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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

AARON RASMUSSEN,

Defendant and Appellant.

E060842

(Super.Ct.No. RIF1300135)

OPINION

APPEAL from the Superior Court of Riverside County. Becky L. Dugan, Judge.

Affirmed.

Charles R. Khoury, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Lynne McGinnis, Allison V. Hawley and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

Following the denial of his motion to suppress, defendant, Aaron Rasmussen, pled guilty to possessing an assault weapon (Pen. Code, § 30605, subd. (a)),<sup>1</sup> and possessing a concealed firearm (§ 25400, subd. (c)(6)). The trial court deemed his convictions to be misdemeanors pursuant to section 17, subdivision (b) and defendant was granted summary probation. He appeals, claiming the trial court erred in denying his motion to suppress. We disagree and affirm.

### **FACTS, ISSUES AND DISCUSSION**

A Riverside County deputy sheriff testified that the sheriff's department received a call from Captain Shawn Artis, "[defendant's] supervisor . . . of a couple levels up in the chain of command[.]" saying that a reserve soldier at March Air Reserve Base in Moreno Valley had a gun strapped to his ankle and he drove a primer green SUV. Captian Artis supplied a description of the soldier, but not his name. The deputy testified that "there was text in the call" saying that the soldier had made prior threats, he was located in building 300 at 14941 Riverside Drive, Moreno Valley, which is on the base, and his handgun was described.<sup>2</sup> The key-padded gate outside this building had a sign posted on it that read, "Warning[.] U[.]S[.] Army Installation[.] Persons and vehicles are subject to search upon entry into and exit from the reserve center and while within the boundaries

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> Although not testified to during the hearing on the motion, in their moving papers, both parties agree that Captain Artis also reported that defendant possibly suffered from Post Traumatic Stress Disorder.

of the military reservation.” The gate was open enough for one person to pass through it at a time. Building 300 was secured by a keypad or key card, so the deputy, accompanied by two other sheriff’s department officers, knocked on the door, while another two to four officers waited in the parking lot, and defendant, who matched the description provided by Captain Artis, as did his khaki pants, answered. Defendant was asked if he could be patted down for weapons, and he agreed,<sup>3</sup> but none were discovered. The deputy asked defendant if he had any guns and defendant said he had a personal loaded nine-millimeter handgun in his vehicle, which was parked in the parking lot near the front door. The license plate on the vehicle had been run and it had come back as registered to defendant. In response to a question, defendant said he did not have a “CCW in order to carry that weapon.” No firearms were visible through the windows of the vehicle, so the deputy opened the doors to locate the gun defendant said was there. According to the People’s moving papers, there was an AK-47, a Ruger Mini-30, a nine-millimeter handgun and hundreds of rounds of ammunition in the vehicle.<sup>4</sup>

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<sup>3</sup> Although the deputy did not actually testify that defendant consented to the pat down, when the trial court, at the end of the hearing, said that defendant had consented, his attorney agreed.

<sup>4</sup> Because defendant did not challenge below the authority of the deputy to enter his vehicle to search for the weapon defendant said was in there on the basis that the weapons found there were not actually concealed in violation of the law, which he now does for the first time in his reply brief, no evidence was developed at the hearing on the motion as to the state of concealment of the firearms. However, the People’s written opposition to defendant’s motion to suppress states that the AK-47 was in a zippered bag and the Ruger Mini-30 was in a case, both in the back seat, the nine-millimeter handgun

*[footnote continued on next page]*

An investigator for the prosecutor's office testified that eight months after the afore-mentioned events took place, there were signs on four of the seven gates on the base saying that anyone on the base is subject to search.

