

COURT OF APPEALS OF OREGON

State v. Ainsworth

347 Or. App. 616 (2026) · No. A177199 · Decided March 11, 2026

SUMMARY

The Oregon Court of Appeals held that the trial court did not err in admitting testimony concerning the continuum of disclosure in child sexual abuse cases. The court held that post-evidence amendments expanding the date ranges in three sexual-abuse counts violated the defendant’s rights under Article VII (Amended), section 5(3), of the Oregon Constitution because the state did not establish that the amended factual allegations had been presented to the grand jury. The convictions on Counts 11, 12, and 13 were reversed and remanded for resentencing, while the remaining convictions were affirmed.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Hellman, J.; Ortega, Presiding Judge; Powers, Judge; Hellman, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	March 11, 2026
DOCKET	A177199
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed a judgment of conviction for two counts of first-degree sexual abuse and two counts of third-degree sexual abuse, challenging the amendment of three indictment counts and the admission of continuum-of-disclosure evidence.
STANDARD OF REVIEW	The court reviewed the trial court's grant of a motion to amend the indictment and the admission of scientific evidence for legal error.
PRECEDENTIAL VALUE	published
PARTIES	Joseph L. Ainsworth v. State of Oregon

TOPICS

- criminal procedure
- grand jury
- evidence
- appellate procedure
- harmless error

PRACTICE AREAS

- criminal law
- criminal procedure
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court violated Article VII (Amended), section 5(3), of the Oregon Constitution by permitting the state, after its case-in-chief, to amend the date ranges in Counts 11, 12, and 13 without proving that the factual theory supporting the amended charges had been presented to the grand jury.
2. Whether the trial court erred by admitting expert testimony concerning the continuum of disclosure, including delayed, incomplete, inaccurate, or inconsistent disclosures and forensic-interview protocols, without additional scientific foundation.

HOLDINGS

1. When the state amends an indictment after presenting its case-in-chief and the amendment raises a possible variance between the evidence at trial and the factual proof presented to the grand jury, the court analyzes the claim under the variance framework. The state must prove that the defendant was tried on the offense indicted by the grand jury; because the state failed to establish that the conduct supporting the convictions had been presented to the grand jury, the amendments created an impermissible variance under Article VII (Amended), section 5(3), of the Oregon Constitution.
2. The trial court did not err by admitting testimony concerning delayed disclosure, incomplete or inaccurate statements, recantations, and forensic-interview protocols without additional scientific foundation when the testimony was based on research and guidelines within the scientific validity established in *State v. Perry* and concerned disclosure phenomena relevant to assessing credibility.

KEY QUOTATIONS

“The state is therefore not permitted to present some set of facts to the grand jury, secure an indictment, and then convict a defendant on an entirely different set of facts.” (622)

“When a defendant alleges a variance, we ask the following questions to determine whether the variance was permissible: (1) Did the variance concern a material element of the crime?; (2) Did the defendant suffer prejudice to their defense?; and (3) Was the defendant, in fact tried on the offense that was indicted by the grand jury?” (624)

FACTUAL BACKGROUND

Defendant was charged with sexual offenses against his stepdaughters, R and A, allegedly occurring after they moved to Oregon in 2018. At trial, the victims testified about abuse occurring during periods that extended beyond the date ranges originally alleged in Counts 11, 12, and 13. After the state's case-in-chief, the prosecutor moved to expand those date ranges, and the trial court granted the motion. The state also presented expert testimony concerning delayed disclosure, inconsistencies and recantations in disclosures, and forensic-interview protocols.

PROCEDURAL HISTORY

A Union County Circuit Court trial judge tried the case without a jury. After the close of the state's case-in-chief, the court permitted the state to amend the date ranges in Counts 11, 12, and 13. The court convicted defendant

on the challenged sexual-abuse counts, and the Court of Appeals reversed those three convictions, remanded for resentencing, and otherwise affirmed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for resentencing after reversal of the convictions on Counts 11, 12, and 13; the judgment was otherwise affirmed.

CASES CITED

- State v. Pachmayr, 344 Or. 482, 185 P.3d 1103 (2008)
- State v. Johnson, 342 Or. App. 278, 576 P.3d 475 (2025)
- State v. Smith, 182 Or. 497, 188 P.2d 998 (1948)
- State v. Arriaga-Mendoza, 316 Or. App. 667, 504 P.3d 703 (2021), rev. denied, 369 Or. 733 (2022)
- State v. Wall, 374 Or. 407, 578 P.3d 1215 (2025)
- State v. Wimber, 315 Or. 103, 843 P.2d 424 (1992)
- State v. Benton, 317 Or. App. 384, 505 P.3d 975 (2022), aff'd, 371 Or. 311, 534 P.3d 724 (2023)
- State v. Moyer, 76 Or. 396, 149 P. 84 (1915)
- State v. Haji, 366 Or. 384, 462 P.3d 1240 (2020)
- State v. Woodson, 315 Or. 314, 845 P.2d 203 (1993)
- State v. Williams, 237 Or. App. 377, 240 P.3d 731 (2010), rev. denied, 350 Or. 131 (2011)
- State v. Perry, 347 Or. 110, 218 P.3d 95 (2009)
- State v. Akins, 373 Or. 476, 568 P.3d 174 (2025)
- State v. Milbradt, 305 Or. 621, 756 P.2d 620 (1988)
- State v. Lee, 202 Or. 592, 276 P.2d 946 (1954)
- State v. Jennings v. Baxter Healthcare Corp., 331 Or. 285, 14 P.3d 596 (2000)
- State v. Roberts, 340 Or. App. 220, 570 P.3d 279 (2025)
- State v. Davis, 336 Or. 19, 77 P.3d 1111 (2003)