

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

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 3 UNITED STATES OF AMERICA, : No. 3:18-cr-00095(SRU)  
 4 Government, : 915 Lafayette Boulevard  
 : Bridgeport, Connecticut  
 5 v. :  
 : October 29, 2018  
 6 YEHUDI MANZANO, :  
 Defendant. :  
 7 - - - - - x

EMERGENCY MOTION HEARING

B E F O R E:

THE HONORABLE STEFAN R. UNDERHILL, U. S. D. J.

A P P E A R A N C E S:

FOR THE GOVERNMENT:

UNITED STATES ATTORNEY'S OFFICE  
 157 Church Street, 25th Floor  
 New Haven, Connecticut 06510  
 BY: NEERAJ N. PATEL, AUSA  
 SARAH P. KARWAN, AUSA

FOR THE DEFENDANT:

THE PATTIS LAW FIRM, LLC  
 383 Orange Street, First Floor  
 New Haven, Connecticut 06511  
 BY: NORMAN A. PATTIS, ESQ.

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 Official Court Reporter  
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 Tel: (860)937-4177

1 (Proceedings commenced at 3:53 p.m.)

2 THE COURT: All right. I have the government's  
3 emergency motion, seeking a two-week stay of trial.

4 MR. PATEL: Your Honor, for the reasons set  
5 forth in the motion, we are seeking a stay to seek  
6 approval from the Solicitor General's Office for writ of  
7 mandamus concerning certain rulings that are outlined in  
8 our motion. We're currently in discussions -- currently  
9 having conversations with the Solicitor General's Office  
10 and are awaiting further instructions from them.

11 THE COURT: So which rulings are you seeking  
12 mandamus on?

13 MR. PATEL: We haven't reviewed the entire  
14 transcript yet, we just got it, so we need to go through  
15 it, but just generally the decision to allow Attorney  
16 Pattis to elicit testimony and evidence and argue the  
17 sentencing consequences, the mandatory minimum penalties,  
18 and then to make argument about those penalties and jury  
19 nullification.

20 THE COURT: Okay. Well, let me be clear. I  
21 think it would be a shame to lose this jury. The jury has  
22 been selected. It's a short trial. I denied Mr. Pattis's  
23 motions for continuance this morning. But, more  
24 importantly, I think mandamus is inappropriate for the  
25 following reasons: I don't believe I've issued any order

1 that is inconsistent with established law. I screened out  
2 jurors at jury selection, and anybody who could not follow  
3 the law we struck for cause. So this jury has already  
4 been selected with jurors who can follow the rule of law.  
5 And at that time I rejected Mr. Pattis's efforts to raise  
6 the jury nullification issue; and there is no reason to  
7 believe, therefore, that this jury is prone to  
8 nullification. So I have done what I can to minimize the  
9 risk of jury nullification, as I'm required to do.

10 In *United States v. Polouizzi*,  
11 P-o-l-o-u-i-z-z-i, 564 F.3d 142, Chief Judge Katzman wrote  
12 that: "The government concedes that neither the Supreme  
13 Court nor this Court has 'expressly held that a court has  
14 no authority to inform the jury of the applicable  
15 sentence,' but it argues that the principles motivating  
16 various Supreme Court and Second Circuit decisions demand  
17 the conclusion that a district court may not inform the  
18 jury of a mandatory minimum sentence. Specifically, the  
19 government draws two principles from court rulings: (1)  
20 the Supreme Court's teaching in *Shannon* that the 'jury is  
21 to base its verdict on the evidence before it, without  
22 regard to the possible consequences of the verdict,' 512  
23 U.S. at 576, and (2) our disapproval, expressed in *United*  
24 *States v. Thomas*, 116 F.3d 606, 616 (2d Cir. 1997), of any  
25 encouragement of jury nullification. The government

1 argues that these two principles are inconsistent with any  
2 recognition of district court discretion to instruct the  
3 jury as to the consequences of a verdict. In fact, the  
4 law does not support such an absolute prohibition.

5 "First, the government's position contradicts  
6 the Supreme Court's explicit statements in *Shannon*.  
7 Although the *Shannon* Court concluded that 'an instruction  
8 [on the consequences of a not-guilty-by-reason-of-insanity  
9 verdict] is not to be given as a matter of general  
10 practice' it also specifically 'recognized that an  
11 instruction of some form may be necessary under certain  
12 limited circumstances.' 512 U.S. at 587-88. And  
13 elsewhere in *Shannon*, the court observed: 'As a general  
14 matter, jurors are not informed of mandatory minimum or  
15 maximum sentences." The phrase "as a general matter" is  
16 hyphenated -- excuse me, is italicized. "Far from  
17 prohibiting all instructions to the jury regarding the  
18 consequences of its verdict, these statements make clear  
19 that in some, albeit limited, circumstances it may be  
20 appropriate to instruct the jury regarding those  
21 consequences."

