Circuit Court for Prince George's County
Case No. CAL18-32534

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 829

September Term, 2019

JASON WILLIAMS

v.

STATE OF MARYLAND, et al.

Meredith,*
Graeff,
Eyler, James R.
(Senior Judge, Specially Assigned),
JJ.

Opinion by Meredith, J.

Filed: April 21, 2021

*Meredith, Timothy E., J., now retired, was assigned as a panel member of this case while an active member of this Court, and after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

In August of 2014, Jason J. Williams, appellant, was a 32-year-old Sergeant in the United States Marine Corps, stationed in Hawaii. He and his best friend on the island, Marine Lance Corporal Zeyquan M. Gardner, offered a ride to a pair of 18-year-old college freshmen women. After Williams and Gardner provided the women hard liquor to drink for several hours, they took them to a hotel, where Gardner engaged in sexual intercourse with one of the women (hereinafter "Ms. B.") at a point when she was not capable of consenting to sex due to her impairment by alcohol. Both men were subsequently convicted of numerous offenses by the United States Navy-Marine Corps Trial Judiciary. One of the offenses of which Williams was found guilty is conspiracy to commit sexual assault upon Ms. B. in violation of Article 81 of the Uniform Code of Military Justice. After his conviction for that offense (and three related lesser offenses) was affirmed, Williams was sentenced to a reduction in grade, confinement for three years, and a bad conduct discharge. Upon his release in 2017, Williams chose to reside in Maryland, and registered as a Tier III sex offender pursuant to Maryland Code (2001, 2018 Repl. Vol.), Criminal Procedure Article ("Crim. Proc."), § 11-701(q)(2).

In 2018, Williams initiated the present civil action by filing suit in the Circuit Court for Prince George's County against the State of Maryland and the Maryland Department of Public Safety and Correctional Services, appellees, hereinafter referred to collectively as "the State." Williams's complaint sought a declaratory judgment that he is not required to register as a Tier III sex offender in Maryland because, he asserted, although there were sufficient findings of fact to sustain his military conviction of the

conspiracy charge, the evidence would not support a conviction for a comparable Maryland criminal offense requiring registration as a Tier III sex offender.

The State filed an answer disputing Williams's assertion that Maryland law does not require a person to register as a Tier III sex offender for having been convicted of the military offense of conspiracy to commit a sexual assault. The State moved for summary judgment, and Williams filed an opposing response and cross motion for summary judgment. The Circuit Court for Prince George's County granted the State's motion for summary judgment and decreed that "Jason John Williams[] is properly required to register as a Tier III sex offender as a result of his conviction under Article 81 of the Uniform Code of Military Justice[.]" This appeal followed.

Williams raises a single question on appeal: "Did the lower court err in granting summary judgment to Appellees?"

Perceiving no error, we shall affirm the judgment of the Circuit Court for Prince George's County.

FACTS AND PROCEDURAL HISTORY

In the State's motion for summary judgment, the State summarized the law relative to Williams's conspiracy conviction as follows:

> In 2015, [the Uniform Code of Military Justice "UCMJ"] Article 81 prohibited a person from "conspiring with any other person to commit a military offense if one or more of the conspirators does an act to effect the object of the conspiracy." UCMJ art. 81 (2015). UCMJ Article 120 outlawed sexual assault, the object of the conspiracy in this instance, and defined sexual assault as, among other things, "committing a sexual act upon another person when the person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar

> substance, and that condition is known or reasonably should be known by the person." UCMJ art. 120(b) (2015). Sexual act was defined to include "contact between the penis and the vulva or anus or mouth, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight[.]" UMCJ art. 120(g) (2015).

