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IN THE COURT OF APPEALS OF INDIANA

James Louis Warren,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 28, 2022

Court of Appeals Case No. 21A-CR-247

Appeal from the Howard Superior Court

The Honorable Hans Pate, Judge

Trial Court Cause No. 34D04-2002-F2-432

Pyle, Judge.

Statement of the Case

[1] James Warren ("Warren") appeals, following a jury trial, his convictions for Level 2 felony dealing in methamphetamine,[1] Level 6 felony possession of a controlled substance while in possession of a firearm,[2] and Level 6 felony maintaining a common nuisance.[3] Warren argues that the trial court: (1) abused its discretion by admitting certain evidence; and (2) erred by denying his request to exercise his right to be physically present in the courtroom during his sentencing hearing. Concluding that any error in the admission of evidence was harmless, we affirm Warren's convictions. Additionally, concluding that the trial court erred by denying Warren's request to exercise his right to be physically present during his sentencing hearing, we vacate the trial court's sentencing order and remand with instructions for the trial court to hold a sentencing hearing where Warren is physically present.

[2] We affirm in part, vacate in part, and remand.

Issues

1. Whether the trial court abused its discretion in its admission of evidence.

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[1] IND. CODE § 35-48-4-1.1.

[2] I.C. § 35-48-4-7.

[3] I.C. § 35-45-1-5.

2. Whether the trial court erred by denying Warren's request to exercise his right to be physically present during his sentencing hearing.

Facts

[3] On February 7, 2020, Warren was on probation, and a probation officer went to Warren's house in Kokomo to do a compliance check. Warren denied that he had any firearms or anything illegal in the house, but the probation officer noticed that Warren looked "obviously nervous[.]" (Tr. Vol. 2 at 107). The probation officer then decided to "do a quick walk through and a search of the residence." (Tr. Vol. 2 at 107). When searching Warren's bedroom, the probation officer found two loaded handguns and some cash in Warren's night stand drawer. Another officer who assisted in the compliance check found baggies of suspected drugs, including a crystal-like substance, a plant-like material,[4] a white substance, and a brown substance, in a closet adjacent to Warren's bedroom. The probation officer put the guns, cash, and suspected drugs on a coffee table in Warren's bedroom and called for further assistance. Additionally, the probation officer had Warren and Brandon Wilson ("Wilson"), who was in another bedroom at Warren's house, go into the living room.

[4] The plant-like material was packaged in two plastic bags, and each contained a printed label that indicated that the contents were damiana leaves from an herb company in California.

[4] Thereafter, multiple officers from the Kokomo Police Department's drug task force, including Captain Shane Melton ("Captain Melton") and Sergeant Aaron Tarrh ("Sergeant Tarrh"), responded to the scene. Upon arriving at the scene, the drug task force observed the suspected drugs that had been placed on the table in Warren's bedroom. After conducting a field test on the crystal-like substance, Captain Melton obtained a positive test, indicating the presence of methamphetamine. Captain Melton also conducted a field test on the brown substance, which he thought was heroin, and obtained a "vague field test[.]" (Tr. Vol. 2 at 75). The police officers then sought a search warrant. Captain Melton gave a *Miranda* advisement to Warren. When the officers questioned Warren about the items found in his house, Warren claimed responsibility and acknowledged that everything in the house belonged to him. Upon executing the search warrant, the officers found two digital scales in a kitchen drawer, an orange powder found in a prescription bottle that had Warren's name on it, and more than 800 empty foil packages that could be used to package spice.

[5] Captain Melton sent the suspected drug materials to the Indiana State Police Lab for analysis. Testing confirmed that the crystal-like substance was methamphetamine and revealed that it weighed twenty-eight grams. Testing of the orange powder that was in the pill bottle revealed it to be 5-FLUORO-MDMB, a controlled substance. The tests for the remaining substances revealed that they were non-controlled substances. Specifically, the lab test for the brown substance indicated the presence of the non-controlled substance nicotinamide with a weight of 269.1 grams. The test for the white substance

was also found to contain nicotinamide, weighing 40.59 grams. Testing of the tan powder indicated the presence of MDMB-PINACA and nicotinamide, both non-controlled substances with a weight of 92.90 grams. Lastly, testing of the plant-like substance or damiana leaves also showed it to be a non-controlled substance, weighing 452 grams.[5]

