

STATE OF DELAWARE, )  
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 Plaintiff, )  
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 v. ) Cr. ID No. 0710019209  
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 RAMAZAN SAHIN, )  
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 Defendant. )  
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**COMMISSIONER’S REPORT AND RECOMMENDATION THAT  
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF  
SHOULD BE DENIED.**

PARKER, Commissioner

This 22nd day of March 2012, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court as follows:

## **I. INTRODUCTION**

In the subject Rule 61 postconviction motion, Defendant Ramazan Sahin contends that his trial counsel was ineffective because: 1) counsel told the trial judge that Sahin should have accepted a plea offer; and 2) counsel told the trial judge that Sahin was untruthful about his need for an interpreter.

A conviction only weakly supported by the record is more likely to be affected by errors than one with overwhelming record support.<sup>1</sup> *Baker v. State*<sup>2</sup> and *Watson v. State*,<sup>3</sup> are examples of cases only weakly supported by the record. In *Baker* and *Watson*, there was no physical evidence, DNA evidence, and/or other corroborating evidence. Those cases turned on who was more credible the defendant or the complaining witness. Those cases are examples of classic "he said/she said" credibility determinations. Given the closeness of those cases, any error affecting the credibility of the defendant would have an impact on the fact-finder's determination.

On the other hand, in those cases where the conviction is supported by overwhelming evidence of guilt, even serious errors do not warrant granting postconviction relief.<sup>4</sup> The subject case falls in this category of cases. This was not a close case. In this case, Sahin claimed that he never had any contact, let alone sexual contact, with any of the complaining witnesses. Sahin's DNA inside their bodies and the

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<sup>1</sup> *Strickland v. Washington*, 466 U.S. 668, 696 (1984).

<sup>2</sup> *Baker v. State*, 906 A.2d 139 (Del. 2006).

<sup>3</sup> *Watson v. State*, 934 A.2d 901 (Del. 2007).

<sup>4</sup> See, for example, *Scarpa v. DuBois*, 38 F.3d 1 (1<sup>st</sup> Cir. 1994); *United States v. Reiter*, 897 F.2d 639, 645 (2<sup>nd</sup> Cir. 1990); *Wise v. Smith*, 735 F.2d 735, 739 (2<sup>nd</sup> Cir. 1984); *Poindexter v. Mitchell*, 454 F.3d 564, 582 (6<sup>th</sup> Cir. 2006)(even if defense counsel conceded defendant's guilt, in light of the overwhelming evidence establishing defendant's guilt, there was no showing of actual prejudice.)

other overwhelming corroborative evidence established conclusively otherwise. This case did not turn on Sahin's credibility. The evidence establishing Sahin's guilt was overwhelming. The one-sidedness of this case overshadowed counsel's errors. There was no reasonable probability that the outcome of the trial would have been different absent counsel's statements. In this case, the large quantity of corroborating evidence could lead to only one conclusion: that Defendant Sahin sexually assaulted the complaining witnesses.

The court does not condone the comments/statements made by trial counsel. However, given the overwhelming evidence against Sahin, there is no reasonable probability that any rational fact finder could have failed to convict Defendant Sahin. Sahin cannot establish actual prejudice under the facts of this case. Moreover, given the overwhelming, one-sidedness of this case, defense counsel's statements did not create an objective "stigma surrounding the appearance of an inability to assess credibility fairly."<sup>5</sup> There was no objective appearance of prejudice. There was no actual prejudice to Sahin as a result of his counsel's remarks. Sahin's motion for postconviction relief should be denied.

## **II. PROCEDURAL HISTORY**

On October 16, 2007, Defendant Ramazan Sahin was arrested and subsequently indicted on 58 felony offenses including multiple counts of first degree rape and possession of a deadly weapon by a person prohibited.<sup>6</sup> Sahin's original appointed counsel was granted leave to withdraw in December 2008.<sup>7</sup> New counsel entered his

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<sup>5</sup> See, *Sahin v. State*, 7 A.3d 450, 453 (Del. 2010).

<sup>6</sup> Superior Court Docket No. 7.

