NO. 104344-9

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

ERIC CHARLES BANFIELD,

Petitioner.

RESPONSE TO PETITION FOR REVIEW

RYAN P. JURVAKAINEN
Cowlitz County Prosecuting Attorney

AYLSA DRAPER-DEHART / WSBA #61031
Deputy Prosecuting Attorney
Representing Respondent

HALL OF JUSTICE
312 SW First Avenue
Kelso, WA 98626
(360) 577-3080
Office ID No. 91091

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I. IDENTITY OF RESPONDENT

The respondent is the State of Washington, represented by Alysa S. Draper-Dehart, Deputy Prosecuting Attorney, Cowlitz County Prosecuting Attorney's Office.

II. COURT OF APPEALS' DECISION

The Court of Appeals correctly decided this matter. The Respondent respectfully requests this Court deny review of the June 3, 2025, Court of Appeals' opinion in *State of Washington vs. Eric C. Banfield*, No. 58850-1-II.

III. ISSUES PRESENTED FOR REVIEW

1. Does the Court of Appeals' opinion, holding that the trial court did not violate Banfield's right to be present at trial present a conflict with a decision by the Supreme Court or Court of Appeals?

IV. STATEMENT OF THE CASE

On May 25, 2021, officers responded to a domestic violence incident in the city of Kelso, Washington. RP 308. Officers could hear a distressed voice saying, "help me," "he won't let go of me." RP 346 -347. Upon entering they located

K.C., and they worked through the front of the apartment to the back to try and locate the offender. On the rear balcony one officer was pointed to another set of apartments by a neighbor who stated, "he had gone that way." RP 350. Following a trail of other individuals pointing, bent grass and other details, the officer located Eric Banfield laying in blackberry bushes, 175 feet away from the incident location. RP 311-312.

Banfield was charged May 28, 2021, under cause number 21-1-00504-08 with assault in the second degree – domestic violence ("DV"), felony violation of a protection order - DV and unlawful imprisonment - DV. CP 3-5.

There were three trials in this case. The first on October 12, 2022, where a mistrial was declared due to lack of available jurors after for cause challenges. The second on January 19, 2023, which ended in a mistrial. The third trial occurred February 8, 2023.

During the second trial on January 20, 2023, Banfield spoke out "stating [the] victim said she was raped; during officer

Panah's testimony." CP 68. The court had the jury escorted out of the courtroom, and the prosecutor asked to have Banfield removed from the courtroom. CP 68-69. Banfield's attorney asked for a mistrial because of the outburst. CP 69. The court granted the mistrial, as the outburst was not in Banfield's best interest. CP 69.

On January 30, 2023, the State filed a motion in limine, which stated:

> [A]fter taking excessive, even obsequious efforts by the Court and both counsel to avoid discussion of rape … Mr. Banfield yelled at the top of his lungs that the victim said he raped her. This was during the final moments of direct examination of the State[']s final witnesses. The effect of the outburst halted proceedings and eventually resulting in a mistrial.
>
> Mr. Banfied[']s efforts were deliberate. In fact, following the end of the proceedings, he informed the assigned jailer that it was his intention to cause a mistrial. …
>
> The Court is entitled to remove a defendant from the courtroom. However, the Court must first admonish him that his conduct could lead to removal. That conduct must be severe enough to justify removal. The trial court must express a preference of the least

> severe alternative... he must be allowed to reclaim his right to be present upon assurances that his conduct will improve. *State v. Chapple,* 145 Wn. 2d 3100, 320 (2001).

CP 70-73. The trial court set the case on a Monday motion docket and, Banfield's attorney stated, "Mr. Banfield is not aware of it, I'll give him a copy today; but, it basically just serves as a warning of what could potentially occur if there were further interruptions. But, it doesn't actually move the Court to do anything in particular." RP 112.

On February 6, 2023, while addressing the motion, the State, Banfield's attorney and Banfield addressed the court. RP 115-118. Banfield stated:

> I can speak for myself, Your Honor. I think that it's a suppression of my -- it's exculpatory evidence that could, you know, let the jurors get a different view of my case, and I don't think it's fair to suppress the only statement that the victim made, and it was unsubstantiated, and the allegations were untrue and never proven. And that goes to the -- to the point of that I think the jury should be able to hear that and it shouldn't be suppressed. It should weigh in my favor.