[6] The State ultimately charged Warren with Level 2 felony dealing in methamphetamine, Level 3 felony possession of methamphetamine, Level 6 felony possession of a controlled substance (5-FLUORO-MDMB) while in possession of a firearm, and Level 6 felony maintaining a common nuisance, which required the State to prove that Warren had used his house for a prohibited purpose of manufacturing or selling a controlled substance or an item of drug paraphernalia.[6]

[7] The trial court held a three-day jury trial from October 30 to November 3, 2020. During the State's opening statement, the prosecutor discussed the evidence, including guns and substances, that had been found in Warren's house. The State explained that these substances included twenty-eight grams of methamphetamine, an orange powder that was a controlled substance, and several non-controlled substances, including damiana leaves, nicotinamide, and

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[5] There were two bags of the plant-like material but the contents of only one bag was analyzed. The bag that was analyzed weighed 452 grams, and the other bag weighed 434 grams.

[6] The State had initially charged Warren with Level 2 felony dealing a narcotic drug (possession of heroin with intent to deliver) but dismissed that charge prior to trial. Additionally, the State had initially charged Warren with Level 3 felony possession of a narcotic drug (heroin) but amended that charge to a charge of Level 6 felony possession of a controlled substance (5-FLUORO-MDMB) while in possession of a firearm.

pinaca. The prosecutor also informed the jury that it would hear testimony from Captain Melton about how damiana leaves, nicotinamide, and pinaca could be used to manufacture spice and that more than 800 empty foil packages had also been found in Warren's house.

[8] The State presented evidence of the facts as set forth above. When the State introduced testimony and evidence regarding Warren's possession of the controlled substance 5-FLUORO-MDMB, the guns, and the twenty-eight grams of methamphetamine, Warren had no objections. Testimony indicated that the value of that amount of methamphetamine was $700.00. Warren also did not object when the State introduced evidence that Warren had two sets of digital scales and more than 800 empty foil packages. Additionally, Sergeant Tarrh's testified, without objection, that the officers who had initially arrived on the scene had searched Warren's bedroom and closet, discovered various types of suspected drugs, and placed them on the table in Warren's bedroom. The suspected drugs included baggies containing a tan powder, a white powder, and plant-like substance or damiana leaves. When the State introduced a photograph of the suspected drugs on the table (Exhibit 14), Warren did not object to that exhibit.

[9] Thereafter, the State introduced Exhibits 24 through 28, which consisted of photographs of the substances that had been tested and found to be non-controlled substances. Specifically, Exhibits 24 and 25 were photographs of the tan powder, Exhibit 26 was a photograph of the white powder, and Exhibits 27 and 28 were photographs of the plant-like substance. These substances were

included in the photograph of the items that had been placed on the table in Warren's bedroom as depicted in Exhibit 14. Warren objected to Exhibits 24 through 28 based on relevancy, arguing that the photographs were not relevant to any of the charged offenses being tried at trial. The State responded that the evidence was relevant because "it [had been] found in the same area that the controlled substances [for] which [Warren] [wa]s charged[.]" (Tr. Vol. 2 at 40). Warren then raised an additional objection that the State was raising "facts not in evidence" because there had been "no testimony as to where any of this [evidence] [had] actually [been] located other than the fact that it [had been] in the house." (Tr. Vol. 2 at 40). The trial court overruled Warren's objections. Specifically, the trial court stated that "the testimony was these items [had been] found in the home along with everything else and that's the reason for the overruling of the objection." (Tr. Vol. 2 at 40).

[10] The State later introduced additional photographs of these same non-controlled substances with no objection from Warren. Specifically, the additional photographs of the substances were taken after Captain Melton had packaged the items in heat-sealed bags to send to the Indiana State Police Lab for testing. Exhibit 38 was a photograph of the package containing a baggie of the tan powder, which corresponded to Exhibits 24 and 25. Exhibit 37 was a photograph of the package containing a baggie of the white powder, which corresponded to Exhibit 26. Additionally, Exhibit 40 was a photograph of the package containing the baggies of plant-like substance or damiana leaves, which corresponded to Exhibits 27 and 28. The lab analyst from the Indiana State

Police Lab testified that testing on the substances in Exhibits 37, 38, and 40 revealed that they were non-controlled substances. Additionally, the lab analyst testified that testing on the brown substance in Exhibit 39 showed it to be a non-controlled substance. When the State moved to admit Exhibits 37 through 40, Warren stated "[n]o objection." (Tr. Vol. 2 at 96).

