, more powerful, it  
9 lasts for a long time. He says no. And he writes in his  
10 orders, no Oxycontin in my practice discharged, but that he  
11 came back and said I can't find a doctor, and then  
12 eventually Haeg agreed to get back into the therapeutic  
13 range.

14 With respect to - - - with respect to what he was  
15 confronted with, there is no demonstration, nothing that  
16 there was a risk that this person - - - a substantial and  
17 unjustified risk that this person would die, which is the  
18 statutory requirement. Did he - - - did he come in? Was  
19 he sweaty? Was he - - - did he have any respiratory  
20 problems? He - - - these people died because they took too  
21 much that caused a respiratory depression. There's no  
22 indication that anything like that took place here.

23 They would come back a little early, he'd say no,  
24 he'd reduce it. This isn't the sort of thing that a pill  
25 pusher would do. There's just no basis here to say that



1 this person was at risk, unjustifiable risk of death having  
2 to occur, that it will occur. This is - - - as Dr.  
3 Weingarten said, this is a pretty common pattern for people  
4 who - - - this is a pain management doctor. These people  
5 had - - - in the case of Mr. Rappold - - -

6 JUDGE RIVERA: If the case boils down to - - -  
7 boils down to these counter opinions of the experts, why  
8 isn't that just going to the jury?

9 MR. BELAIR: Because the opinions are worthless  
10 when they're not based upon the evidence. What is the  
11 evidence that there was an unjustifiable risk? Were they  
12 coming in high? Were they coming in disheveled? Were they  
13 coming in looking like - - - like somebody would look like  
14 if they were a - - - an addict? Are they - - - do they  
15 look like death's head? Are they gaunt? Are they having  
16 trouble breathing? Are they - - -

17 JUDGE STEIN: Well, you - - -

18 MR. BELAIR: None of that happened.

19 JUDGE STEIN: You identified some ways that might  
20 alert a doctor, a pain medicine doctor, to that risk. But  
21 I - - - my understanding is that Dr. Gharibo identified  
22 other ways that a pain management doctor could identify and  
23 should identify the risk of someone overdosing.

24 MR. BELAIR: Well, first of all - - -

25 JUDGE RIVERA: And if I may add, you identified





1 the things that, of course, a criminal actor would deny  
2 they observed.

3 MR. BELAIR: I don't under - - -

4 JUDGE RIVERA: He's the only one in the room,  
5 right? So he would, in that moment - - - you're saying, in  
6 that moment, when they walk in, if you don't see him  
7 manifesting these particular traits, characteristics,  
8 symptoms, then the doctor did nothing wrong.

9 As Judge Stein points out, the expert - - - their  
10 experts said no, there are other ways you can do that, and  
11 in part, some of that required for the doctor, your client,  
12 to ask questions that he didn't ask.

13 MR. BELAIR: Well, with respect to the first  
14 part, there was nothing identified that should have been  
15 asked that wasn't asked. The people had people come in,  
16 they had his mother come in. In the case of Haeg they had  
17 - - - they had a sister come in. They didn't testify that  
18 this person was - - - was high all the time or at any other  
19 time.

20 JUDGE GARCIA: Didn't they put a video in of one  
21 of - - -

22 MR. BELAIR: Sorry?

23 JUDGE GARCIA: Didn't they put a video in of one  
24 of the victims acting in a way that suggested they were  
25 abusing drugs?



1 MR. BELAIR: If I recall correctly, that was - -  
2 - that was not anything that was ever shown to have been  
3 seen by - - - no, that was outside. Judge Sonberg wouldn't  
4 let that in - - -

5 JUDGE GARCIA: Wouldn't let it in?

6 MR. BELAIR: - - - because there was no showing  
7 that he ever saw that.

8 JUDGE GARCIA: No, but I thought they put one in  
9 to show what he was like at the time these drugs were being  
10 prescribed.

11 MR. BELAIR: Oh, no, no. There was - - - there  
12 was a video taken which is very - - - you could - - - you  
13 could read that to say anything you wanted to. But on the  
14 day in question, when he went to see the doctor, his  
15 friend, Adam Calliento, said I didn't think he looked any  
16 different than he ordinarily did. He didn't look out - - -  
17 out of the way at all.

18 JUDGE GARCIA: But isn't that really for the jury  
19 then? They can look at the video, they can listen to the  
20 friend, and they can decide, you know.

21 MR. BELAIR: Well, direct evidence would probably  
22 be - - - be better than a questionable video. But that  
23 still doesn't indicate that he was at risk of death based  
24 upon anything that was presented.

25 CHIEF JUDGE DIFIORE: Thank you, counsel.



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MR. BELAIR: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of the State of New York v. Stan XuHui Li, No. 86, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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