

# Virginia judge: Police can demand a suspect unlock a phone with a fingerprint

**But passcodes need not be divulged as per the Fifth Amendment, court says.**

A Virginia Circuit Court judge ruled on Thursday that a person [does not need to provide a passcode](#) to unlock their phone for the police. The court also ruled that demanding a suspect to provide a fingerprint to unlock a phone would be constitutional.

The ruling calls into question the privacy of some iPhone 5S, 6, and 6 Plus users who have models [equipped with TouchID](#), the fingerprint sensor that allows the user—and [ideally only the user](#)—to unlock the phone. It is possible for users to turn TouchID unlocking off and simply use a passcode, and Apple has provided certain extra protections to prevent TouchID privacy issues—requiring the entry of a passcode if the phone hasn't been used in 48 hours, for example. But if a suspect simply uses TouchID to open their phone, police could have a window to take advantage of that when apprehending them.

The case in question this week involved a man named David Baust, who was charged in February with trying to strangle his girlfriend. The [Virginian Pilot reports](#) that Baust's phone might contain video of the conflict but that his phone was locked with a passcode. Baust's attorney argued that passcodes are protected by the Fifth Amendment.

The judge agreed with Baust, though he noted in his written opinion that "giving police a fingerprint is akin to providing

a DNA or handwriting sample or an actual key, which the law permits,” the *Virginian Pilot* reports. “A passcode, though, requires the defendant to divulge knowledge, which the law protects against.”

The ruling is interesting because it draws into relief the legal difference between a person’s identity and their knowledge. The Fifth Amendment protects people from being forced to witness against themselves, and last year when Apple’s TouchID fingerprint sensor was announced, the website Wired [noted](#) that fingerprints may not have the same protection as passcodes. “A communication is ‘testimonial’ only when it reveals the contents of your mind,” Wired wrote. “We can’t invoke the privilege against self-incrimination to prevent the government from collecting biometrics like fingerprints, DNA samples, or voice exemplars. Why? Because the courts have decided that this evidence doesn’t reveal anything you know. It’s not testimonial.”

Comments or questions are welcome.

\* indicates required field

Name:\*

Email:\*

Subject:\*

Message:\*

Submit

---

## How EA's jet-setting founder avoided \$26 million in taxes

**“I bought a private jet because I thought it would make me more efficient in my work.”**

In the early 2000s, William “Trip” Hawkins—founder of video game publisher Electronic Arts—was living the good life. He owned a private jet, two multi-million-dollar homes, sent his kids to private school, had four vehicles between himself and his wife, held San Francisco Giants season tickets, and employed a private staff.

Hawkins appeared to be flush with cash. He once had an estimated worth of \$100 million while manning the video game company that has long produced best-sellers like the *Madden NFL* franchise, and he cashed out company stock repeatedly. He sold \$24.4 million of EA stock in 1996. The following year, he sold \$3.7 million more. In 1998, he sold \$38.76 million.

But Hawkins had a peculiar way of keeping his cash flow up; he wasn't paying all the taxes connected to the proceeds of some of his stock sales. Instead, he participated in a tax sheltering setup designed to produce on-paper “monetary losses” to offset the gains. The scheme was all done through accounting firm KPMG, which used convoluted Swiss and Cayman Islands deals that eventually raised the eyebrows of Internal Revenue Service (IRS) tax auditors. The IRS and the California Franchise Tax Board eventually cried foul.

In 2002, the IRS notified Hawkins' lawyers that the tax shelters, accounting for about \$60 million in claimed losses, wouldn't be allowed for the tax years 1997 to 2000. This meant

that Hawkins would be on the hook for millions in back taxes on all those EA stock profits.

Still, Hawkins continued living a jet setter's life until around the time he filed for bankruptcy protection in 2006. For instance, a government [legal filing](#) [PDF] said that Hawkins' private jet had cost \$11.8 million in 2000 and had an "operating" cost of \$1 million annually. Hangar fees were \$100,000 monthly, the filing added. The jet was allegedly used for trips, some personal, to Hawaii, England, Russia, Italy, Aspen, San Diego, and Long Beach.

"Debtors continued to purchase Giants season tickets each year commencing with the 2000 season. By the 2003 season, debtors were paying \$7,487.76 for their season tickets and \$1,415 for their parking pass," the government said. In 2002, the government said that Hawkins bought a newly built "vacation home" in the upscale La Jolla section of San Diego for \$2.6 million.

Hawkins, for his part, disputes that he spent outrageously in the lead-up to his bankruptcy.

"I didn't retire, build a home, or buy a bunch of luxury items other than one obvious indulgence," the 60-year-old [wrote](#) in a comment appended to a recent *Forbes* piece about his financial trouble. "I bought a private jet because I thought it would make me more efficient in my work. That was really stupid, too." (Hawkins sold his jet in 2003 for "approximately \$5 million," according to the government.) Hawkins went on to say the one thing he was guilty of was "stupidity" for trusting accountants who promised him legitimate tax shelters.