[11] During Captain Melton's direct examination, the State asked the captain to discuss the significance of the 800 empty foil packets and the non-controlled substances that had been found in Warren's house. Captain Melton testified that the foil packets were typically used to package spice. The captain further explained that spice could be made from a plant material that was then sprayed with a chemical and thereafter placed in a foil package to sell. When the State asked Captain Melton what the value of such a spice packet would be, Warren objected based on the value being "beyond relevant and beyond the scope of what Mr. Warren is on trial for today." (Tr. Vol. 2 at 74). The State responded that it was relevant because the packages had been found in Warren's house. The trial court overruled Warren's objection and allowed Captain Melton to testify regarding the value of a spice package, which Captain Melton indicated was $30.00 for a three-gram bag.

[12] Thereafter, the State asked Captain Melton about how the plant-like material and the brown substance found in Warren's house related to the spice packages. Captain Melton explained that a chemical, such as the brown substance, was usually liquified in a spray bottle and then sprayed onto the plant-like material and then left to dry before weighing and packaging it. The State then asked

Captain Melton if he "ha[d] some suspicion as to what the brown powder was" when he first saw it, and Captain Melton responded, "At first, I thought it was heroin." (Tr. Vol. 2 at 74-75). Thereafter, Warren objected based on speculation and relevancy. Specifically, Warren stated that the testimony was "speculation as to [Captain Melton's] belief as to what something was without a certified lab test[,]" and that his speculation was not relevant. (Tr. Vol. 2 at 75). The State responded that the testimony was relevant because the captain had "field tested it and found the belief to charge [Warren] with possession" and then sent it to the lab for confirmation testing. (Tr. Vol. 2 at 75). The trial court overruled the objection. Captain Melton then testified that he had believed that the brown powder was heroin, had gotten a "vague field test," and had sent it to the lab for further testing. (Tr. Vol. 2 at 75).

[13] During cross-examination of Captain Melton, Warren's counsel asked Captain Melton about Warren being arrested based on the belief that the brown substance had been heroin. Warren's counsel then had Captain Melton confirm that sometimes people can be "charged for things that turn out to not be illegal" and that being charged does not mean that a person is guilty. (Tr. Vol. 2 at 81).

[14] During the State's closing argument, the prosecutor argued that Warren's possession with intent to deal the methamphetamine had been shown by the amount of methamphetamine, which was worth $700.00, the two sets of scales, and the guns. Aside from Warren's intent to deal the methamphetamine, the State also argued that mass quantity of damiana leaves and nicotinamide found

in his house showed that he could have manufactured spice to then place in the more than 800 empty foil packages and sell. The prosecutor's discussion of the manufacturing and dealing evidence occurred in relation to the maintaining a common nuisance charge. The jury subsequently found Warren guilty as charged.

[15] On December 29, 2020, Warren filed a request to be physically present in the courtroom for the upcoming sentencing hearing. The trial court denied Warren's request on January 4, 2021. Specifically, the trial court did not issue an order with findings; instead, it stamped "DENIED" on Warren's motion. (App. Vol. 2 at 62).

[16] The trial court held a remote sentencing hearing on January 8, 2021. Warren appeared by video from the county jail. Warren's counsel and the prosecutor appeared via a Zoom video connection. Additionally, Warren had eight character witnesses, who appeared via Zoom and who provided character testimony during the sentencing hearing. Warren also submitted multiple letters of support.

[17] The trial court imposed a seventeen and one-half (17½) sentence, with twelve and one-half (12½) years executed and five (5) years suspended to probation, for Warren's dealing in methamphetamine conviction; a two (2) year sentence for his possession of controlled substance while in possession of a firearm conviction; and a two (2) year sentence for his maintaining a common nuisance

conviction. The trial court ordered all sentences to be served concurrent to one another.[7] Warren now appeals.

Decision

[18] Warren argues that the trial court: (1) abused its discretion by admitting certain evidence; and (2) erred by denying his request to exercise his right to be physically present in the courtroom during his sentencing hearing. We will address each argument in turn.

