

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH**

THE UNITED STATES OF AMERICA

v.

JENNIFER ARMENTO

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: 2017 CF2 001193
:
: Judge Lynn Leibovitz
:
: Trial: 11/15/2017

**DEFENDANT JENNIFER ARMENTO’S MOTION IN LIMINE TO EXCLUDE
REFERENCE TO AN “ENCRYPTED” CELL PHONE OR DATA**

Defendant Armento moves *in limine* to exclude references to her “encrypted” cell phone or cell phone data during the trial set to begin November 15, 2017.

REFERENCES TO MS. ARMENTO’S “ENCRYPTED” CELL PHONE SHOULD BE EXCLUDED AS PREJUDICIAL AND MISLEADING

At a hearing before Your Honor on November 3, 2017, references were made to cell phones of several defendants taking part in the November 15, 2017 trial, including Ms. Armento. The Government noted that certain phones were “encrypted”, therefore no data could be pulled from them to include texts or emails. While the Government indicated that this was not meant to imply any “nefarious” purpose, it mentioned that the jury would or could be alerted during trial to the fact that no data would be provided from Ms. Armento’s phone since it was “encrypted”. The term “encrypted” however, in and of itself sounds nefarious and is highly prejudicial to Ms. Armento. Additionally, the term “encrypted” is a technological term of art that could confuse or mislead a jury without any expert present to provide an explanation.

A simple internet search reveals that an individual can install additional measures and programs to encrypt the data on their cell phones or computers. However, there is no evidence that Ms. Armento added any additional features on her phone that was recovered by MPD other than those available from the factory. Upon information and belief, Ms. Armento was using the factory setting to protect her iPhone. She had to use a numerical code or fingerprint to access her phone. Ms. Armento contends that many newer cell phone models, including but not limited to Apple products, need a passcode of some sort to access data stored on that phone. Access restrictions are usual and normal. However, it is not common knowledge what the term “encrypted” entails or even that it is correctly being applied to the factory installed access restrictions on Ms. Armento’s iPhone.

Machines like iPhones and other smart-phones are commonly used as facilitators of financial transactions in addition to connecting a user to others in personal or group communication by voice, visual, symbol and written modes. Securing a user's finances from third parties in iPhones and other smart-phones is a good choice that manufacturers made to foster wide-spread adaption of the new form of hand-held computer hybridized with traditional and evolving communication technologies. To say that an access control feature is a synonym for encryption, or vice-versa, is incorrect.

It is also extremely prejudicial. The use of the term "encryption" to describe an iPhone using factory-installed access restriction technology in light of the rapid changes in technology which have brought communications products like a iPhones and other smartphones into the stream of commerce over the last thirty years is unlikely to carry anything other than nefarious connotations to less-technologically savvy members of the jury pool as well as more elderly members.

For these reasons, Ms. Armento respectfully requests that the Government be precluded from using the word "encrypted" at trial when referencing the contents of Ms. Armento cell phone that was seized as the result of this case. As an alternative, Ms. Armento suggests that the Government simply refer to Ms. Armento's phone as "passcode protected" or "locked".

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2017 a copy of the foregoing was e-filed and a courtesy copy emailed to AUSA Jennifer Kerkhoff and all counsel of record.

_____/s/_____
Carrie Weletz

_____/s/_____
Thomas R. Healy