

MSC Opinion: People v. Armstrong

27. October 2011 By Julie Lam

The complainant, a 15-year-old girl, accused defendant, a 25-year-old male, of violently raping her on two separate occasions. The jury convicted defendant of two counts of third-degree criminal sexual conduct, and the trial court sentenced defendant to concurrent terms of 7 to 15 years' imprisonment. In *People v. Armstrong*, No. 142762, the Michigan Supreme Court held that defendant's trial counsel's ineffective assistance in failing to seek the introduction into evidence of cell phone records showing the complainant's frequent communication with defendant after the alleged rapes, that would have undermined the complainant's credibility, prejudiced defendant. In lieu of granting appeal, the Michigan Supreme Court unanimously reversed the judgment of the Court of Appeals, and remanded the case to the trial court for a new trial.

At trial, the complainant unequivocally denied that she had contacted defendant after the second alleged rape occurred. Defense counsel attempted to introduce into evidence defendant's cell phone records showing what defense counsel described as hundreds of incoming calls from the complainant's cell phone after the second alleged rape. However, the prosecution objected for lack of a foundation, which the trial court sustained. Defense counsel, who had been practicing law for only eight months at the time, made no further attempt to admit the cell phone records. At a *Ginther* hearing on the issue of ineffective assistance of counsel, defendant's trial counsel testified that he failed to subpoena the custodial of the cell phone records because of a mistaken belief that the business records exception to the hearsay rule did not require testimony from the custodian and that he thought it would be sufficient to have the complainant acknowledge her phone number on the cell phone statement. He further explained that he intended to introduce the records because they were important to the defense's case but that he made no further attempt to have them admitted because he became flustered following the prosecution's successful objection.

The two requirements a defendant must meet in order to warrant a new trial due to the ineffective assistance of counsel are: first, that counsel's performance fell below an objective standard of reasonableness – thus, overcoming the strong presumption that counsel's assistance constituted sound trial strategy; and second, that but for counsel's deficient performance, a different result would have been reasonably probable. The Michigan Supreme Court concluded that defense counsel's failure to pursue the admission of the cell phone records, which would have caught the complainant in a lie, where attacking the complainant's credibility offered the most promising defense, was not a matter of sound trial strategy. The Michigan Supreme Court held that the Court of Appeals clearly erred by affirming the trial court's finding of no prejudice, and concluded that a reasonable probability exists that the cell phone records would have convinced the jury to discredit the complainant's accusations.