DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
DAVID M. GLOVER, JUDGE

CACR06-51

September 6, 2006

APPEAL FROM THE UNION COUNTY CIRCUIT COURT
[CR2001-141-1]

HONORABLE HAMILTON H. SINGLETON, JUDGE

AFFIRMED

KEVIAS TREMAINE RANDLE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

In 2001 appellant, Kevias Randle, was placed on five years' probation when he pleaded guilty to the underlying offense of robbery. One of the conditions of his probation was that he not purchase, own, control, or possess any firearms. In April 2005, the State petitioned to revoke appellant's probation, asserting, *inter alia*, that he had violated one of the conditions of his probation by possessing a handgun on public-school property. After a hearing on the petition, the trial court revoked appellant's probation and sentenced him to ten years' imprisonment. For his sole point of appeal, appellant contends that the trial court violated his constitutional right to confront one of the witnesses against him by allowing a public-safety officer from UA-Monticello to testify concerning what the victim told an officer during an investigation of allegations of rape, kidnapping, and terroristic threatening against appellant. We affirm the revocation.

At the revocation hearing on May 25, 2005, Officer Anthony Cox testified that he had served as appellant's probation officer since May 2004; that he had reviewed appellant's file; and that appellant had signed the conditions of probation on September

25, 2001. Cox stated that one of the conditions of probation for appellant was that he must not purchase, own, control, or possess any firearm or other prohibited deadly weapon or be in the company of any person possessing such a weapon.

Robert Murphy, a campus security officer for UA-Monticello, testified that he was a certified law-enforcement officer and that he was involved in the investigation of a woman's allegations of rape against appellant. He explained that he helped in taking witness statements and that he had read the woman's statement, even though he had not actually taken it. He also explained that appellant was arrested based on the interviews.

Appellant's counsel objected to Murphy testifying about anything that the woman said during that investigation, arguing that she should be produced because, otherwise, appellant's constitutional right of confrontation would be violated. The trial court overruled the objection, stating, "I am going to side-step that issue and I am going to go directly to the probable cause hearing and if probable cause is found and there was a probable cause order that was entered, then I am going to allow the prosecution to submit that as an exhibit to this hearing." The trial court made it clear, however, that the only thing it was going to consider was the probable-cause finding. The following colloquy then occurred:

DEFENSE COUNSEL: And so is the Court agreeing with the defense that we have a Sixth Amendment right of confrontation?

COURT: No, because we are not going there. He doesn't have a Sixth Amendment right to confront the judicial officer that found probable cause.

DEFENSE COUNSEL: I am talking about the person who gave the statement, the individual.

COURT: I am not going there, [defense counsel], that's the problem.

Officer Murphy then testified about the steps that had been taken to acquire a search warrant to search Room 253 of Bankston Hall at the university – the room assigned to appellant. He stated that they were looking for evidence concerning an alleged rape; that they had been told that appellant kept a black .9mm weapon on his person, in his car, or in his room; and that they included that information in the affidavit for warrant as well. Murphy said that the search warrant was executed on April 12, the same day that it was issued; that he was present; and that as a result of the search of appellant's room, they seized one Hi-Power .380 ACP semi-automatic handgun and seven rounds of ammunition in the magazine, in addition to items related to the rape allegation.

Murphy testified on cross-examination that he had dealt with appellant earlier, on the night of April 7, concerning another matter. On redirect, Murphy explained that on the night of April 7, there was an incident in which "some guys accused [appellant] of showing them, brandishing the gun towards them and threatening to shoot them with it." Defense counsel objected, again based on the right of confrontation, but the objection was overruled because the court determined that counsel opened the matter up in cross-examination. Murphy clarified his testimony, explaining that the inclusion of the gun in the search warrant had nothing to do with the rape allegation, but rather the earlier incident that occurred on April 7.

John Kidwell, Director of Public Safety at UA-Monticello, testified about his involvement in the investigation of rape allegation by the woman against appellant. He stated that he went to the emergency room on April 10 and spoke with the woman and that he later spoke with appellant at the Drew County Detention Center. He stated that the affidavit for search warrant was prepared and sworn in front of the district judge and

that based on the affidavit the judge issued a probable-cause finding authorizing the arrest warrant. Defense counsel again objected, arguing that the affidavit contained statements by the alleged victim that he had previously objected to on confrontation grounds. The trial court explained, "I'm not considering the affidavit. I'm telling you right now I am not considering it. What I am considering is the fact that the warrant was issued, that a finding of probable cause existed for the issuance of the warrant." The court went on to state that it was allowing introduction of the affidavit but that the affidavit was not going to be considered.

At the close of the State's case, the court explained that it was making only one finding, which was sufficient to revoke the probation, and that the only thing the court was interested in was the gun.

Appellant then testified that Room 253 was his room at the university; that he had never seen the gun; that he was told that his room had been broken into; that they searched his room on April 7, 9, and the day he was arrested, and no gun was found; that he had never had a gun; and that he never possessed or owned a gun at Bankston Hall.

Appellant's sister, Tamesha Maddox, testified that when she went to clean out her brother's room, other residents told her that the room had been broken into. She also testified that she had never known her brother to possess a handgun.

For his sole point of appeal, appellant contends that the trial court violated his constitutional right to confront the witnesses against him. We disagree.

At the revocation hearing, the trial court explained the basis for its decision to revoke:

> There are whole bunch of things that have been introduced that y'all can play with on appeal if you want to, but it is clear to this Court that the Defendant

> violated the terms and conditions of his probation by being in possession of a .380 semi-automatic pistol. It is ludicrous for someone to think that someone broke in and left the gun and took property. It just absolutely defies all logic and we are not going there.
>
> So I am making a finding that he has violated the terms and conditions of his probation, and I am sentencing him to ten years in the Department of Correction.

The possession of the gun was the basis for revocation, not the allegations of rape by the young woman. There was testimony that the police became aware of the allegations that appellant had a gun during the investigation of a separate matter, which was not related to the rape. Further, when considering the introduction of the affidavit, the trial court made it clear that it was "not considering the affidavit. I'm telling you right now I am not considering it. What I am considering is the fact that the warrant was issued, that a finding of probable cause existed for the issuance of the warrant."

We hold that appellant's constitutional right to confront the witnesses against him was not violated. We, therefore, affirm the revocation of his probation.

Affirmed.

PITTMAN, C.J., and GLADWIN, J., agree.