<sup>7</sup> Superior Court Docket No. 29.

appearance on January 9, 2009.<sup>8</sup> On May 19, 2009, Sahin waived his right to a jury trial.<sup>9</sup>

A six day non-jury trial began on May 21, 2009.<sup>10</sup> The State entered a *nolle prosequi* on all but twenty counts of the indictment prior to the start of trial.<sup>11</sup> The State entered a *nolle prosequi* on an additional count during the trial on May 26, 2009.

On June 1, 2009, the Superior Court judge found Sahin guilty on all the remaining 19 charges.<sup>12</sup> Specifically, the 19 remaining charges included:

**Victim 1- D.D.**<sup>13</sup>

Rape First Degree  
Possession of a Deadly Weapon During the Commission of a Felony

**Victim 2- L.S.**

Rape First Degree  
Possession of a Deadly Weapon During the Commission of a Felony

**Victim 3- S.M.**

Rape First Degree  
Rape First Degree  
Possession of a Deadly Weapon During the Commission of a Felony  
Possession of a Deadly Weapon During the Commission of a Felony

**Victim 4- J.M.**

Rape First Degree  
Rape First Degree  
Possession of a Deadly Weapon During the Commission of a Felony  
Possession of a Deadly Weapon During the Commission of a Felony

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<sup>8</sup> Superior Court Docket No. 35.

<sup>9</sup> Superior Court Docket No. 56.

<sup>10</sup> See, Superior Court Docket No. 70.

<sup>11</sup> See, Superior Court Docket No. 70.

<sup>12</sup> Superior Court Docket No. 70.

<sup>13</sup> The sexual assault victims are all referenced by only their initials.

**Victim 5- L.T.**

Rape First Degree  
Possession of a Deadly Weapon During the Commission of a Felony

**Victim 6- T.P.**

Rape First Degree  
Possession of a Deadly Weapon During the Commission of a Felony

**Victim 7- N.W.**

Rape First Degree  
Possession of a Deadly Weapon During the Commission of a Felony

**Victim 8- A.R.**

Aggravated Menacing

On August 14, 2009, Defendant Sahin was sentenced to life plus 138 years in prison, followed by six months of probation.<sup>14</sup> The Delaware Supreme Court affirmed Sahin's convictions and sentence on appeal.<sup>15</sup>

On March 17, 2011, Defendant Sahin, through new counsel, moved for postconviction relief. In the subject motion, Sahin contends that statements made by trial counsel prejudiced his entitlement to a fair trial.

Before making a recommendation, the record was enlarged by directing Sahin's trial counsel to submit an Affidavit responding to Sahin's ineffective assistance of counsel claims. Thereafter, the State filed a response to the motion. Defendant filed a reply. On February 10, 2012, a hearing was held to further address the issues raised in Sahin's postconviction relief motion.

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<sup>14</sup> Superior Court Docket Nos. 71, 72.

<sup>15</sup> *Sahin v. State*, 7 A.3d 450 (Del. 2010).

### III. FACTS

The subject bench trial involved claims from 8 women claiming they were sexually assaulted by Defendant Sahin.

On October 16, 2007, Defendant Ramazin Sahin was arrested. He was subsequently indicted on multiple counts of first degree rape and other related charges. Sahin was born on March 28, 1985<sup>16</sup>, and was 22 years old at the time of his arrest in October 2007. He is of Turkish decent.<sup>17</sup> He has brown eyes, black hair, and is 5'6" in height and was 130 pounds in weight. In 2007, Sahin lived with his parents and brother in Beck Woods in Delaware, which is on or near Route 896.<sup>18</sup>

Following Sahin's arrest, he was interviewed by the police. Sahin spoke to the police at length in a series of three interviews. All of Sahin's interviews with the police took place on the date of his arrest, October 16, 2007. The first interview was conducted at Delaware State Police Troop 2.<sup>19</sup> During Sahin's first interview with the police he admitted, among other things, to having picked women up, taking them to the canal banks by the C&D Canal, forcing them at knifepoint to have sexual relations with him, and then leaving the women stranded at the canal banks in the dark. The canal banks by

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<sup>16</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007 at pgs. 1-2.

<sup>17</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007 at pg. 1.

