

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

RYAN MICHAEL LANGENBERG,  
*Defendant-Appellant.*

Coos County Circuit Court  
15CR43191; A161589

Richard L. Barron, Judge.

Argued and submitted September 26, 2017.

Kyle Krohn, Deputy Public Defender, argued the cause for appellant. With him on the brief was Ernest G. Lannet, Chief Defender, Criminal Appellate Section, Office of Public Defense Services.

Keith L. Kutler, Assistant Attorney General, argued the cause for respondent. With him on the brief 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**

Defendant appeals a judgment of conviction for unlawful possession of methamphetamine, ORS 475.894. That methamphetamine was found in a syringe discovered in defendant's underwear during a jailhouse strip search after defendant was arrested on charges of burglary and theft. Defendant denied knowing that the syringe was in his underwear. To establish his lack of knowledge, he sought to introduce evidence at trial that the charges of arrest were not methamphetamine-related (evidence which would tend to make it less likely that defendant knew he possessed methamphetamine). In addition, defendant sought to introduce evidence that he was acquitted of those charges to dispel the potential erroneous inference that he had been convicted of them. The trial court admitted the evidence of the nature of the charges of arrest, but excluded as irrelevant the evidence that defendant had been acquitted of those charges. On appeal, defendant assigns error to the court's exclusion of the evidence of his acquittals, arguing that the court's relevance determination was erroneous under the Supreme Court's decision in *State v. Smith*, 271 Or 294, 532 P2d 9 (1975). We agree that the trial court erred. Further, because the error was not harmless, we reverse and remand.

We start from the premise that the evidence that the charges of arrest were not drug charges was probative of—and thus properly admitted to establish—whether defendant knew that he possessed the syringe containing methamphetamine. That point is not disputed on appeal. The question is whether evidence of defendant's acquittals on those nondrug charges was also relevant, once the evidence of those charges was admitted. Under *Smith*, the answer to that question is yes. There, the Supreme Court explained:

“[T]he admission of evidence of other offenses in which the defendant has been involved without disclosing that he was acquitted tends to brand him as a ‘criminal’ and exposes him to the danger that the jury might lose sight of the presumption of innocence and the high level of proof required to rebut it.”

*Smith*, 271 Or at 299. In other words, as we understand *Smith*, when evidence of a defendant's involvement in other

crimes is otherwise properly admitted in a defendant's criminal trial, evidence that a defendant was acquitted of those offenses becomes relevant to dispel the potential prejudice of being branded a criminal based on that evidence. The trial court therefore erred by excluding evidence of defendant's acquittals as irrelevant.

That error was not harmless. Defendant's defense was that he did not know about the syringe, and he testified in support of that defense. The case necessarily turned largely on the jury's assessment of defendant's credibility, and we are unable to conclude that the omission of the evidence of defendant's acquittals had little likelihood of affecting that assessment. *State v. Davis*, 336 Or 19, 32, 77 P3d 1111 (2003) (error is harmless if there is "little likelihood" that it affected the jury's verdict). That is, absent the evidence of defendant's acquittals, there is some likelihood that the jury branded defendant as a criminal in the prejudicial manner contemplated by *Smith*, and deemed him not credible for that reason. Accordingly, we must reverse and remand.

Reversed and remanded.