Hawkins did eventually pay more than \$10 million toward his tax debt, but \$26 million still remained. Because of Hawkins' continued high spending, a federal bankruptcy court refused to give him the usual bankruptcy benefit of wiping his tax burden.

But Hawkins appealed this ruling—and he doesn't have to pay those taxes, at least not for now. A recent [decision](#) [PDF] by a three-judge panel for the 9th US Circuit Court of Appeals in San Francisco sided 2-1 with Hawkins despite objections from a dissenting appellate judge who said that Hawkins didn't deserve a break because he was engaged in “profligate spending.”

The appeals court concluded that it didn't matter whether Hawkins bought a private jet or lived the high life, so long as he wasn't willfully scheming to evade his tax burden. The majority opinion [concluded](#) [PDF] that the law was on Hawkins' side and that “bankruptcy law must apply equally to rich and poor alike.”

Hawkins' ongoing legal push to be relieved of his tax obligations is merely the latest chapter in a long story. His saga provides a glimpse into the murky world of tax shelters, the principles of bankruptcy law, and the spendy lifestyles of the tech sector's elite. And, in this instance, it just happens to involve the man who started one of the world's most popular video game companies.

## Tax shelters for sale

Hawkins, a Harvard University and Stanford University grad, was among the earliest Apple employees. He left his post as an Apple marketing director in 1982 to found [Electronic Arts](#). In addition to the *Madden* franchise, EA has produced *The Sims*, *FIFA*, and a slew of other video games. Hawkins later formed 3DO, a gaming company that issued its first console in 1993. Despite at least \$12 million in loans from Hawkins, 3DO filed for Chapter 11 bankruptcy protection in 2003.

His LinkedIn [profile](#) lists Hawkins now as the co-founder and CEO of [If You Can](#), a company that makes children's learning tools. Through his attorney, Hawkins declined to comment to Ars.

The tax saga began with accountants at KPMG advising Hawkins to shelter his proceeds from the sales of EA stock in vehicles called a Foreign Leveraged Investment Portfolio (FLIP) and an Offshore Portfolio Investment Strategy (OPIS). The government said Hawkins' reported investment failures "[were not real economic losses.](#)" [PDF]

The appeals court described Hawkins' tax shelters as a convoluted web "designed to generate large paper losses":

*To execute the FLIP transaction, Trip purchased shares of the Union Bank of Switzerland ("UBS") for \$1.5 million and an option to acquire shares of Harbourtowne, Inc., a Cayman Islands corporation. Harbourtowne then contracted with UBS to purchase shares of UBS for \$30 million, with UBS receiving an option to repurchase the shares before the sale closed. UBS exercised the option, and the UBS shares were never transferred to Harbourtowne. Hawkins then received a letter from KPMG stating that he could add to the tax basis of his UBS shares the \$30 million that Harbourtowne had contracted to pay for its UBS shares. The opinion letter stated that UBS's repurchase of its shares would likely be considered a distribution to Harbourtowne (which was nontaxable because Harbourtowne was a foreign corporation), and that Harbourtowne's basis in its UBS shares should be treated as a transferred to Hawkins's basis in his UBS shares.*

*OPIS worked in a similar way. Hawkins purchased shares of UBS for \$1.99 million and an option to acquire an interest in Hogue, Investors LP, a Cayman Islands limited partnership. Hogue contracted to purchase shares of UBS treasury stock, with UBS retaining a call option to repurchase the shares before transfer. UBS exercised the option. KPMG issued an opinion letter to Hawkins stating that he could add the Hogue shares to his basis in the UBS stock.*

The appellate court said that Hawkins sold "various quantities

of UBS stock” and claimed losses connected to that stock of “approximately \$6 million on his 1996 federal tax return, \$23.4 million on his 1997 return, \$20.5 million on his 1998 return, \$3.5 million on his 1999 return, and \$8.2 million on his 2000 return.”

Hawkins wasn't the only one to climb aboard the KPMG tax-sheltering train. In 2005, the IRS [announced](#) what it labeled the “largest criminal tax case ever filed”—dinging KPMG with a \$456 million fine in connection with a “multi-billion dollar criminal tax fraud conspiracy” through the sale of “fraudulent tax shelters.” FLIP, OPIS, and other KPMG vehicles helped generate \$11 billion in phony tax losses that cost the US Treasury \$2.5 billion, the IRS said.