The State's motion quoted at length from the evidence summary that had been set forth in the opinion of the United States Navy-Marine Corps Court of Criminal Appeals, Case No. 201500296 (filed March 17, 2017). The motion recited that "Williams's military conviction for conspiracy to commit sexual assault requires him to register as a [T]ier III sex offender in Maryland" because he had been convicted of committing or conspiring to commit an offense "'in a federal, military, tribal or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection.'" (Quoting Crim. Proc. § 11-701(q)(5).) The motion then asserted that the conduct of which Williams was convicted would, if committed in Maryland, be considered conspiracy to commit a violation of Maryland Code (2002, 2012 Repl. Vol.), Criminal Law Article ("Crim. Law"), § 3-304(a)(2), rape in the second degree, which clearly requires registration as a Tier III sex offender pursuant to Crim. Proc. § 11-701(q)(1)(ii).

The State's motion further asserted:

> The record evidence establishes, as the military court concluded, that Mr. Williams conspired with Lance Corporal Gardner to commit a sexual assault with the object of the conspiracy being accomplished by the penetration of the victim's vagina by Lance Corporal Gardner's penis. The facts established that the victim of the crime was rendered helpless through alcohol intoxication and that Mr. Williams and Lance Corporal Gardner were aware of the victim's helplessness through intoxication when the conspiracy was consummated.

(Citations to the opinion of the military appeals court omitted.)

The opinion of the Navy-Marine Corps Court of Criminal Appeals, attached to the State's motion for summary judgment as Exhibit 2, included this explanation of Williams's military conviction for conspiracy to commit sexual assault:

> First, the appellant [*i.e.*, Williams] argues "the Government failed to present evidence that [he] and LCpl Gardner entered into an agreement to sexually assault [Ms. B.]," or "sufficient evidence that LCpl Gardner's penetration of [Ms. B.]'s vagina was an overt act to effect the conspiracy." The elements of this offense are: (1) that the appellant entered into an agreement with LCpl Gardner to sexually assault [Ms. B.]; and (2) that while the agreement continued to exist, and while the appellant remained a party to the agreement, LCpl Gardner performed the overt act of inserting his penis into [Ms. B.]'s vagina without her permission, for the purpose of sexually assaulting her. MANUAL FOR COURTS-MARTIAL (MCM), UNITED STATES (2012 ed.), PART IV, ¶ 5(b).
>
> A conspiracy "'need not be in any particular form or manifested in any formal words,' [and] '[i]t is sufficient if the agreement is merely a mutual understanding among the parties.'" *United States v. Harman*, 68 M.J. 325, 327 (C.A.A.F. 2010) (quoting *United States v. Mack*, 65 M.J. 108, 114 (C.A.A.F. 2007) (second alteration in original). "'The existence of a conspiracy may be established by circumstantial evidence, including reasonable inferences derived from the conduct of the parties themselves.'" *Id*. (quoting *Mack*, 65 M.J. at 114).
>
> The trial evidence shows the appellant and LCpl Gardner agreed to allow LCpl Gardner to sexually assault [Ms. B.] after she already had sex with the appellant and vomited in the hotel room. At that point, [Ms. B.] was too intoxicated to consent to further sex, or even realize with whom she was having sex. The appellant first offered Cpl Handoo an opportunity to "have a go with her." When Cpl Handoo left because of that offer, and a strong belief that the unfolding circumstances were not right, the appellant and LCpl Gardner then spoke about why Cpl Handoo left. Like Cpl Handoo's earlier kissing session with [Ms. I.] in the car, by then LCpl Gardner's own efforts to escalate physical interaction with [Ms. I.] had been thwarted. LCpl Gardner's physical encounter with [Ms. B.] began only after his conversation with the appellant as LCpl Gardner sat on [Ms.

B.]'s bed, just beside the appellant. That the appellant did not stop [Ms. B.] and LCpl Gardner from kissing further demonstrates the formation and continuation of an ongoing conspiracy. The appellant's only warning for LCpl Gardner—"just don't kiss her in the mouth"—directly encouraged LCpl Gardner to sexually assault [Ms. B.].