1. Admission of Evidence

[19] We first address Warren's challenge to the admission of evidence. Warren contends that the trial court abused its discretion by admitting: (1) Exhibits 24-28, the photographs of the non-controlled substances; (2) Captain Melton's testimony regarding value of spice; and (3) Captain Melton's testimony that he had initially thought that the brown substance was heroin.

[20] The admission and exclusion of evidence falls within the sound discretion of the trial court, and we review the admission of evidence only for an abuse of discretion. *Wilson v. State*, 765 N.E.2d 1265, 1272 (Ind. 2002). An abuse of discretion occurs when the trial court's decision is clearly against the logic and

[7] The trial court vacated the possession of methamphetamine conviction based on double jeopardy.

effect of the facts and circumstances before it. *Conley v. State*, 972 N.E.2d 864, 871 (Ind. 2012), *reh'g denied*.

[21] In regard to the admission of the photographs of the non-controlled substances contained in Exhibits 24-28, we note that Warren's argument is based on the incorrect assertion that these substances were not identified during trial. Warren contends that "[a]dmitting unidentified substances would necessarily have caused the jury to speculate as to their contents" and further argues that "[t]he only possible reason for the State to offer the exhibits was to suggest to the jury that . . . Warren had committed other uncharged crimes[.]" (Warren's Br. 14, 18). Warren argues that these photographic exhibits were not relevant because the substances were unidentified and that the admission of the exhibits was prejudicial and led to "a forbidden inference" in violation of Evidence Rule 404(B). (Warren's Br. 18).

[22] We reject Warren's arguments for multiple reasons. First, the substances contained in the challenged photographic exhibits did not go unidentified at trial. Specifically, the lab analyst from the Indiana State Police Lab testified that the substances that corresponded to Exhibits 24-28 were non-controlled substances.[8] Additionally, Warren did not raise a prejudice or a 404(b) objection at trial; thus, any such arguments are waived on appeal. *See Malone v. State*, 700 N.E.2d 780, 784 (Ind. 1998) ("A party may not object on one ground

[8] As noted above, the lab analyst identified the substances when discussing Exhibits 37, 38 and 40, which were the photographs of the heat-sealed packages that had been sent to the State Police Lab.

at trial and seek reversal on appeal using a different ground."). Moreover, the photographs of the substances were merely cumulative of Sergeant Tarrh's prior testimony—to which Warren did not object—that a tan powder, white powder, and plant-like leaves had been found at Warren's house when the probation officer conducted an initial search. Because the photographic exhibits were merely cumulative, any error in their admission would have constituted harmless error. *See Hunter v. State*, 72 N.E.3d 928, 932 (Ind. Ct. App. 2017) (explaining that "[t]he improper admission of evidence is harmless error when the erroneously admitted evidence is merely cumulative of other evidence before the trier of fact"), *trans. denied*. *See also Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012) (explaining that any error in the admission of evidence is harmless where the same or similar evidence has been admitted without objection), *reh'g denied*.

[23] Next, we address Warren's argument that the trial court abused its discretion by admitting Captain Melton's testimony regarding the value of spice. At trial, after Captain Melton had testified about the significance of the 800 empty foil packets and the non-controlled substances that had been found in Warren's house, the State asked Captain Melton what the value of such a spice packet would be. Warren objected based on relevancy, and the trial court overruled Warren's objection. On appeal, Warren contends that the admission of Captain Melton's testimony was prejudicial and in violation of Indiana Evidence Rule 404(b). Because Warren did not object on these grounds at trial,

he cannot raise them to support his appellate argument. *See Malone*, 700 N.E.2d at 784.

[24] Furthermore, one of the charges that Warren faced was maintaining a common nuisance, which required the State to prove that Warren had used his house for a prohibited purpose of manufacturing or selling a controlled substance or an item of drug paraphernalia. Our review of the record reveals that the State used the evidence regarding the 800 empty foil packages and how the non-controlled substances could be used to manufacture spice as part of proving an element of the maintaining a common nuisance charge. Because the record reveals that the testimony regarding the value of spice was an additional means of proving an element of that offense, it would have been relevant. *See* Evid. R. 401.

[25] Moreover, any error in the admission of Captain Melton's testimony regarding the value of spice was harmless. "The improper admission of evidence is harmless error when the conviction is supported by substantial independent evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction." *Cook v. State*, 734 N.E.2d 563, 569 (Ind. 2000), *reh'g denied*. *See also Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014) ("If we are satisfied the conviction is supported by independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the verdict, the error is harmless.").

