

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Criminal Case No. 10-cr-00509-REB-02

UNITED STATES OF AMERICA,

Plaintiff,

v.

2. RAMONA CAMELIA FRICOSU,
a/k/a Ramona Smith,

Defendant.

MINUTE ORDER¹

The matter is before the court on the government's **Application Under the All Writs Act Requiring Defendant Fricosu To Assist in the Execution of Previously Issued Search Warrants** [#111], filed May 6, 2011. The court heard oral arguments on this matter on Friday, July 22, 2011.

Based on the arguments and evidence submitted at the hearing, it appears to the court that the government can prove by a preponderance of the evidence that defendant owned a laptop and that the laptop was encrypted. However, the evidence presently before the court is insufficient to conclude by a preponderance of the evidence that the laptop referenced in the recorded conversation appended to the search warrant affidavit is the same laptop that is the subject of the government's application. Six computers, including two laptops, were seized when the search warrant was executed. Counsel for defendant represented at the hearing, without contradiction, that at least one of the other five computers was encrypted, but it is not apparent whether that computer was the other laptop or if the other laptop otherwise was encrypted also.

Unless the government establishes by at least a preponderance of the evidence that the laptop that is the subject of the application belonged to defendant, requiring her to provide the password thereto would force her to admit ownership of the laptop, in ostensible violation of the Fifth Amendment. **See Doe v. United States**, 487 U.S. 201, 209, 108 S.Ct. 2341, 2347, 101 L.Ed.2d 184 (1988) (testimonial acts that "entail implicit statements of fact," such as that particular documents "existed, were in his possession or control, and were authentic," are subject to Fifth Amendment privilege against self-

¹ This minute order is issued pursuant to the express authority of the Honorable Robert E. Blackburn, United States District Judge for the District of Colorado.

incrimination); *United States v. Kirschner*, 2010 WL 1257355 at *3 (E.D. Mich. March 30, 2010) (“An act is testimonial when the accused is forced to reveal his knowledge of facts relating him to the offense[.]”) (citation and internal quotation marks omitted).

THEREFORE, IT IS ORDERED that a telephonic setting hearing conference is **SET** for **Tuesday, August, 2 2011**, at 10:00 a.m. (MDT), during which the court will set a hearing to receive evidence on the issues of fact discussed above. Counsel for the government shall coordinate the arrangements necessary to conduct the setting conference and initiate the call to chambers.

Dated: July 26, 2011