

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR11-325

KIRKLAND ROCHELLE FOSTER

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered November 2, 2011

APPEAL FROM THE CRITTENDEN
COUNTY CIRCUIT COURT
[NO. CR-2008-663]

HONORABLE JOHN N.
FOGLEMAN, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Kirkland Rochelle Foster appeals from an order of the Crittenden County Circuit Court revoking his suspended imposition of sentence (SIS) for driving while intoxicated, fourth offense. The trial court found that Foster committed theft of property and imposed a three-year sentence in the Arkansas Department of Correction. On appeal, Foster argues that his constitutional rights were violated by an illegal search and seizure. We affirm.

On September 10, 2010, the State petitioned to revoke Foster's SIS, alleging that he failed to pay his court-ordered fines and costs, failed to notify the sheriff of his address and employment, and committed the offenses of burglary, theft, and criminal mischief. As noted previously, the trial court found that Foster committed theft of property.

Wesley Woodard testified that he owned property in West Memphis across the street from the home Foster shared with his mother. Woodard discovered that his portable generator was missing. He subsequently observed the generator in Foster's backyard. Woodard filed a



stolen-property report with the West Memphis police, who contacted Woodard. Woodard accompanied the police to Foster's residence.

Officer Roger Brigman testified that he and Officer Samuel Edwards walked across the street with Woodard to look for the generator in Foster's backyard. They noted it was no longer there. Foster came out of the house and asked what was going on. They told Foster that Woodard's generator had been seen in his backyard. Foster denied any knowledge of the generator. Officer Edwards told Foster that the officers needed to look inside his residence. Following Foster through the back door, they observed the generator on the floor of the kitchen. Foster then asserted that the generator was in the backyard and two black males had put it in the house and fled when they saw the police. Officer Edwards's testimony was substantially the same.

On appeal, Foster argues that his rights under the constitutions of the United States and the State of Arkansas were violated by the search. However, we are unable to reach this argument because it was not raised to the trial court below. It is axiomatic that for us to be able to consider a constitutional argument in a revocation proceeding, that argument must first be raised to the trial court. *Ingram v. State*, 2009 Ark. App. 729, 363 S.W.3d 6. Because the legality of the search is raised for the first time on appeal, we are precluded from considering it. Accordingly, we must affirm.

Affirmed.

GRUBER and BROWN, JJ., agree.

C. Brian Williams, for appellant.

Dustin McDaniel, Att'y Gen., by: *Lauren Elizabeth Heil*, Ass't Att'y Gen., for appellee.