

State v. Armstrong

In 2016, Joshua John Armstrong was incarcerated in the South Dakota State Penitentiary after being convicted in 2009 of sexual contact with a person under sixteen. While in prison, he prepared a packet of letters and other documents to be sent to the Compass Center in Sioux Falls. The Compass Center is an organization that provides services for victims of domestic and sexual assault, including services to prisoners who wish to report sexual harassment or assault occurring within the prison. Armstrong addressed the envelope to “P.R.E.A.”—the acronym for the federal Prison Rape Elimination Act. Under that Act, prison staff could not open Armstrong’s envelope and review the documents before mailing.

Armstrong’s envelope arrived at the Compass Center, and Michelle Markgraf read and reviewed its contents. The envelope contained a three-page letter addressed to PREA, an eighteen-page letter addressed to Governor Dennis Daugaard, a completed commissary order form, documents indicating treatment was being used as a weapon against Armstrong, and handwritten quotes from this Court’s 2010 opinion affirming Armstrong’s 2009 conviction. Only the letters to PREA and Governor Daugaard are relevant to this appeal.

In his letter to PREA, Armstrong identified that he had sent previous, unanswered letters to the Compass Center. He then begged for help, and wrote the following:

I want you to know that I am absolutely serious about what I said about [K.H.] I have got nothing to lose and everything to gain by raping and killing her or a guard. At least I will be serving time for a crime that I actually committed and to be honest I would rather die of lethal injection than sit in this cell suffering from untreated psoriasis and thoughts that I can’t seem to stop.

...

I know that I can not live like this much longer and fight my own conscience every day to keep me from raping [K.H.] or a guard, but if the warden and Governor are willing to sacrifice her I might as well.

...

What would you do? Please let me know if or when you forward the letter to Daugaard. I want to know where I stand and what I need to do in my near future. If you don’t respond by August 26, 2016 I will assume that I am on my own and might as well die embarrassing South Dakota’s government.

K.H. is actually “C.H.” and she is a mental health therapist at the penitentiary. Armstrong was housed in her unit.

In his letter to Governor Daugaard, Armstrong also referenced C.H. and related in even greater detail similar statements about how he would rape and kill her. Armstrong gave Governor Daugaard multiple options “to keep [C.H.] from being raped and murdered,” including the placement of several hundreds of thousands of dollars in various accounts and providing him a full pardon.

Ultimately, Armstrong was indicted on one count of threatening to commit a sexual offense. Under that charge, Armstrong was alleged to have directly threatened or communicated the specific intent to commit further felony sex offenses. Armstrong pleaded not guilty, and at trial, moved for judgment of acquittal. He argued that the State failed to present sufficient evidence that he *directly* threatened C.H. The circuit court denied Armstrong’s motion. At the close of the case, Armstrong requested an instruction informing the jury that to find him guilty, it must determine “beyond a reasonable doubt that he directly threatened or directly communicated specific intent to commit a further felony sex offense.” He requested another instruction on specific intent, namely that “the State must prove that the defendant acted with the specific design or purpose to threaten [C.H.]” The circuit court refused both requested instructions, and the jury found Armstrong guilty.

Armstrong appeals, asserting the circuit court erred in denying his motion for judgment of acquittal and in refusing his requested instructions.

Mr. Beau J. Blouin and Mr. Christopher Miles, Attorneys for Appellant Joshua John Armstrong.

Mr. Jason R. Ravnsborg, Attorney General and Ms. Erin E. Handke, Assistant Attorney General, Attorneys for Appellee State of South Dakota.