<sup>18</sup> May 22, 2009 Trial Transcript, at pg. 22, 80-81; State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007 at pg. 84; State Exhibit 47, Sahin's Third Statement of October 16, 2007; Court Exhibit 2-Transcript of Sahin's Third Interview of October 16, 2007 at pgs. 26-28; June 1, 2009 Trial Transcript, pgs. 15-17.

<sup>19</sup> See, State Exhibit No. 44, Sahin's First Interview on October 16, 2007; Court Exhibit 1- Transcript of Sahin's First Interview of October 16, 2007.

the C&D Canal are located off Summit Bridge, Chesapeake Road area, and consist of dirt roads, with no street lamps or lighting anywhere.<sup>20</sup>

On the day of his arrest, after his first interview with the police, Sahin then accompanied the police to the canal banks. His second interview with the police was conducted at the canal banks where he showed the police, among other things, his various crime scenes.<sup>21</sup> Sahin's third interview with the police was conducted back at Delaware State Police Troop 2.<sup>22</sup> All of these interviews were videotaped and each of these videotaped interviews, as redacted, was shown to the fact-finder, the trial judge, at trial.

During these interviews with the police on October 16, 2007, Sahin explained that he began sexually assaulting women in 2007 and that all of his sexual assaults took place that year.<sup>23</sup> Sahin explained to the police how each of his assaults followed a precise *modus operandi*. He explained that he only assaulted women at the canal banks.<sup>24</sup> He would drive around and pick up women (mostly prostitutes) and then take them to the canal banks.<sup>25</sup> When he reached the canal banks, he would usually make a U-turn so that his car would be facing out.<sup>26</sup> He would then retrieve a knife and force the women to perform sexual acts at knifepoint. After he completed the sexual assaults, he would direct his victims to get out of the car and get something out of his trunk, usually napkins or

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<sup>20</sup> May 26, 2009 Trial Transcript, pgs. 96-97, 127-128.

<sup>21</sup> See, State Exhibit No. 46.

<sup>22</sup> See, State Exhibit No. 47, Sahin's Third Interview on October 16, 2007; Court Exhibit 2- Transcript of Sahin's Third Interview of October 16, 2007.

<sup>23</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007 at pgs. 87-88 (everything started in 2007)

<sup>24</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007 at pgs. 78-79.

<sup>25</sup> See, State Exhibit No. 44, Sahin's First Interview on October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007 at pgs. 56-61, 70-72, 87-88; June 1, 2009 Trial Transcript, at pgs. 20-22, 27-28, 30-31.

<sup>26</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007, pg. 94.

paper towels. He would pop the trunk from the inside of his car.<sup>27</sup> When the women got out of the car, he would drive off leaving them stranded in the dark by the canal.<sup>28</sup>

Sahin told the police that he did not keep track of his sexual assaults,<sup>29</sup> but, of the women he sexually assaulted, he left about 6-7 of them stranded at the canal banks, forcing them to find some way back.<sup>30</sup> In addition, Sahin told the police that on one occasion, after sexually assaulting a woman at the canal banks, he then returned her to the apartment complex where he had picked her up. He also admitted that a few of the women that he took to the canal banks to sexually assault managed to get away and ran from him.<sup>31</sup>

The trial at issue consisted of claims brought by eight women, seven of whom were prostitutes. Each of these women were sexually assaulted at the canal banks between February 2007 and October 2007. Each of these women were picked up by someone fitting Sahin's description, driven to the canal banks, and forced at knifepoint to perform sexual acts. Of the eight women, after they were sexually assaulted, six of them were told to get out of the car to retrieve napkins or paper towels from the assailant's trunk, and when they got out of the car, the assailant drove off leaving them stranded. One of the women managed to free herself at the canal banks and ran away. The last one of the eight women was driven back to the apartment complex from which she was picked up.

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<sup>27</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007, pg.s 70-71, 77, 105-06.

<sup>28</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007, pgs. 105-06.

<sup>29</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007, pg. 73.

<sup>30</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007, at pg. 82.

<sup>31</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007, at pg. 108.



