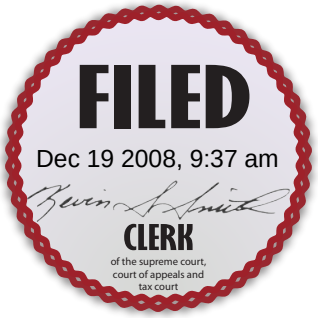

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IN THE
COURT OF APPEALS OF INDIANA

DAVID SHIVELY,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 18A05-0806-CR-315
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Richard A. Dailey, Judge
Cause No. 18C02-0708-FD-87

December 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent David Shively appeals the trial court's order revoking his probation. Shively argues that his due process rights were violated because, although the notice of probation violation stated that his probation should be revoked because he had been arrested, the State "created a minitrial on the new offenses and presented evidence that [Shively] could not have been prepared to rebut." Appellant's Br. p. 6. Finding no error, we affirm.

FACTS

On February 4, 2008, Shively pleaded guilty to class D felony identity deception and class A misdemeanor possession of marijuana. Pursuant to the plea agreement, he was sentenced to eighteen months, all suspended to probation.

At 1:00 a.m. on March 10, 2008, Shively knocked on the door of Sharon King and John Pollard. Pollard unlocked the door, believing it to be King's daughter, and Shively immediately entered without permission. Shively began cursing at Pollard, who told him to leave. Shively head-butted Pollard and King called the police. When police officers arrived at the residence, Pollard had sustained a laceration to his head. The officers informed Shively that he was under arrest. When an officer attempted to handcuff Shively, he refused to comply, forcing the officer to use a taser to control Shively.

On March 20, 2008, the probation department filed a petition to revoke Shively's probation, which alleged that Shively had been arrested for class D felony residential entry, class A misdemeanor resisting law enforcement, and class A misdemeanor battery resulting in bodily injury, "which is in violation of Rule #8 of the Standard Rules of

Probation." Appellant's App. p. 120. Rule 8 instructs probationers to "obey all the laws of the: City, State or Federal Government and report all arrests including traffic citations to the probation officer within 48 hours." Id. at 118.

At the May 29, 2008, revocation hearing, the State presented evidence of the circumstances underlying Shively's arrest. Following the hearing, the trial court revoked Shively's probation, finding that "the State has established by a preponderance of the evidence that the defendant had while on probation committed the offenses of Battery, Residential Entry and Resisting Law Enforcement." Tr. p. 43. The trial court ordered Shively to serve the previously-suspended sentence of eighteen months with credit for time served. Shively now appeals.

DISCUSSION AND DECISION

Shively's sole argument on appeal is that his due process rights were denied when, notwithstanding the fact that the notice of probation violation referenced the fact that he had been arrested, the trial court permitted the State to present evidence of the circumstances underlying that arrest at the revocation hearing. According to Shively, the revocation hearing became a "minitrial concerning the substance of the new offenses" even though he had not been "apprised that the hearing concerned the substance of the offenses, rather than the mere fact of an arrest . . . ." Appellant's Br. p. 4.

Initially, we note that Shively raises this argument for the first time on appeal; consequently, he has waived it. Waiver notwithstanding, we observe that a probation revocation hearing is in the nature of a civil proceeding, and the alleged violation need be

proved only by a preponderance of the evidence. Isaac v. State, 605 N.E.2d 144, 146 (Ind. 1992). We will neither reweigh the evidence nor reassess witness credibility, and will uphold a probation revocation if there is substantial evidence supporting the trial court's conclusion that the probationer violated any term of probation. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999); Packer v. State, 777 N.E.2d 733, 740 (Ind. Ct. App. 2002).

Merely being arrested for a crime is insufficient to revoke a defendant's probation; instead, "[t]here must be proof at the revocation hearing that the defendant engaged in the alleged criminal conduct or proof of the conviction thereof." Gleason v. State, 634 N.E.2d 67, 68 (Ind. Ct. App. 1994). Such proof includes evidence that the arrest was reasonable and that there was probable cause to believe that the defendant violated a criminal law. Pitman v. State, 749 N.E.2d 557, 560 (Ind. Ct. App. 2001).

Here, the notice of probation violation alleged that Shively had violated Rule 8, which requires probationers to obey all laws. By alleging that Shively had violated Rule 8, the notice implicitly informed him that the probation department was contending that he had violated one or more laws. Shively, therefore, should have understood that the probation revocation hearing would concern whether he had, in fact, violated any laws. Such an inquiry would necessarily involve an examination of the circumstances underlying his arrest so that the trial court could determine whether the State had proved that the arrest was reasonable and that there was probable cause to believe that Shively had violated a criminal law. We find, therefore, that the notice of probation violation sufficiently informed Shively of the State's intention to revoke his probation and the

reason for the revocation. Cf. England v. State, 670 N.E.2d 104, 105 (Ind. Ct App. 1996) (finding that the defendant's due process rights were violated where he had not been provided any written notice that revocation was being sought or written notice of the alleged violations prior to the revocation hearing); Gleason, 634 N.E.2d at 68 (finding that the defendant's due process rights were violated where the notice of probation violation did not state the actual basis of the revocation). Thus, Shively's due process rights were not violated.

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.