

## **Criminal Procedure**

### **Double Jeopardy**

*Evans v. Michigan*, 568 U.S. \_\_\_ (Feb. 20, 2013) ([http://www.supremecourt.gov/opinions/12pdf/11-1327\\_7648.pdf](http://www.supremecourt.gov/opinions/12pdf/11-1327_7648.pdf)). When the trial court enters a directed verdict of acquittal based on a mistake of law the erroneous acquittal constitutes an acquittal for double jeopardy purposes barring further prosecution. After the State rested in an arson prosecution, the trial court entered a directed verdict of acquittal on grounds that the State had provided insufficient evidence of a particular element of the offense. However, the trial court erred; the unproven “element” was not actually a required element at all. The Court noted that it had previously held in *Arizona v. Rumsey*, 467 U. S. 203, 211 (1984), that a judicial acquittal premised upon a “misconstruction” of a criminal statute is an “acquittal on the merits . . . [that] bars retrial.” It found “no meaningful constitutional distinction between a trial court’s ‘misconstruction’ of a statute and its erroneous addition of a statutory element.” It thus held that the midtrial acquittal in the case at hand was an acquittal for double jeopardy purposes.

## **Post-Conviction**

### **Retroactivity**

*Chaidez v. United States*, 568 U.S. \_\_\_ (Feb. 20, 2013) ([http://www.supremecourt.gov/opinions/12pdf/11-820\\_j426.pdf](http://www.supremecourt.gov/opinions/12pdf/11-820_j426.pdf)). *Padilla v. Kentucky*, 559 U. S. \_\_\_ (2010) (criminal defense attorneys must inform non-citizen clients of the risks of deportation arising from guilty pleas), does not apply retroactively to cases that became final before *Padilla* was decided. Applying the *Teague* retroactivity analysis, the Court held that *Padilla* announced a new rule. The defendant did not assert that *Padilla* fell within either of the *Teague* test’s exceptions to the anti-retroactivity rule. [Author’s Note: The N.C. Court of Appeals already has held that *Padilla* is not retroactive. *State v. Alshaif*, \_\_\_ N.C. App. \_\_\_, 724 S.E.2d 597 (Feb. 21, 2012)].