The accounting firm was never prosecuted but instead became the benefactor of what is known as a “deferred prosecution,” meaning it could be charged [if it didn't reverse course](#). [PDF] Two KPMG accountants were later successfully prosecuted, and a KPMG partner [was acquitted](#) in 2008. But taxpayers discovered to have taken advantage of these shelters like Hawkins weren't facing charges. They had opinion letters from KPMG saying the shelters were legit.

## **Bankruptcy for the rich, poor**

Though safe for the moment, Hawkins isn't completely off the tax hook. The 9th US Circuit Court of Appeals decision from September 15 does not put the bankruptcy case to bed. The majority opinion, by Judge Sidney Thomas (a Bill Clinton appointee) and Judge Andrew Kleinfeld (a George H.W. Bush appointee), said that for the taxes to stick, the government must prove that Hawkins' monthly spending—which court records say was between \$16,750 and \$78,000 more than his monthly income—was something more than “simply living beyond one's means.”

*A mere showing of spending in excess of income is not sufficient to establish the required intent to evade tax; the government must establish that the debtor took the actions with the specific intent of evading taxes. Indeed, if simply living beyond one's means, or paying bills to other creditors prior to bankruptcy, were sufficient to establish a willful attempt to evade taxes, there would be few personal bankruptcies in which taxes would be dischargeable. Such a rule could create a large ripple effect throughout the bankruptcy system. As to discharge of debts, bankruptcy law must apply equally to the rich and poor alike, fulfilling the Constitution's requirement that Congress establish "uniform laws on the subject of bankruptcies throughout the United States."*

The government had attempted to show that Hawkins' actions were a willful attempt to evade taxes, and its evidence did convince appeals court Judge Johnnie Rawlinson, also a Clinton appointee. As Rawlinson wrote in a dissent, "There is little doubt, if any, that William Hawkins deliberately decided to spend money extravagantly rather than pay his duly assessed state and federal taxes. Hawkins now seeks to discharge these taxes in bankruptcy."

For evidence, Rawlinson noted that in 2004 Hawkins had acknowledged owing more than \$20 million in taxes during child support proceedings:

*Even after acknowledging the tax debt, Hawkins maintained a home worth well over \$3.5 million, and an ocean-view condominium worth well over \$2.6 million. Although there were only two drivers in the family, Hawkins purchased a fourth vehicle that cost \$70,000.00. At the family court hearing, Hawkins' bankruptcy attorney "testified that Hawkins' intent was not to pay the tax debt, but to discharge it in bankruptcy..." This testimony is a strong indication of a willful intent to avoid the payment of taxes by hook or by*

*crook. Indeed, the bankruptcy court noted that the personal living expenses of the Hawkins family during the period in question were “truly exceptional.” Incredibly, the family “spent between \$16,750 and \$78,000 more” each month than their income. The bankruptcy court determined that the wasting of assets through profligate spending indicated willful evasion of tax payments.*

On the other hand, within months of filing for Chapter 11 bankruptcy protection in 2006, Hawkins did sell his primary residence in an upscale Atherton, California, neighborhood for \$6.5 million and his La Jolla, California, beachfront condo for \$3.5 million. The proceeds were used to lower his tax bill, the court said. (Court documents said he eventually moved to San Mateo, California, and was renting a \$2.5 million house owned by his parents for \$7,500 a month.)

Hawkins’ attorney, Wendy Smith, [wrote](#) [PDF] in a court filing that neither tax officials nor the lower courts ever claimed the Hawkins family “increased their spending, or that the reason they didn’t reduce food costs, mow their own yard, or buy a cheaper car was to evade or defeat taxes.” She said the lower courts did not “explain why a debtor’s failure to reduce living costs quickly enough following some event signaling the finalization of tax liability proves intent to evade or defeat a tax.”

[A. Lavar Taylor](#), a California tax attorney, wrote a blog post about the uncertainty wealthy clients in Hawkins’ position could face when courts start scrutinizing their spending—and how quickly they needed to draw down their spending.

“For those debtors who are living a good lifestyle but are greeted by an overwhelmingly large tax liability, how long do they have to reduce their expenditures before their pre-existing level of expenditures becomes ‘unnecessary?’ Six months? A year?” he [asked](#). “If they attempt to sell their

expensive house and find no buyers at a reasonable price after a year, are debtors required to sell at a fire sale or to stop paying their mortgage?"

## **“Profligate spending”**

According to Hawkins, he’s a victim in all this—not a tax dodger.

“Tax code seems to me to be about as complicated as brain surgery and I don’t pretend to tell either tax experts or surgeons how to do their thing and I would bet you would feel the same,” he commented on the *Forbes* piece. “You ask them to do all the forms and you trust what they do. If they say they know a way to legally save money on a good investment or deduction you do what they say. We all make mistakes trusting people, it is just that the higher you are the further you are going to fall.”

