

PAUL MANAFORT'S IPOD (AND OTHER APPLE PRODUCT) HABIT RIVALS HIS ANTIQUE RUG HABIT

In addition to a misleading motion to conduct an investigation into leaks about the investigation into him, Paul Manafort submitted similar (but not identical) motions to the motions he submitted to throw out the fruits of searches of his storage facility and condo in the DC case.

In addition to one or two different precedents (reflecting the different circuit), the biggest difference in the condo search motion is that Manafort lists all the devices the FBI took from his condo. The disorderly list of his devices includes at least 20 Apple devices:

- 4 DVD discs
- 7 external hard drives
- 12 SD cards
- 7 memory sticks
- 1 micro SD card
- 1 iPod
- 3 compact flash cards
- 1 MacBook Air hard drive
- 2 iPads
- 9 thumb drives
- 1 iPhone
- 1 micro vault pro
- 1 DEWF_COMB01: A 1TB (containing forensic images and device extractions from rooms: C, F, K, and Q)
- 7 iPods
- 1 iMac (including 1 Solid State Drive (SSD) and 1 Hard Disk Drive (HDD))

- 4 iPhones
- 1 SD card
- 12 digital flash drives
- 1 Macbook Air
- 2 iPad Minis
- 2 micro SD HC cards
- 2 SD HC cards
- 1 ultra-SD XC I card [my emphasis]

I raise this not just because Manafort appears to collect Apple devices like he also collects (er, launders) antique rugs. But also for another detail.

In the original filing, Manafort suggested that an Agent could not possibly have believed that an iPod would contain any evidence.

For example, the search warrant inventory of electronic devices seized or imaged includes things such as an Apple iPod music device and some Apple iPod Touch music and video devices. No agent could have reasonably believed that he was seizing electronic devices used in the commission of the subject offenses.

Not so, I argued.

Except that's not right: you can use Signal on iPods, so these might have stored communication. Which would be precisely the kind of thing that would be of most interest: devices that could be used for encrypted comms that would not show up on cell records.

See this piece for how communicating using an iPod over WiFi is the most secure way to communicate.

The government was similarly unimpressed with Manafort's focus on his iPods.

Manafort's contention again rests on his mistaken reading of the warrant—that is, that it authorized only the seizure of computers and storage media that were instrumentalities of the Subject Offenses. As explained above, however, the warrant also authorized agents to search “storage media (such as hard disks or other media that can store data)” for the 11 categories of records enumerated in Attachment B. See Doc. 264-1 Attach. A. Devices such as the iPod and iPod Touch plainly qualify as “storage media,” since they can store files such as contact lists and can even be used as backup drives. See, e.g., See *United States v. Ballard*, 551 Fed. Appx. 33, 36 (3d Cir. 2014) (unpublished) (personal information relevant to identity-theft scheme found on iPod); *United States v. Okeayainneh*, No. 11-cr-87, 2011 WL 2457395, at *10 (D. Minn. May 13, 2011) (affidavit established probable cause to believe that an iPod was among the devices used to store and transmit information in a fraud and identity-theft scheme). Because those devices are capable of storing evidence that falls within the scope of the warrant, the agents properly imaged those devices or took them for offsite review under Attachment A to the warrant.

The government goes on to note that even if they shouldn't have taken the iPods, the only recourse Manafort has is to suppression of evidence submitted at trial. And the government won't be using evidence from the iPods at trial in this case.

In any event, Manafort would not be entitled to suppression even if he were correct. Absent evidence that the government flagrantly disregarded the terms of the warrant (which

Manafort does not allege), the remedy for the seizure of materials outside the scope of a warrant is suppression of the improperly seized materials. See Maxwell, 920 F.2d at 1034 n.7. Here, Manafort identifies only the two iPod devices as supposedly falling outside the warrant's terms, but the government will not be introducing any evidence obtained from those devices at the trial in this case. There is, in short, nothing to suppress. [my emphasis]

I'm a bit confused by the government reference to "two iPod devices," because Manafort's new list identifies eight. The discrepancy may arise from iPods that were taken versus those that were simply imaged.

In any case, Manafort cites the government in his EDVA motion, again focusing on a handful – whether a big or small handful – of iPods as proof that the search was improper. But he doesn't cite the government motion directly.

In his opposition to Mr. Manafort's motion to suppress evidence seized from his residence filed in the related matter pending in the U.S. District Court for the District of Columbia, the Special Counsel stated that he would not seek to introduce evidence from the iPods seized from the residence, see United States v. Manafort, Dkt. No. 17-cr-201 (D.D.C.) Doc. No. 284 at p. 18, further underscoring the unreasonableness of their seizure in the first place.

Rather than stating that "the government will not be introducing any evidence obtained from those devices at the trial in this case," Manafort instead claims that "the Special Counsel stated that he would not seek to introduce evidence from the iPods seized from the residence."

Mueller's team only said they wouldn't be introducing evidence from the iPods "in this case," not that they wouldn't introduce evidence from them "in some future case."

Manafort is likely to face criminal charges in at least one more case (as indicated by the redacted – to us – bullet in several documents shared more broadly with Manafort). That case is presumably the hack-and-leak conspiracy – the one in which Manafort may have reached out "to Russia about potential assistance to the campaign." As a reminder, unlike the storage unit warrant, the condo search warrant included evidence about the June 9, 2016 meeting.

Mueller's team said nothing about introducing evidence from the iPods Manafort is so hung up about in some other trial.

Given how unlikely Manafort is to succeed with these suppression motions, they may pertain as much to evidence that will be used for the hack-and-leak conspiracy as they do to these cut-and-dry money laundering ones. (Michael Cohen's concern about the FBI searches in NY may similarly reflect concerns about evidence that can be used in the larger conspiracy cases.)

And in both jurisdictions, Manafort seems awfully worried about his iPod devices.