There is overwhelming evidence that LCpl Gardner had sex with [Ms. B.]. **As to consent, LCpl Gardner confessed that he had vaginal intercourse with [Ms. B.] just after the appellant had sex with her, and after seeing her vomit from drinking too much hard alcohol. The collective testimony of LCpl Gardner, [Ms. B.], and [Ms. I.] thus proves that [Ms. B.] was, through impairment by alcohol, not capable of consenting to sex with LCpl Gardner.**

[Ms. I.]'s credible testimony regarding this offense supports both of its elements. She witnessed [Ms. B.] become highly intoxicated. She saw the appellant and LCpl Gardner switch beds, allowing LCpl Gardner to take the appellant's place next to [Ms. B.]. She listened to the appellant and LCpl Gardner speaking to each other, before she heard LCpl Gardner having sex with [Ms. B.], followed by [Ms. B.] complaining, "it hurts, it hurts."

The next day, [Ms. B.] exchanged text messages with the appellant. Their discussion covered both [Ms. B.]'s and [Ms. I.]'s concerns about what might have happened in the hotel room:

> [Ms. B.]: "I'm a little unclear about what happened last night, did I hookup with anyone?"
> Appellant: "You have no worries. Call me if you need clarity." You were a good girl[.]
>
> [Ms. B.] It's kind of expensive to call since I have a [foreign] phone plan. [C]an you just tell me through text?"
> Appellant: "Nothing happened[.] Why is your friend so upset [referring to text message discussions between [Ms. I.] and LCpl Gardner]?"
>
> [Ms. B.]: "Please be honest, I vaguely remember something happening[.] She feels guilty because she's really religious."
> Appellant: "What do you recall[?] What did she do to be guilty?["]

> [Ms. B.]: "Having sex with someone. I don't think she did anything, but she can't remember[.]"
> Appellant: "She didn't[.]"
>
> [Ms. B.]: "I guess I did though[.] It's okay, I just want to know exactly what happened[.] I don't like not remembering[.]"
> Appellant: "It was [sic] a lot of drinking. I hate not remembering everything also."
>
> [Ms. B.]: "Did I have sex with you or [LCpl Gardner] or both. I just want to know[.] Can you please tell me[?]"
> Appellant: "Going to a party now. We can come get you do [sic] we can talk[.]"
>
> [Ms. B.]: "No I don't need to see you in person, I just need a straight up answer, please have enough respect to give me that at least[.]"
> Appellant: "What do you remember?"
>
> [Ms. B.]: "I already told you what I remember, all I want to know is who I did stuff with[.] Please just tell me[.]"
>
> The appellant did not text [Ms. B.] again that day. He sent a single text message on two subsequent days—respectively, "How you been?" and "You alright?"
>
> A reasonable factfinder could have found a mutual understanding legally sufficient to support the conspiracy conviction, from the appellant actively encouraging LCpl Gardner to have sex with [Ms. B.], immediately before LCpl Gardner inserted his penis into [Ms. B.]'s vagina without her permission and while she was incapable of consenting, in order to sexually assault her. The appellant's refusal to answer [Ms. B.]'s questions about who had sex with her demonstrates consciousness of guilt. **Weighing all the evidence, and making allowances for not having observed the witnesses, we are convinced beyond a reasonable doubt that the conspiracy conviction is factually sufficient.**

(Footnotes omitted; emphasis added.)

After the State filed its motion for summary judgment, Williams filed a response in which he asserted that the court should grant summary judgment in his favor "because

the facts do not support a finding of conspiracy to commit second-degree rape." (Capitalization modified.) Williams argued that the elements of Maryland Crim. Law § 3-304 were not met because "Gardner did not engage in sexual intercourse with [Ms. B.] 'without her consent.'" Williams further asserted that there was evidence that Ms. B. "instigated and consented to intercourse with Gardner." And he contended that "the actual facts show absolutely no 'encouraging' committed by Mr. Williams [of Gardner to engage in sex with Ms. B. despite her incapacitated condition]."