RP 116-117. Based on the motion, the trial court at gave Banfield a warning:

> THE COURT: ... I want you to be very -- very much understand that I can and I will remove you from the trial if I think that you're going to throw another wrench into it like you did last time. You've been demanding a speedy trial for months --
>
> THE DEFENDANT: Years.
>
> THE COURT: -- and claiming that it's everyone's fault but your own, and we're in a situation we are now here, because of your actions.
>
> You do have a right to be present and to be involved in your trial. I want that for you. However, if you continue with these actions, I can and I will remove you. You need to just understand that your attorney has a trial strategy that, frankly, based on the responses that we got from the jury in the last case, I think is in your best interest. And if this happens again, the likelihood of us moving forward without you present is very high.

RP 118.

On February 8, 2023, trial once again commenced. During cross examination of the first witness by Banfield's attorney, Banfield stated "you said I raped you. Don't you remember that?" RP 261. The State made a motion at that time, which the

court acknowledged, and Banfield continued to speak out. RP 261. The State then asked for the jury to be removed and noted:

> I think that we all realized that this moment was going to happen. Short of putting duct tape on Mr. Banfield's mouth, he was going to, at some point in time, interrupt. He's been admonished by this Court not to do so. The Court informed him on Monday, following that Motion in Limine, that it would remove him from trial.
>
> At this point, in order for us to conduct a trial free of these interruptions, which, as the Court was aware, based on the testimony that I provided in a form of affidavit to the Court, he intentionally attempted to cause a mistrial. Then he's done so again today ...

RP 262. Banfield interrupted and stated "[n]o, I just want the truth to be told." RP 262-263. Banfield's counsel then also requested a mistrial. RP 263. The court made the following ruling in denying the mistrial:

> Mr. Banfield is in a position where I don't know if it's malingering, so he can continue to claim that his speedy trial rights are being violated. I don't know what's going on. He claims that he wants all the truth to come forward. I can appreciate that. This is not the process where that would be afforded, and the approach that needs to be done. I do think that we're in a situation where he's aware of the rules that

> we need to operate under. He's refusing to operate under those rules. He got a result last time, and that was -- I'm just going to note for the record, after a COVID test was done, because he said he was ill -- and I don't know if he thinks he's going to get the same result this time.

RP 265. For the removal request, Banfield's attorney asked the court to admonish him, but acknowledged "that any further outburst, he would be removed. But I leave it to the Court's discretion." RP 267. The court ruled:

> I think this is the fifth time to trial. This is the at least second time that we're at jury and we're in a position that we're trying to get Mr. Banfield a fair trial before a jury of his peers. This is the second time that we're in that position and Mr. Banfield has shouted at the witness while they were testifying. And I think we all agree, shouted at the witness something that all efforts by Counsel have been made to keep out of the jury purview as we work through this case. Mr. Laurine did file a Motion in Limine, it was raised at the end of the trial, I think it was two weeks ago, and then followed up with a Brief. We had a review on readiness, and I know that it was touched base on at readiness because Judge Scudder relayed that to me. And then it was set on again for my Monday motion docket, to again touch base with Mr. Banfield about the detriments of him acting out.

> I know Mr. Maher is not at fault in this, and that I'm assuming he's taken every measure and had every conversation he can with his client about this. I don't know what other method the Court can take to move this trial forward and not just continue to kick the can down the road, except to have him not be present while we resume testimony and continue this case.

RP 267-268. At this point, Banfield's counsel suggested putting Banfield in another courtroom where he would be allowed to watch proceedings, use an interpreter device to speak only with Banfield's counsel:

> [t]hat way, at least, he's somewhat engaging with me and allowing me to hear his commentary, which is my chief concern, is when you remove the Defendant from the courtroom, important attorney-client conversations are then halted. And I think that's still very much necessary, so that he feels in this situation, he's still receiving as fair of a trial he can be afforded.

RP 269. While trying to set up another courtroom and the microphone with Banfield's attorney, information was further provided by jail staff that "Mr. Banfield was clear that it wasn't just an isolated incident; that it was going to occur during trial; that he was going to interrupt at all parts of the trial." RP 271-

273. Banfield's counsel then noted that he was able to hear Banfield from the other area where he would be watching or listening, and that he would be able to communicate with Banfield's counsel. RP 273-277.

