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Division II  
State of Washington  
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**NO. 51935-6-II**

**IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON**

**DIVISION II**

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**STATE OF WASHINGTON,**

**Respondent,**

**vs.**

**JONATHAN GOULDING-BOOTH,**

**Appellant.**

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**RESPONDENT'S BRIEF**

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## I. ISSUES

1. Did the trial court err when the Appellant was ejected from the courtroom during his trial counsel's closing argument and was taken back to the jail?
2. If the trial court did err, was it harmless?
3. Does the recently passed legal financial obligation legislation require this court to strike the trial court's imposition of the criminal filing fee and DNA collection fee?

## II. SHORT ANSWERS

1. No. The trial court's decision to allow the Appellant to be taken back to the jail after his outburst in the courtroom was not error.
2. Yes. Any error by the trial court was harmless.
3. The State takes no position on the issue involving legal financial obligations.

## III. STATEMENT OF FACTS

### 1. **Factual history.**

The State agrees with the Appellant's rendition of the factual history for this matter. Where appropriate, the State's brief will point to specific facts in the record regarding the issues before the Court.

### 2. **Procedural history.**

On January 4, 2018, the Cowlitz County Prosecutor's Office charged the Appellant, Johnathan Michael Goulding-Booth, with Felony Harassment, Criminal Impersonation in the First Degree, and Vehicle

Prowling in the Second Degree.<sup>1</sup> CP 6-7. On January 31, 2018, at the request of the Appellant's trial counsel, the court ordered the Appellant to undergo a competency evaluation. CP 8-14. Western State Hospital concluded that the Appellant was competent to stand trial. CP 8-14; 16-27; 28-38.

The Appellant's jury trial commenced on April 26, 2018. Prior to jury selection, the trial court held a hearing to address the jail staff's concerns about the Appellant's possible behavior during the course of the trial. 1RP 5-18. Sergeant Jeremy Ehrmantrout testified about the Appellant's behavior in previous court hearings, his short temper, and the request to outfit the Appellant with restraints during the trial. 1RP 5-12. The trial court decided to reserve on the issue of restraints.

The Appellant then addressed the court about his speedy trial rights being violated and the possibility of representing himself. A lengthy colloquy occurred between the court and the Appellant. 1RP at 18-48. During the course of this colloquy, the court had to instruct the Appellant to refrain from interrupting numerous times. 1RP at 27, 31, 32, 37, 38. The court warned the Appellant that if he continued to be disruptive he would be removed from the courtroom. 1RP at 38.

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<sup>1</sup> Count III – Vehicle Prowling in the Second Degree, was dismissed by State's motion on the first morning of trial. 1RP at 49.

The court then returned to the jail staff's request to use restraints on the Appellant. 1RP at 41-45. The court ultimately decided that restraints were not necessary. The court, for the fourth time at this point, warned the Appellant about interrupting and his disruptive behavior. 1RP at 45.<sup>2</sup>

The Appellant's disruptive behavior continued during motions in limine. The court, again, had to order the Appellant to refrain from interrupting. 1RP at 119-20, 121, 122, 151, 152. The Appellant, again, was informed that if he continued to be disruptive he would be removed from the courtroom. 1RP at 122. The court ordered the Appellant out of the courtroom due to his continuous disruptions. 1RP at 152-53. Motions in limine continued without the Appellant's presence. 1RP at 154-169.

On the second day of trial, prior to testimony beginning, the court was forced to remove the Appellant from the courtroom due to his disruptive behavior. 3RP at 19-24. After the State rested its case, the Appellant was permitted to return to the courtroom. However, within a few minutes of returning, the Appellant was again removed from the courtroom due to his disruptive behavior. 3RP 79-88. The Appellant was again permitted to return to the courtroom and was prepared to testify. 3RP at 97. However, the Appellant was again removed from the courtroom due to his disruptive behavior. 3RP 98-101.

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<sup>2</sup> Approximately 56 minutes have elapsed at this point.

The Appellant was then allowed back into the courtroom in order to testify. The court engaged in a colloquy with the Appellant about his disruptive behavior and how it could result in a waiver of his right to testify. 3RP at 104-106. During cross examination, he was again removed from the courtroom due to his behavior. 3RP at 133. The Appellant was allowed back into the courtroom and was able to conclude his testimony.