22 I am doing far less here. I have no intention,  
23 as I said this morning, of instructing the jury on  
24 mandatory minimums or their power to nullify. Instead, I  
25 simply am allowing Mr. Pattis to argue as he chooses to

1 argue. There is no doubt that juries have the power to  
2 nullify, and Mr. Pattis intends to argue that they should.

3 I also intend to, as I said this morning,  
4 instruct the jury specifically that they must follow the  
5 law, and I'm going to quote from my boilerplate jury  
6 instructions that I've used in every case for the last 19  
7 years:

8 "Duties of the jury.

9 "It is your duty to find the facts from all the  
10 evidence in the case. In reaching a verdict you must  
11 carefully and impartially consider all the evidence in the  
12 case and then apply the law as I have explained it to you.  
13 Regardless of any opinion you may have about what the law  
14 is or ought to be, it would be a violation of your sworn  
15 duty to base a verdict upon any understanding or  
16 interpretation of the law other than the one I give you."

17 Later, "Closing Instructions on Charged  
18 Offenses:

19 "If you, the jury, find beyond a reasonable  
20 doubt from the evidence in this case that the government  
21 has proved each of the foregoing elements for a particular  
22 count, then proof of the charged crime is complete, and  
23 you should find Mr. Manzano guilty on that count. If, on  
24 the other hand, you have a reasonable doubt about any of  
25 the elements of a particular count, then it is your duty

1 to find Mr. Manzano not guilty on that count."

2 And still later:

3 "The Jury is Not to Consider Punishment.

4 "The question of the possible punishment that  
5 Mr. Manzano will receive if convicted is of no concern to  
6 the jury and should not, in any way, enter into or  
7 influence your deliberations. The duty of imposing a  
8 sentence rests exclusively upon the judge. Your function  
9 is to weigh the evidence in the case and to determine  
10 whether or not Mr. Manzano has been proven guilty beyond a  
11 reasonable doubt on the crimes charged, solely upon the  
12 basis of such evidence. Under your oath as jurors, you  
13 cannot allow a consideration of the punishment that may be  
14 imposed upon Mr. Manzano, if convicted, to influence your  
15 verdict or enter into your deliberations."

16 It is not clear to me what more the government  
17 wants me to do. And it would be -- I am not going to do  
18 anything to charge that they can nullify, to charge on the  
19 mandatory minimum, or to charge that they should in any  
20 way encourage or consider nullification as an option in  
21 this case. But it's not appropriate to seek mandamus to  
22 prevent Mr. Pattis from arguing, in closing arguments by  
23 counsel -- if I, under certain circumstances, can admit  
24 evidence of the mandatory minimum, if that evidence comes  
25 in as a matter of trial evidence, he is permitted to argue

1 from that to the jury, period.

2 I said this morning that I think it's outrageous  
3 that this prosecution is seeking a mandatory minimum of 15  
4 years; and if Mr. Pattis is not allowed to argue jury  
5 nullification, in my view there is a risk of a Sixth  
6 Amendment violation here.

7 All that being said, I recognize that the  
8 government does not have the right to appeal a not guilty  
9 verdict, and so I recognize that there may be a need to  
10 raise whatever its argument is at the Second Circuit by  
11 way of mandamus. It's a shame that we're coming to that.  
12 But if that's what you intend to do, I think I'm just  
13 going to stay this case. Why stay it for two weeks,  
14 because we've lost the jury. We can't hold the jury for  
15 two weeks. I have no idea when we can next schedule this  
16 case.

17 Take as long as you want. Get your approval.  
18 Take as long as you want on the mandamus. Come back here  
19 when you're done in the Court of Appeals; and if and when  
20 we can schedule it at that time, we will.

21 So I'm granting the motion, but I think it's a  
22 shame that we've gone to this trouble to get a jury, and  
23 they're going to be charged appropriately, and I don't  
24 know what more I can do.

25 MR. PATEL: Thank you, Your Honor. Nothing

1 further from the government.

2 THE COURT: So you can release the jurors, Rody.

3 MR. PATTIS: Judge, just so the record is clear,  
4 I did not direct Mr. Manzano to come with me to this  
5 second proceeding today. I thought we were going to do it  
6 by phone. I looked at my email and then hopped in the car  
7 immediately. He would have come from a different  
8 location. I will inform him.

9 THE COURT: I don't think it's necessary for him  
10 to be here. This is an issue of law. I mean, it's a  
11 motion.

12 MR. PATTIS: Okay.

13 THE COURT: All right. Thank you. We'll stand  
14 in recess.

15 (Proceedings adjourned at 4:04 p.m.)  
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## C E R T I F I C A T E

No. 3:18-cr-00095-sru  
United States of America v. Yehudi Manzano

I, Sharon L. Masse, RMR, CRR, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

October 30, 2018

/S/ Sharon L. Masse  
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