

Utah Supreme Court to decide if cell phone passcodes are protected

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SALT LAKE CITY — The state's top court will decide if cell phone passcodes are protected under the Fifth Amendment right against self-incrimination. On Wednesday, the Utah Supreme Court heard arguments in a case involving a man convicted of kidnapping, assaulting and robbing his ex-girlfriend. Police sought



a warrant for Alfonso Margo Valdez's cell phone as part of their case. However, he refused to give them the passcode for the phone's lock screen.

At trial, prosecutors argued to a jury that Valdez's refusal to give up the passcode implied he was guilty. [The Utah Court of Appeals sided with Valdez that the passcode was protected under the Fifth Amendment.](#)

The Utah Attorney General's Office appealed that ruling to the Supreme Court.

Justices on Wednesday peppered lawyers for both sides with questions about historic constitutional rights and new technologies.

"I guess we have two different issues here," said Justice Paige Petersen. "Whether compelling the defendant to give the passcode is a violation of the Fifth Amendment, and if, then what remedy is available to the state?"

Assistant Solicitor General John Nielsen argued that this was no different than a signature or a key, things that can be compelled under a search warrant. But Chief Justice Matthew Durrant questioned if the password in someone's mind can be compelled.

"There are probably plenty of cases where the state knows a defendant is guilty, the evidence is overwhelming but the defendant never says 'I did it,'" he said. "He still has a Fifth Amendment right to not say 'I did it.'"

Across the nation, court rulings have been mixed on facial recognition and fingerprints to unlock cell phones. The Utah Attorney General's Office appeared to want a ruling on the use of touch entry passwords.

"We have a new series of cases here and the concepts should fit not just with the history of the Fifth Amendment... but should also take into account the realities of what's going on and the realities of encryption," Nielsen said.

Freyja Johnson, Valdez's attorney, argued that a person cannot be compelled to participate in their own prosecution.

"This case is about the state improperly commenting on Mr. Valdez's refusal to communicate his phone passcode when he was asked to do so by police. In that sense, this isn't a new frontier, new technology issue," she told the court.

Valdez's case has drawn support from the American Civil Liberties Union and the Electronic Frontier Foundation. The civil liberties groups submitted a "friend of the court" brief, urging the Utah Supreme Court to side with Valdez.

"The Fifth Amendment doesn't mean much if when we exercise that right the state is then able to turn around and argue that us exercising that right should be used to imply guilt," said John Mejia, the legal director for the ACLU of Utah.

The justices took the case under advisement. Cases decided by the Utah Supreme Court often have broader implications, so whatever the high court decides will impact others across the state.

"We need to draw firm bright lines around our privacy, around our Fifth Amendment rights," Mejia said in an interview with FOX 13 News. "The more the state is allowed to chip away at our privacy and chip away at our Fifth Amendment rights, that will have big implications moving forward."