Neither party requested a hearing. The Circuit Court for Prince George's County granted the State's motion for summary judgment and denied Williams's cross motion. The court noted that the elements of second-degree rape in Maryland are defined in Crim. Law § 3-304(a) to include "vaginal intercourse or a sexual act with another: . . .(2) if the victim is a . . . mentally incapacitated individual . . . and the person performing the act knows or reasonably should know that the victim is . . . a mentally incapacitated individual . . . ." The term "mentally incapacitated individual" is defined in Crim. Law § 3-301(b) to mean "an individual who, because of the influence of a drug, narcotic, or intoxicating substance, . . . is rendered substantially incapable of: (1) appraising the nature of the individual's conduct; or (2) resisting vaginal intercourse, a sexual act, or sexual contact." (Codified as Crim. Law §3-301(c) until October 1, 2016).

The circuit court quoted portions of the opinion issued by the Navy-Marine Corps Court of Criminal Appeals in Williams's case, including these excerpts:

> The trial evidence shows the [Plaintiff, *i.e.*, Williams] and LCpl Gardner agreed to allow LCpl Gardner to sexually assault [Ms. B.] after she already

> had sex with the [Plaintiff] and vomited in the hotel room. At that point, [Ms. B.] was too intoxicated to consent to further sex, or even realize with whom she was having sex.
>
> * * *
>
> LCpl Gardner's physical encounter with [Ms. B.] began only after his conversation with the [Plaintiff] . . . . The [Plaintiff]'s only warning for LCpl [Gardner]—"just don't kiss her in the mouth"—directly encouraged LCpl Gardner to sexually assault [Ms. B.] . . . .
>
> The collective testimony of LCpl Gardner, [Ms. B.], and [Ms. I.] thus proves that [Ms. B.] was, through impairment by alcohol, not capable of consenting to sex with LCpl Gardner.
>
> A reasonable factfinder could have found a mutual understanding legally sufficient to support the conspiracy conviction, from the [Plaintiff] actively encouraging LCpl Gardner to have sex with [Ms. B.], immediately before LCpl Gardner inserted his penis into [Ms. B.'s] vagina without her permission and while she was incapable of consenting, in order to sexually assault her.

(Citations to opinion of the military appeals court omitted.)

The circuit court concluded: "This conduct, and the resulting military conviction, would have constituted conspiracy to commit second-degree rape if committed in this [S]tate." Accordingly, the court declared that "Jason John Williams is properly required to register as a Tier III sex offender . . . ."

STANDARD OF REVIEW

On appeal from a summary judgment granted in a declaratory judgment action, if there are no genuine disputes of material facts, we review *de novo* whether the circuit court's declaration was correct as a matter of law. *Catalyst Health Solutions, Inc. v. Magill*, 414 Md. 457, 471-72 (2010).

ANALYSIS

Maryland Rule 2-501(a) provides: "Any party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." Subpart (f) of Rule 2-501 states: "The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law."

Both parties moved for summary judgment in this case. The State's motion and the response filed by Williams showed that there was no genuine dispute as to any material fact. It was therefore appropriate for the circuit court to decide the case upon the motions for summary judgment.

The circuit court did not err in concluding that the conduct for which Williams was convicted would have constituted conspiracy to commit rape in the second degree in Maryland in violation of Crim. Law § 3-304(a). The military appeals court found that there was adequate evidence to support the finding of an agreement for Williams's friend, LCpl Gardner, to engage in sexual intercourse with Ms. B. even though both men knew, or reasonably should have known, that she was, at that point, so impaired by alcohol that she was rendered substantially incapable of consenting to sexual contact with Gardner. There was no genuine dispute that, if Williams could have been convicted of conspiracy to commit rape in the second degree had the acts occurred in Maryland, then he was

required to register as a Tier III sex offender. Therefore, the court did not err in granting summary judgment in favor of the State.

JUDGMENT OF CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0829s19cn.pdf