[26] Here, Warren's three convictions are supported by substantial evidence independent of the evidence regarding the value of spice. The State presented

evidence that Warren had two guns, a controlled substance, and twenty-eight grams of methamphetamine in his house. He also had two sets of scales and material that could be used to package drugs. Based on our review of the record and the evidence supporting Warren's three convictions, which he does not challenge on appeal, we are satisfied that there is no substantial likelihood that the challenged evidence contributed to the jury's verdict and, therefore, conclude that the admission of the evidence was harmless error.

[27] Warren's last challenge to the admission of evidence is his argument that the trial court abused its discretion by allowing Captain Melton's testimony regarding his initial belief as to the nature of the brown substance found in Warren's house. Warren, however, has waived review of this argument because he did not raise a timely objection at trial. In order to preserve a challenge to the admissibility of evidence for appeal, "a defendant *must* make a contemporaneous objection at the time the evidence is introduced at trial." *Hutcherson v. State*, 966 N.E.2d 766, 770 (Ind. Ct. App. 2012) (emphasis added), *trans. denied*. *See also* Ind. Evidence Rule 103(a)(1) (providing that a "party may claim error in a ruling to admit . . . evidence *only if* . . . [the] party, on the record[,] . . . *timely objects* . . . and . . . states the specific ground" for the objection) (emphases added). At trial, the State then asked Captain Melton if he "ha[d] some suspicion as to what the brown powder was" when he first saw it, and Captain Melton responded, "At first, I thought it was heroin." (Tr. Vol. 2 at 74-75). Thereafter, Warren objected based on speculation and relevancy. Because Warren did not object until after Captain Melton had already testified,

he has waived appellate review of his challenge to the testimony. *See Tinnin v. State*, 275 Ind. 203, 416 N.E.2d 116, 118 (1981) (explaining that a defendant "must make his objection to a question before the answer is given in order to preserve the issue for appeal"). *See also Bean v. State*, 913 N.E.2d 243, 253 (Ind. Ct. App. 2009) (finding an objection raised shortly after the admission of the challenged testimony to be untimely and therefore waived), *trans. denied*.

[28] Furthermore, any error in the admission of Captain Melton's testimony was harmless. Again, based on our review of the record and the evidence supporting Warren's three convictions, which he does not challenge on appeal, we are satisfied that there is no substantial likelihood that the challenged evidence contributed to the jury's verdict and, therefore, conclude that the admission of the evidence was harmless error. *See Blount*, 22 N.E.3d at 564 ("If we are satisfied the conviction is supported by independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the verdict, the error is harmless.").

2. Remote Sentencing Hearing

[29] Next, we turn to Warren's argument that the trial court erred by denying his request to exercise his right to be physically present in the courtroom during his sentencing hearing and then holding a remote sentencing hearing. Specifically, Warren contends that the trial court failed to comply with Administrative Rule 14, which governs when and how a trial court may conduct sentencing proceedings remotely. Additionally, Warren asserts that the trial court failed to

comply with the Indiana Supreme Court's emergency Covid-19 order, dated May 13, 2020, which was in effect at the time of his January 2021 sentencing hearing. Warren argues that this Court should vacate his sentence and remand for a new sentencing hearing at which he can be physically present. We agree.

[30] It is axiomatic that a defendant has a right to be physically present when he is sentenced on a criminal conviction. Indeed, "[t]here is a lengthy history involving the common law and statutory right requiring a defendant's actual physical presence at a sentencing hearing." *Gary v. State*, 113 N.E.3d 237, 243 (Ind. Ct. App. 2018) (Pyle, J., dissenting), *trans. denied*.[9] INDIANA CODE § 35-38-1-4(a) requires that a defendant "*must be personally present* at the time [his] sentence is pronounced." (Emphasis added). The Indiana Supreme Court interpreted "personally present" to refer to a defendant's "actual physical presence." *See Hawkins v. State*, 982 N.E.2d 997, 1002 (Ind. 2013). Our supreme court also noted that "subsection 4(a) is written in such a way that it conveys not only the defendant's *right* to be present at sentencing, but also his *obligation* to be present." *Id.* at 1003 n.4 (emphasis in original).

