

## Fishing For Red Herring

I represented a man in Alamance County who was charged with driving while impaired. Luckily I stay current on the US Supreme Court and North Carolina cases. Recently the United States Supreme Court in Melendez-Diaz decreed that the constitution's requirement that the defendant be allowed to confront the witnesses against him means exactly that: no testimony will be admitted in court without a witness testifying to it. Historically in District Court many documents have been allowed in evidence without a witness; for instance, the chemical analysis affidavit and a roadblock plan.

In this case the State attempted to introduce the roadblock plan without the witness. I objected and handed the Melendez-Diaz opinion up to the court. After looking over the opinion the Court opined that I was correct and that it looked like the Supreme Court had made it necessary to bring a witness in to prove that the plan didn't violate the rules set out in *Michigan v. Sitz*. (That's the case that says DWI roadblocks can be constitutional but only when they are set up and run by the book!) The District Attorney then scrambled but was able to get the witness in.

Now here is the red herring. The District Attorney had not been able to prepare her witness ( it was after 4:30 p.m.!), and so when he testified he said that he had been the supervisor of the roadblock but he had been at the scene and that he had authorized everyone at the roadblock (approximately 30 officers) to make changes as to who was stopped and when traffic would be let through. I argued that was a violation of the roadblock rules set out in *Sitz* and *Indiana v Edmonds*. In *Edmonds* the Court held that there can be no discretion given to officers at the scene as to who will be stopped. That rule was reiterated by the North Carolina Courts in *State v. Rose*. The District Attorney was so focused on getting her witness to court that she forgot the most important issue: showing that the roadblock was set up neutrally, was supervised by someone not on scene, and that officers on scene were not given any discretion.

You see roadblocks are an exception to the general rule that the police have to have a reasonable articulable suspicion that you are about to commit a crime in order to stop you in your car or on the street. Roadblocks are only allowed in very limited circumstances, and the US Supreme Court has opined that they are allowed only if there is a neutral plan based on numbers not based on the judgment of the police officers at the scene as to who to stop. Otherwise the police officers could simply stop all the cars with african american people in white neighborhoods, or all of the hispanic looking people leaving a flea market, and check for drivers licenses and registrations. After a long hearing the judge congratulated me on my presentation, and awarded my client a dismissal of all charges. I think that's a gold medal red herring!