The trial court denied defendant's motion to suppress his "identity, . . . statements . . . , the fact of [his] arrest and [the] fruits [of his arrest,] . . . including [the firearms], ammunition, clothing, cell phone records, text messages, photographs, fingerprints, DNA evidence, and other physical characteristics." The court reasoned, "[T]he signs [stating that those coming onto the base are subject to search] . . . are clearly posted . . . . With or without probable cause, you're subject to search. Anybody. [¶] And [defendant] worked there, so he knows that. And the signs told him that. So the only interesting part to me legally was, I would assume that military personnel would be searching me if I was submitting myself to search on a military base. [¶] Here, law enforcement from Moreno Valley ends up doing the search . . . . [¶] . . . [T]he Moreno Valley [Sheriff's Office] w[as] called by military personnel, by the [C]aptain, by [defendant's] superior officer saying that I have a person under my command that is behaving in a way that is scaring us, and I'd like the Moreno Valley [sheriff's office] to go check him out. We believe he has a weapon on him. [¶] That could be complete hogwash, could be some personal problem they have between them

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*[footnote continued from previous page]*

was under a shirt and the ammunition in a locked container, both in the trunk. If this is not concealed, we do not know what is.

and be complete hogwash. That is not, at that time, law enforcement's job to determine. They're to determine whether [defendant] is a threat to people he's around on the base. [¶] He knows he is subject to search. They've gotten permission from the military to arrive on the base and contact him so . . . the search permission, the implied consent . . . that people give when they come on a base when they're subject to search would apply to this case as well because law enforcement in Moreno Valley are acting on behalf and on the behalf of the military personnel. [¶] . . . [I]f this was off the base, [the deputy] would have to get a warrant because there was nothing in plain view. [The deputy] had no [probable cause] to break in [to defendant's vehicle]. There [were] no exigent circumstances. [Defendant] had been removed from his vehicle by th[e] time [it was searched]. [The deputy] could have secured the vehicle and got a warrant. [¶] My call would have been way different if it wasn't on the military base. I'm saying because he is on the military base, he has given up his personal right not to be searched without probable cause . . . . [¶] He consented to [the] search. He knew that. He knows he's consenting to a search . . . .”

On appeal from a denial of a motion to suppress, we exercise our independent judgment to determine whether, on the facts found by the court below, which are supported by substantial evidence, the search was reasonable under the Fourth Amendment. (*People v. Brophy* (1992) 5 Cal.App.4th 932, 936.)

Defendant begins his attack on the trial court's ruling by jumping from one subject to another. He asserts that the deputy had no authorization to search him because Captain

Artis's call/text did not constitute authorization. He cites no authority in support of his position. He then asserts that because the deputy did not verify the source of the information before searching him, the source can only be considered anonymous. Again, he cites no authority for this, and it makes no sense. The deputy was aware of Captain Artis's full name, rank, and the fact that she was defendant's supervisor, "a couple of levels up the chain of command." This information does not render her anonymous.

Defendant then jumps to his next assertion, which is that when the deputy met defendant at the door of building 300, he "could clearly see there was no gun strapped to his ankle" and this should have triggered a reassessment by the deputy, but did not. However, there was no evidence about the deputy's observation of defendant and the fact that the deputy asked defendant whether he would consent to be patted down for weapons, then asked him if he had any weapons suggests just the opposite of what defendant asserts.

Defendant does not state what kind of reassessment the deputy should have made and cites no authority requiring one. Frankly, what happened at that point is irrelevant to the trial court's ruling, which was that the sign at the gate in front of the building defendant was in (as well as the other signs on the base) gave defendant notice that he was subject to search and implied his consent to have his person and vehicle searched while he was on base.

Defendant cites no authority and provides no persuasive argument why the Captain's complaint to the sheriff's office cannot be construed as authorizing it to act on

behalf of the military to search any person or vehicle on the base. After all, the sign does not specify who may do the searching.