The final time the Appellant was removed from the courtroom occurred during closing arguments. While the Appellant's trial counsel was making his closing argument, the Appellant suddenly stood up and began yelling and screaming. 4RP at 203. The court ordered the Appellant to remain silent, but the Appellant ignored her, 4RP at 203. The court ordered the Appellant to be removed from the courtroom. The court noted that the Appellant resisted his removal from the courtroom. 4RP at 204. The Appellant continued his yelling in the other courtroom to the point where it could be heard in the trial courtroom. 4RP at 204-05. The court noted that it was possible the jury would continue to hear the Appellant's yelling while he was in the other courtroom. 4RP at 205. Based upon that finding, the court agreed with the jail staff and had the Appellant taken back to the jail. 4RP at 205. The court also noted that "he was shouting loud enough where I think he was intentionally trying to make himself heard throughout the entirety of the floor here." 4RP at 221.

Prior to the verdict, the court revisited the idea of the Appellant being placed in restraints. 4RP at 221-29. The court noted that placing the Appellant in restraints for the verdict would not be prejudicial because the verdict would have already been rendered. 4RP at 225-26. The court decided that the less restrictive alternative to restraints would be placing the Appellant in a separate courtroom while the verdict was being read into the record. 4RP at 229.

The jury returned a not guilty verdict for the felony harassment charge and a guilty verdict for the criminal impersonation charge. 4RP at 231-37. The Appellant was sentenced within the standard range. 4RP at 248. The Appellant was disruptive during the sentencing hearing. 4RP at 248-49. The Appellant filed a timely notice of appeal. CP 116.

#### IV. ARGUMENT

- 1. The trial court did not commit error when the Appellant was ejected from the courtroom during his trial counsel's closing argument and was taken back to the jail.**

A criminal defendant has the constitutional right to be present in the courtroom during all critical stages of his trial. *State v. Chapple*, 145 Wn.2d 310, 318, 36 P.3d 1025 (2001) (citing Wash. Const. art. I, § 22; CrR 3.4(a)). However, "a defendant's persistent, disruptive conduct can constitute a voluntary waiver of this right." *Chapple*, 145 Wn.2d at 318 (citing *Illinois*

*v. Allen*, 397 U.S. 337, 343, 90 S.Ct. 1057, 25 L.Ed.2d 353 (1970); *State v. DeWeese*, 117 Wn.2d 369, 381, 816 P.2d 1 (1991)).

[A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom. Once lost, the right to be present can, of course, be reclaimed as soon as the defendant is willing to conduct himself consistently with the decorum and respect inherent in the concept of courts and judicial proceedings.

*Allen*, 397 U.S. at 343. Whether a defendant's right to be present has been violated is a question of law and is reviewed de novo. *State v. Irby*, 170 Wn.2d 874, 880, 246 P.3d 796 (2011).

The appropriate method for dealing with a disruptive defendant is left to the discretion of the trial judge. *Chapple*, 145 Wn.2d at 320. To assist trial judges in these situations, the court has developed basic guidelines: (1) the defendant should be warned that he could be removed; (2) the conduct must be severe enough to justify removal; (3) there is a preference for the least severe alternative to prevent the defendant from continuing to disrupt the proceedings; and (4) the defendant must be allowed to reclaim his right to be present upon assurances that his disruptive conduct will improve. *Id.* (citing *Allen*, 397 U.S. at 343; *DeWeese*, 117 Wn.2d at 380-81). "The guidelines are not meant to be constraints on trial court discretion, but rather

to be relative to the exercise of that discretion such that the defendant will be afforded a fair trial while maintaining the safety and decorum of the proceedings.” *Chapple*, 145 Wn.2d at 320.

In the present matter, the Appellant’s removal from the courtroom due to his outburst during his trial counsel’s closing argument was well within the trial court’s discretion. Likewise, the trial court’s decision to allow the Appellant to be taken back to the jail, rather than being placed in another courtroom and observe the remainder of the trial via a video monitor, was also justified. The Appellant’s repeated disruptions of the trial must be considered a voluntary waiver of his right to be present.