[31] A defendant, however, may waive his right to be physically present at a sentencing hearing. Specifically, Administrative Rule 14(2)(a) provides that a

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[9] Recently, members of the Indiana Supreme Court have discussed whether a defendant's right to be physically present at his sentencing hearing is constitutional in nature. *See Gary v. State*, 116 N.E.3d 455, 456 (Ind. 2019) (David, J., dissenting to denial of transfer with Rush, C.J., concurring in dissent) (opining that "there is a constitutional right to be physically present at a sentencing hearing" and asserting that "there are significant and important reasons for finding a constitutional right for a defendant to be physically present at a sentencing hearing").

"trial court may use audiovisual telecommunication to conduct . . . [s]entencing hearings . . . when the defendant has given a *written waiver* of his or her *right to be present in person* and the prosecution has consented[.]" (Emphases added). "Thus, a trial court may conduct a sentencing hearing at which the defendant appears by video, but only after obtaining a written waiver of his right to be present and the consent of the prosecution." *Hawkins*, 982 N.E.2d at 1002-03.

[32] At the time of Warren's January 2021 sentencing hearing, the Covid-19 pandemic continued to affect the daily workings of trial courts across Indiana, and Indiana trial courts were operating under emergency Covid-19 orders issued by the Indiana Supreme Court. Specifically, our supreme court issued an emergency order, dated May 13, 2020, ("May 2020 Covid-19 Order") that "modified" Administrative Rule 14. *See Matter of Admin. Rule 17 Emergency Relief for Indiana Trial Courts Relating to 2019 Novel Coronavirus*, 144 N.E.3d 197, 197 (Ind. 2020).[10] This May 2020 Covid-19 Order provided, in relevant part, as follows:

> 1. The court may use audiovisual communication to conduct proceedings whenever possible to ensure all matters proceed expeditiously and fairly under the circumstances. This includes all proceedings in felony cases, including (1) guilty pleas; (2) *sentencings where the defendant waives the right to be present in*

[10] The parties do not dispute the applicability of the May 2020 Covid-19 Order to Warren's sentencing hearing.

> *court*; and (3) any other proceeding with witness testimony where the defendant waives the right of confrontation.

Id. at 197 (emphasis added). Thus, whether under Administrative Rule 14 or under our supreme court's May 2020 Covid-19 Order, a trial court could conduct a remote sentencing hearing *only* where a defendant waived his right to be physically present in the courtroom for the hearing.

[33] Here, the record before us reveals that Warren did not waive, in writing or otherwise, his right to be present at his sentencing hearing. Instead, Warren filed a written motion, asserting his desire to exercise his right to be physically present in the courtroom for his sentencing hearing. The trial court, however, denied Warren's motion without an order or findings. Instead, it merely stamped "DENIED" on Warren's motion. (App. Vol. 2 at 62). Because the trial court held a sentencing hearing in which Warren clearly did not waive his right to be present, we vacate the trial court's sentencing order and remand for a new sentencing hearing in which Warren can exercise his right to be physically present at the hearing.[11]

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[11] Additionally, we reject the State's assertion that Warren has waived any challenge to the remote nature of the sentencing hearing because he did not object as required by the May 2020 Covid-19 Order, which provided that "[a]ny party not in agreement to the manner of the remote proceeding must object at the outset of the proceeding, on the record, and the court must make findings of good cause to conduct the remote proceeding." *See Matter of Admin. Rule 17 Emergency Relief for Indiana Trial Courts Relating to 2019 Novel Coronavirus*, 144 N.E.3d at 198. The State acknowledges that Warren filed a written request to be present at the sentencing hearing, but the State contends that Warren's written assertion of his right did "not satisfy the requirements" of the May 2020 Covid-19 Order. (State's Br. 26). We disagree. Warren's written motion, made on the record and just prior to the hearing, clearly indicated that he was not in agreement with the manner of the remote proceeding. Accordingly, we conclude that Warren's filing of a written motion requesting to exercise his right to be physically present at the sentencing hearing preserved the issue for

[34] Affirmed in part, vacated in part, and remanded.

Bailey, J., and Crone, J., concur.

appellate review. Despite Warren's objection to the remote sentencing, the trial court made no findings of good cause regarding the remote proceeding.