Neither does defendant provide any authority or persuasive argument why the signs cannot be construed as implied consent from everyone on the base, including himself, to have their persons and vehicles searched. In his opening brief, defendant cites only one case, which he purports is on the subject, but the facts are so dissimilar to those here as to make it useless. In *People v. Jasmin* (2008) 167 Cal.App.4th 98, 108, the serviceperson-defendant's on-base barracks were searched by a civilian detective pursuant to two military versions of search warrants, both authorized by the base commander, for evidence of off-base crimes. The sole issue was whether the Fourth Amendment required a search warrant issued by a civilian magistrate and the appellate court concluded it was not. (*Id.* at pp. 109, 112.) There was no discussion whatsoever in *Jasmin* of signs posted on base requiring searches or implied consent.

“The prosecution has the burden of establishing that a warrantless search falls within one of the exceptions to the rule that such a search is unreasonable under the Fourth Amendment.” (*Mincey v. Arizona* (1978) 437 U.S. 385, 390.) Consent to search is an exception to the warrant requirement. (*Bumper v. North Carolina* (1968) 391 U.S. 543, 548.) Consent is properly implied where, inter alia, signs are posted in the jail warning inmates that their calls will be recorded. (*People v. Windham* (2006) 145 Cal.App.4th 881, 886-893.) The owner of a car, who reports the car stolen, impliedly consents to a search of the car for its vehicle identification number. (*People v. Hackett*

(1981) 115 Cal.App.3d 592, 598.) More on point with the facts here, federal decisions imply consent to search where the defendant is on notice of a policy allowing such searches. (*United States v. Collamore* (10th Cir. 2009) 330 Fed.Appx. 708 [Postal carrier's consent to have his personal vehicle, parked on United States Postal Service property, searched is implied when employee policy stating vehicles and their contents so located are subject to inspection and consent to inspection was conspicuously posted where all employees could see it.]; *United States v. Aukai* (9th Cir. 2006) 440 F.3d 1168 [Defendant's consent to search implied because he walked through magnetometer at airport checkpoint and was on notice that his person would be searched]; *United States v. Miner* (9th Cir. 1973) 484 F.2d 1075 [same].) Even more to the point are federal cases dealing with entry onto military bases. (*United States v. Morgan* (9th Cir. Dec. 24, 2003, No. 02-16595) 2003 L26343 [consent to search may be implied if defendant is warned before entering base]; *Jenkins v. United States* (4th Cir. Sept 23, 1993, No. 93-5184) 1993 L24644 [Signs warning of the possibility of search and "a civilian's common sense awareness of the nature of a military base" inter alia, deprived defendant of any reasonable expectation of privacy in his car on the base]; *United States v. Ellis* (5th Cir. Dec. 29, 1997, No. 97-2459) 1977 L36545 [Consent to search implied by defendant's entry onto base which, according to the visitor's pass he was given and acknowledged reading, was conditioned upon his consent to search].) Defendant has nothing of substance to say about any of these cases.

Defendant appears to contest the trial court's conclusion that it was not the job of the deputy to confirm the accuracy of Captain Artis' information. Again, he cites neither authority in support of his assertion nor does he offer a cogent argument as to it. Defendant matched the description provided by Captain Artis both in his person and his dress. Also, Artis's information was accurate as to where on the base defendant was located and what kind of vehicle he drove. Defendant does not explain why this is insufficient corroboration to the extent corroboration of the information was actually necessary, given the fact that the trial court hung the justification for the search on the implied consent occasioned by the signs on the base. Defendant appears not to understand that under such circumstances, there is no need for probable cause—consent alone justifies the search, which is precisely what the trial court ruled. Defendant cites extensively from certain factual assertions made in his moving papers below to the effect that Captain Artis was not at the base when she called the sheriff's department, but was, in fact, in Nevada (a point which the trial court expressly ruled was irrelevant) and that her information was second-hand, being provided by a retired Army Captain during a social encounter with defendant. However, the defense presented no evidence to support the latter, the record before us does not suggest that the trial court believed these unsupported representations, and, as before, it is irrelevant because implied consent was the justification for the search, not probable cause established by the Captain's call/text.

#### **DISPOSITION**

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

KING

J.