

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SMITH *v.* MASSACHUSETTS

CERTIORARI TO THE APPEALS COURT OF MASSACHUSETTS

No. 03–8661. Argued December 1, 2004—Decided February 22, 2005

Petitioner was tried before a Massachusetts jury on charges related to a shooting, including unlawful possession of a firearm. At the conclusion of the prosecution’s case, petitioner moved for a not-guilty finding on the firearm count because “the evidence [was] insufficient as a matter of law to sustain a conviction,” Mass. Rule Crim. Proc. 25(a). The trial judge granted the motion, finding no evidence to support the requirement of the unlawful possession count that the firearm have a barrel shorter than 16 inches. The prosecution rested, and the trial proceeded on the other counts. Before closing argument, the prosecution argued that under Massachusetts precedent, the victim’s testimony that the defendant shot him with a “pistol” or “revolver” sufficed to establish barrel length. The judge “reversed” her previous ruling, allowing the firearm count to go to the jury. The jury convicted petitioner on all counts. In affirming, the Massachusetts Appeals Court held that the Double Jeopardy Clause was not implicated because the trial judge’s correction of her ruling had not subjected petitioner to a second prosecution or proceeding, and held that Rule 25 did not prohibit the judge from reconsidering her decision.

Held:

1. Submitting the firearm count to the jury plainly subjected petitioner to further “factfinding proceedings going to guilt or innocence,” which are prohibited following a midtrial acquittal by the court, *Smalis v. Pennsylvania*, 476 U. S. 140, 145. The ruling here met the definition of an acquittal consistently used in this Court’s double-jeopardy cases. In *United States v. Martin Linen Supply Co.*, 430 U. S. 564, this Court rejected reasoning identical to the Commonwealth’s claim that jeopardy did not terminate midtrial because the judge’s determination was legal rather than factual. How Massachusetts characterizes the ruling is not binding on this Court. *Smalis*,

Syllabus

supra, at 144, n. 5. What matters is that, as the Massachusetts Rules authorize, the judge “evaluated the [Commonwealth’s] evidence and determined that it was legally insufficient to sustain a conviction.” *Martin Linen, supra*, at 572. Pp. 3–6.

2. The Double Jeopardy Clause forbade the judge to reconsider the acquittal later in the trial. While the Clause may permit States to create a procedure for reconsidering a midtrial determination of insufficiency of proof, Massachusetts had no such procedure at the time of petitioner’s trial. Its Rules allowed only clerical errors, or those “arising from oversight or omission,” to be corrected at any time. Mass. Rule Crim. Proc. 42. A few Commonwealth cases have provided that interlocutory rulings are subject to reconsideration, but these cases, without more, do not extend that principle to a not-guilty finding under Rule 25, which purports not to be interlocutory but to end the case. A seeming dismissal may induce a defendant to present a defense to the undismissed charges when he would be better advised to stand silent. The Double Jeopardy Clause cannot be allowed to become a potential snare for those who reasonably rely on it. If, after a facially unqualified midtrial acquittal on one count, the trial has proceeded to the defendant’s introduction of evidence on the remaining counts, the acquittal must be treated as final, unless the availability of reconsideration has been plainly established by pre-existing rule or case authority expressly applicable to midtrial rulings on the sufficiency of the evidence. Pp. 6–12.

58 Mass. App. 166, 788 N. E. 2d 977, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which STEVENS, O’CONNOR, SOUTER, and THOMAS, JJ., joined. GINSBURG, J., filed a dissenting opinion, in which REHNQUIST, C. J., and KENNEDY and BREYER, JJ., joined.