

**FILED: February 15, 2012**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

DANIEL MIKE CHAVEZ,  
Defendant-Appellant.

Klamath County Circuit Court  
0800999CR

A142160

Roxanne B. Osborne, Judge.

Argued and submitted on November 15, 2011.

Zachary Lovett Mazer, Deputy Public Defender, argued the cause for appellant. With him on the brief was Peter Gartlan, Chief Defender, Office of Public Defense Services. Daniel M. Chavez filed the supplemental brief *pro se*.

Matthew J. Lysne, Assistant Attorney General, argued the cause for respondent. With him on the brief were John R. Kroger, Attorney General, and Mary H. Williams, Solicitor General.

Before Ortega, Presiding Judge, and Brewer, Chief Judge, and Sercombe, Judge.

PER CURIAM

Reversed and remanded.

1 PER CURIAM

2 Defendant appeals a judgment convicting him of two counts of attempted  
3 first-degree sexual abuse, ORS 161.405, and two counts of private indecency, ORS  
4 163.467. On appeal, defendant raises several assignments of error. We reject without  
5 discussion defendant's third assignment of error, in which he contends that the trial court  
6 erred in denying his "motion to exclude his statements" to an officer on the grounds that  
7 they were not voluntary.<sup>1</sup> However, defendant also argues that the trial court erred in  
8 admitting, in the absence of physical evidence, a physician's diagnosis that it was "highly  
9 likely" that the complainant had been sexually abused. See [State v. Southard](#), 347 Or  
10 127, 218 P3d 104 (2009). The state concedes, and we agree, that the trial court erred in  
11 admitting the diagnosis. Accordingly, we reverse and remand.<sup>2</sup>

12 Reversed and remanded.

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<sup>1</sup> In addition, we reject without discussion all of defendant's contentions in his *pro se* supplemental brief.

<sup>2</sup> In light of our resolution of the first assignment of error, we decline to address defendant's second assignment, in which he challenges the trial court's admission of "scientific evidence of 'grooming' without a sufficient scientific foundation."