At the end of the day, Banfield's attorney put on the record that he had been able to hear Banfield throughout the afternoon and had been taking note of everything he had been saying. RP 325. The following day on February 9th, 2023, Banfield's attorney asked the court to allow Banfield to return to the courtroom. RP 329. The Court ruled that it understood the significance of removing Banfield, but there were "sufficient warnings given," between multiple judicial officers, hearings, motions and the prior trial. RP 331. Banfield's counsel provided that he could hear Banfield and was continuing to make tactical decisions in trial in Banfield's best interest. RP 333-334.

The Court of Appeals assessed the conduct through the *Chapple* analysis. *State v. Chapple,* 145 Wn.2d 310, 36 P.3d 1025 (2001). The Court of Appeals held:

> [T]he trial court did not abuse its discretion here, where there was no indication in the record that Banfield assured or would have assured his conduct would improve. Thus, we hold that the trial court did not violate Banfield's right to be present at trial when the court removed him from the courtroom and placed him in a different courtroom for the remainder of the trial with the ability to watch the proceedings and communicate directly with his counsel.

Slip Op. at 14.

V. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS' DECISION

Because Banfield's petition fails to raise any of the grounds governing review under RAP 13.4(b), it should be denied. Under RAP 13.4(b) a petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Banfield maintains that the decision by the Court of Appeals involves a conflict between the ruling of the Court of Appeals or the Supreme Court regarding the right to be present in the courtroom subsequent to warnings, admonitions and conduct, under RAP 13.4(b)(1), (2). He does not claim that rulings are a significant question of law under the Constitution of the State of Washington or United States, or that there is a substantial public interest under RAP 13.4(b)(3) or (4).

Banfield's claim fails because the Court of Appeals properly addressed the facts and case history under the *Chapple*[1] analysis:

> First, the trial court should warn the defendant that their conduct may lead to removal. *Id.* Second, their conduct must be severe enough to justify removal. *Id.* Third, the court should use the least severe alternative that will prevent the defendant from disrupting the trial. *Id.* Fourth, the court must allow the defendant to reclaim their right to be present

[1] 145 Wn.2d at 320.

> upon assurances that their conduct will improve. *Id.* The fourth guideline may require varying degrees of trial court involvement in the reclamation. *See Id.* at 326.

Slip Op. at 11- 14. For these reasons, his petition does not meet the criteria required for review under RAP 13.4(b).

A. The Court of Appeals decision that Banfield was afforded the least restrictive means to participate in his trial without further disturbing the courtroom proceedings is consistent with prior published caselaw of the Court of Appeals and Supreme Court.

The Court of Appeals found because Banfield continued to interrupt courtroom proceedings, the trial court was within its authority to remove Banfield after warning him and providing the least restrictive means to allow him to participate despite continued outbursts, this decision does not conflict with any decision by the Court of Appeals or the Supreme Court, and adheres to the *Chapple* test. 145 Wn.2d at 320. The Court of Appeals explained for the fourth part of the *Chapple* test:

> The *Chapple* court was clear that its four guidelines are not mandatory but rather are basic guiding principles. 145 Wn.2d at 320. Banfield asserts that for the remainder of trial, the court did not inform

> him that he could return to the courtroom if his conduct improved. However, while the trial court did not explicitly notify Banfield of the reclamation of his right to be present on the subsequent days of trial, that does not mean that the trial court violated Banfield's right to be present. Indeed, any reclamation would have required that Banfield commit to following the rules, and as his counsel admitted, Banfield was still "not going to make any promises to the Court or anything that there would not be a further outburst" on the second day of trial. RP at 329. As explained above, a trial court has wide discretion in determining the appropriate way to handle a defendant's disruptive courtroom behavior.

Slip Op. *a*t 13-14 (citing *Chapple*, 145 Wn.2d at 320). Banfield now contends that the Court of Appeal's decision conflicts with *Chapple*. *Id.* However, a defendant's right to be present is not absolute, and the decision does not conflict with case law.[2]

A trial court has its own authority to remove a defendant to maintain the courtroom and proceed with the least restrictive means to allow him to participate in his trial. *Chapple,* 145 Wn.

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[2] *State v. Jackson*, 124 Wash. 2d 359, 878 P.2d 453 (1994) (where a defendant abstained from trial after it commenced), *See also State v. Crafton,* 72 Wn. App. 98, 863 P.2d 620 (1993*). State v. Chapple*, 145 Wn. 2d 310, 36 P.3d 1025 (2001)

2d 310. A trial is permitted to continue in the defendant's absence only if the defendant was present when it commenced. *State v. Jackson*, 124 Wash. 2d 359, 878 P.2d 453 (1994).