“Yes, before I clearly understood and accepted that I had tax problems and obligations, I did spend too much money because I presumed, like most people, that my money was my money and that I was an American living in the USA,” he added. “The biggest luxury, of course, was 3D0. Mostly I just wanted to re-invest my money in whatever business I was trying to build; in my history I don’t generally buy ‘stuff’ or spend much on myself—I invest, personally, in my businesses—much more so than typical founders and CEOs.”

As for the legal case, the appellate court has kicked it back to the federal bankruptcy court so that Hawkins’ tax liabilities can be analyzed under the newly articulated standard for “intent to evade tax.”

Justice Department spokeswoman Nicole Navas said in an e-mail that the authorities are reviewing the appellate court’s decision and are “exploring options on how the government will proceed.” Those options include asking the same three judges

to reconsider the ruling, petitioning the court to revisit the case *en banc* with 11 judges, appealing to the Supreme Court, or letting the ruling stand.

---

## Health Insurance in the United States

### **I have health insurance.**

After years of not having health insurance I have health insurance through my employer since October 1st, 2014. For me not having health insurance was just cheaper than having it. I am basically a healthy guy. I saved every month something to cover the health expenses and my doctor is a good guy, he gives me his services at a very reasonable rate. But now it is the law in the United States to be health insured or else the IRS will fine you every year.

### **I gave in.**

I have health insurance now. I pay \$400 every month. This is by all means much more what I did spend for my health in the past years. Oh yea, dental is not included (you see, dental I really need). Since a few days I don't feel so well. Today I came home from work and I told my wife that I feel sick, that I am thinking of going to the doctor. I did not even finish saying that as I ran the numbers in my mind. My paycheck is now much smaller because of health insurance, but the insurance does not cover everything and makes everything health related usually just cheaper. Not like in Germany where the health insurance covers everything. It is more like a

discount card. After I was done running the numbers I realized that I cannot go to the doctor. I cannot afford it. I have not enough money left after paying for health insurance to pay the "discounted" rates for the doctor and medicine. My doctor prescribed me a few months ago pills for my heart. He said that he does not like how my heart sounds. Those pills are generics, I can afford them without health insurance just paying for them out of my pocket. But now with health insurance I have to stop taking those pills. I cannot afford them anymore with health insurance.

*I have health insurance. Now I cannot afford anymore to go to the doctor and I cannot afford anymore my medicine. Was this not supposed to work somehow in a different way?*

In December 2014, during "Open Enrollment" my health insurance payment will go up about 20%. I guess from December on I have to cut back on food or move into a cheaper apartment (maybe in Compton or Inglewood) for a health coverage which makes it impossible for me to use any health services. By the way, I am 6'1" and weigh 158lbs with clothes. Its not like I could use to lose some weight.

P.S.: If you tell me now I should check into one of those health programs for the poor, save it. I am not poor. I checked. I make too much money to qualify. I am middle class.

Update: I signed up for dental insurance. I have for a week now excruciating toothaches. The dental insurance basically covers nothing. Two cleanings a year are free. Nothing else. As I am writing these lines I am in pain. I don't have money to go to a dentist. I pay a lot for taxes and for health insurance. There is no money left to actually see a doctor. What is the United States government doing with all the tax revenue? Are they just using it to bomb little brown people in Irak and Afghanistan? Making the rich in the United States along that way richer and richer? The United States healthcare

system does not meet minimum humanitarian standards.

*A few years ago I went to a dentist in Sherman Oaks, California. I had no health insurance at this time. I went there to have a root canal done. I told the girl at the reception that I don't have health insurance but that I am prepared to pay for the root canal out of pocket. She led me to one of these "dentist rooms" with a dentist chair in it. I took a seat on it. The dentist came and asked me ONLY if it is true that I don't have health insurance. He said "okay" and left. 10 to 15 minutes later a rather strong build man entered the room, asked me to get up and leave. Which I did. They threw me out of the dentists office despite the pain I was in. A few days later I received from the dentists office a bill of \$150 for a "doctors consult". Later I had the tooth pulled by another "dentist". I actually don't know if this guy was really a dentist. I took the cheapest plan he had, which means pulling the tooth without ANY pain medication, nothing to numb the area where the tooth was to be pulled. I did it anyways. One of the most horrifying and painful experiences in my life. When it comes to healthcare the United States is really a big shit hole.*

While I was sitting here in pain I was watching the Michael Moore documentation "Sicko". If you have not seen it, watch it. Critics (usually scumbags and assholes like Right-Wing Republicans) say that this documentation is only propaganda. I am a German citizen. Everything is true what Michael Moore describes in his documentation about the healthcare system in Europe. In Europe you will be provided with the healthcare you need, not with the healthcare you can afford. There nobody is profiting from healthcare.

Comments or questions are welcome.

\* indicates required field

Name:\*

Email:\*

Subject:\*

Message:\*