This was the sixth time he had to be removed from the courtroom during this two day jury trial. This outburst was not simply the Appellant interrupting the proceedings; rather, he was screaming and yelling while his trial counsel was giving his closing argument.<sup>3</sup> Despite numerous warnings from the trial court to remain silent, the Appellant persisted with his ranting and raving. Additionally, the Appellant’s removal from the courtroom was not an easy undertaking – it took numerous jail staff to physically remove the Appellant.

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<sup>3</sup> The transcript of the proceedings does not do justice to the level of the Appellant’s agitation, nor does it properly convey the volume at which the Appellant was yelling.

The Appellant was initially taken by the jail staff to another courtroom, as had been previously done the other five times he was removed from the courtroom. However, as the trial court correctly noted, his behavior did not cease or calm down as he held in the other courtroom. Instead, his continuous yelling and screaming was so loud while he was in the other courtroom that he could be heard in the trial courtroom.<sup>4</sup> The trial court specifically found that if the Appellant was allowed to remain in the other courtroom, the jury would potentially be able to continuously hear his disruptive behavior. 4RP at 205. Thus, the trial court attempted to have the Appellant watch the proceedings from another courtroom, but rightfully found this to be an inadequate solution due to the Appellant's ongoing disruptive behavior that could be heard from that other courtroom.

The Appellant also suggests that the trial court could have employed a lesser restrictive alternative by gagging the Appellant. The Appellant's argument seems to conclude that the trial court was required to order that a physical object be placed in the Appellant's mouth as a less restrictive alternative. Given that his main issue throughout the whole trial was not being afforded an opportunity to tell the jury what he thought they need to hear, physically gagging the Appellant would likely have further triggered his behavior. This argument also ignores the level of agitation the Appellant

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<sup>4</sup> The transcript documents this as "indiscernible yelling from Defendant." 4CP at 204.

had already displayed when the disruption began, when he had to be forcibly removed from the courtroom by multiple members of the jail staff, and his continuous agitation that could be heard while he was in a different courtroom. The trial court's decision to remove the Appellant and allow him to be taken back to the jail was within its discretion.

**2. In the alternative, if the Court finds that the trial court erred, the error was harmless.**

A violation of the right to be present is subject to harmless error analysis. *Irby*, 170 Wn.2d at 885-86 (citing *In re Pers. Restraint of Benn*, 134 Wn.2d 868, 921, 952 P.2d 116 (1998); *In re Pers. Restraint of Lord*, 123 Wn.2d 296, 306-07, 868 P.2d 835 (1994)). A defendant is guaranteed the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure." *Kentucky v. Stincer*, 482 U.S. 730, 745, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987). An error is harmless if beyond a reasonable doubt the violation did not contribute to the verdict. *Chapman v. California*, 386 U.S. 18, 24, 26, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).

Here, if the trial court did err when it allowed the Appellant to be removed from the courtroom and be taken back to the jail, the error was harmless because it did not affect the outcome of the trial. The final outburst occurred during his trial counsel's closing argument. All of the testimony

(including the Appellant's) had been completed, all of the evidence had been admitted, and all of the law had been given to the jury. Although closing arguments are important part of the jury trial process, it is doubtful that the Appellant's presence could have contributed to the fairness of the procedure.

**3. The State takes no position in regards to the Appellant's legal financial obligations argument.**

The Appellant was determined to be indigent at the time of sentencing. The trial court imposed only non-discretionary legal financial obligations. The Appellant is now requesting this court to retroactively apply an amendment to the legal financial obligation legislation and strike the criminal filing fee and DNA collection fee. The State simply defers to this court's judgment.

**V. CONCLUSION**

The Appellant voluntarily waived his right to be present during his trial through his continuous outbursts and disruptive behavior. The trial court properly noted that the Appellant's continuous disruptive behavior that could be heard while he was in the other courtroom would likely be heard by the jury during closing arguments. Therefore, the trial court was within its discretion to allow the Appellant to be taken back to the jail while closing arguments were finishing.

The State takes no position on the Appellant's legal financial obligation argument.

The Court should affirm his conviction.

Respectfully submitted this 28 day of December, 2018.

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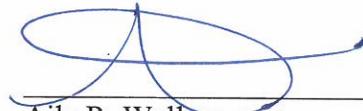
**CERTIFICATE OF SERVICE**

Aila Wallace certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on December 28, 2018.

  
Aila R. Wallace

# COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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## Transmittal Information

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