

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

TYLER JAMES THOMPSON,  
*Defendant-Appellant.*

Deschutes County Circuit Court  
16CR48386; A165120

Walter Randolph Miller, Jr., Judge.

Argued and submitted April 25, 2019.

Daniel C. Bennett, Deputy Public Defender, argued the cause for appellant. Also on the briefs was Ernest G. Lannet, Chief Defender, Criminal Appellate Section, Office of Public Defense Services.

Jordan R. Silk, Assistant Attorney General, argued the cause for respondent. Also on the briefs were Ellen F. Rosenblum, Attorney General, and Benjamin Gutman, Solicitor General.

Before Lagesen, Presiding Judge, and DeVore, Judge, and James, Judge.

PER CURIAM

Reversed and remanded.

**PER CURIAM**

Appealing a judgment of conviction for attempted sodomy in the second degree and attempted sodomy in the first degree, defendant assigns error to (1) the trial court's denial of his motion for a mistrial, based on the state's failure to disclose recorded interviews of multiple witnesses until near the end of trial; (2) the trial court's admission of expert testimony regarding grooming without an adequate foundation to establish its scientific validity; and (3) the trial court's instruction to the jury that it could render a nonunanimous verdict, and the court's acceptance of nonunanimous verdicts.

We reject without written discussion defendant's challenge to the denial of his motion for a mistrial and his plain error challenges implicating jury unanimity. As for defendant's contention regarding the admission of the expert testimony regarding grooming, we are not persuaded by the state's argument that this case is distinguishable from *State v. Henley*, 363 Or 284, 422 P3d 217 (2018), and *State v. Plueard*, 296 Or App 580, 439 P3d 556, *adh'd to as modified on recons*, 297 Or App 592, \_\_\_ P3d \_\_\_ (2019). For reasons similar to those identified in both *Henley* and *Plueard*, the trial court erred by admitting the grooming testimony without requiring the state to lay an adequate foundation. We therefore reverse and remand.

Reversed and remanded.