Chapple's "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, 36 P.3d at 1030. Multiple warnings are not required to remove a defendant from the courtroom. *Id.* Additionally, where a defendant is not representing himself pro se, mere interruptions are enough to remove a defendant from the courtroom. *Id* (citing *Badger v. Cardwell*, 587 F.2d 968 (9th Cir. 1978), *United States v. Kizer,* 569 F.2d 504, 506–07 (9th Cir.1978)).

For the final step "'[o]nce 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.'"

Chapple, 145 Wn.2d at 319, 36 P.3d at 1029 (citing *Illinois v. Allen*, 397 U.S. 337, 343, 90 S. Ct. 1057, 1060, 25 L. Ed. 2d 353 (1970)). The *Allen* Court stated: "We believe trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case. No one formula for maintaining the appropriate courtroom atmosphere will be best in all situations." 397 U.S. at 343, 90 S. Ct. at 1061.

Here, all four factors of the *Chapple* test are met. Banfield received multiple warnings throughout the pendency of the case and through the last trial. He had warnings from a prior mistrial, warnings from the motion in limie, warnings during regular court hearings, warnings from two separate judges and on February 8th he violated the warnings. *See, E.g.,* RP 48, 62, 112, 118-119. The *Chapple* test was expressly provided in the motion in limine. At no time did Banfield's attorney relay that his client was willing to improve his conduct. In fact, the court was provided information on February 8th, after Banfield's removal, that

"[Banfield] had stated that he had informed his Defense Attorney that he could not hold his language, that he would potentially have an outburst, and that he would continue to have an outburst. 'By God's will,' he wants the truth out." RP 272.

This was the second trial that Banfield had an outburst in. Banfield was afforded the right to take the stand and decided not to testify. RP 391. However, throughout the trial the only assurance was that he was going to have another outburst. Unlike *Chapple* where there was an outburst during a singular trial, Banfield's outburst in his second trial occurred in front of a seated jury, after the prior mistrial for having an outburst.

A trial court must be able to conduct a trial and maintain the decorum of the courtroom, while providing the least restrictive means to allow participation. It did so here. Banfield received multiple warnings about his conduct, his conduct was severe enough to justify removal, and he was still able to relay information to his attorney, observe the trial, and was offered the ability to testify. There had been statements before the outbursts

from Banfield about his belief that the statement will be introduced, that he was going to do it again and there were no assurances contrary to that. Courtroom decorum was maintained once he was removed. Finally, the only assurance from Banfield was that there was going to be another outburst.

The Court of Appeals held that the trial court did not violate Banfield's right to be present under the *Chapple* test. Slip Op. at 10. Further, the Court of Appeals continued through the *Chapple* analysis, stating:

> Though the trial court did not inform Banfield on the record that he could return to the courtroom if his conduct improved, like in *Chapple*, defense counsel's communications with Banfield and subsequent report to the court that he could not assure Banfield's behavior would improve, was appropriate under these circumstances and adequate to give Banfield an opportunity to reclaim his right to return. 145 Wn.2d at 326. The trial court explained the gravity of Banfield's outbursts and anticipated that his disruptive behavior would continue given Banfield's history of outbursts in front of the jury. Furthermore, in *Thompson*, we recognized that there is no requirement for defendants to receive daily reminders about the right to be present. 190 Wn. App at 844. The *Chapple* court was clear that its four guidelines are

> not mandatory but rather are basic guiding principles. 145 Wn.2d at 320.

Slip Op. at 13. The Court of Appeal's decision does not conflict with a decision by either the Court of Appeals or the Supreme Court. For these reasons, Banfield's petition does not meet the criteria required for review under RAP 13.4(b) and the petition should be denied.

VI. CONCLUSION

Because the petition does not meet any of the considerations governing acceptance of review under RAP 13.4(b), it should be denied.

Respectfully submitted this 2 day of September, 2025.

Alysa S. Draper-Dehart #61031
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I, Jacqueline Renny, do hereby certify that the RESPONSE TO PETITION FOR REVIEW was filed electronically through the Supreme Court Portal to:

Peter Tiller
The Tiller Law Firm
PO Box 58
Centralia, WA 98531-0058
ptiller@tillerlaw.com
kelder@tillerlaw.com

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 September 2, 2025.

Jacqueline Renny

Jacqueline Renny

COWLITZ COUNTY PROSECUTORS OFFICE

September 02, 2025 - 10:54 AM

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