Sahin's defense at trial was that although he sexually assaulted women at the canal banks, he denied ever seeing, nor ever having any sexual contact of any nature whatsoever, with any of the eight complaining witnesses.<sup>32</sup> This was not a consent case. Defendant *never* contended that his sexual relations with the eight women pursuing claims against him were consensual. His defense was that he never had any sexual contact with any of them.

The specifics of the sexual assaults of each of the eight complaining witnesses are discussed below.

**Victim 1- D.D.**

D.D. testified that in February 2007, around 2:00 a.m. in the morning, she was picked up outside her room at the Fairwinds Motel on Route 40 in Bear, Delaware.<sup>33</sup> D.D. was a prostitute. She had consumed a few drinks and had smoked crack cocaine earlier in the evening.<sup>34</sup> D.D. described her assailant as being about 5'5" in height, very short, with dark hair, and dark eyes.<sup>35</sup> He spoke with an accent. He was driving a dark-bluish green van, an Aerostar van.<sup>36</sup> Her assailant drove her to the C&D Canal onto a dirt road in an unlighted area near the Summit Bridge.<sup>37</sup> He made a U-Turn before parking so that his vehicle pointed forward.<sup>38</sup>

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<sup>32</sup> June 1, 2009 Trial Transcript, at pgs. 19, 20-22, 29-30.

<sup>33</sup> May 21, 2009 Trial Transcript, at pgs. 20-25.

<sup>34</sup> May 21, 2009 Trial Transcript, at pgs. 20-22, 26-27.

<sup>35</sup> May 21, 2009 Trial Transcript, at pgs. 19-24.

<sup>36</sup> May 21, 2009 Trial Transcript, at pg. 23.

<sup>37</sup> May 21, 2009 Trial Transcript, at pgs. 27-28.

<sup>38</sup> May 21, 2009 Trial Transcript, at pg. 27.

Her assailant pulled out a knife and told her to get into the backseat of the vehicle. He put the knife close to her neck. He made her perform oral sex on him.<sup>39</sup> He then told her to get out of the vehicle. He pushed her out and drove away.<sup>40</sup>

During the time period of this sexual assault, Defendant Sahin did, in fact, drive a greenish-blue van.<sup>41</sup> It was his father's van.<sup>42</sup> Defendant Sahin, in one of his interviews with the police on the day of his arrest, admitted that he assaulted one woman using his father's minivan. Sahin told the police that after forcing his victim to perform oral sex on him, he directed her to get a napkin from the trunk of his car, and when she got out, he left.<sup>43</sup>

### **Victim 2- L.S.**

On March 24, 2007, late at night, L.S. decided to walk to the gas station to buy cigarettes.<sup>44</sup> The gas station was located at the split of Routes 13 and 40.<sup>45</sup> L.S. was a prostitute but was not working the night of her assault.<sup>46</sup> She had purchased the cigarettes and was walking along Route 13 near the Llangollen Apartments on her way back to her boyfriend's mother's house.<sup>47</sup> A blue minivan pulled up and the driver asked L.S. if she wanted a ride. She did not. The minivan then pulled in front of her, cutting off her path, and the driver got out. The driver was holding a knife in his left hand and

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<sup>39</sup> May 21, 2009 Trial Transcript, at pgs. 29-36.

<sup>40</sup> May 21, 2009 Trial Transcript, at pgs. 37-38.

<sup>41</sup> State Exhibit 47, Sahin's Third Interview of October 16, 2007; Court Exhibit 2-Transcript of Sahin's Third Interview of October 16, 2007, at pgs. 2-3, 7, 26; May 21, 2009 Trial Testimony, pgs. 147-48 (Defendant's father owned a 2002 Ford Windstar spruce metallic green van).

<sup>42</sup> State Exhibit 47, Sahin's Third Interview of October 16, 2007; Court Exhibit 2-Transcript of Sahin's Third Interview of October 16, 2007, at pgs. 7, 26; May 21, 2009 Trial Testimony, pgs. 147-48.

<sup>43</sup> State Exhibit 47, Sahin's Third Interview of October 16, 2007; Court Exhibit 2-Transcript of Sahin's Third Interview of October 16, 2007, at pgs. 2-4.

<sup>44</sup> May 21, 2009 Trial Transcript, at pgs. 64-65.

<sup>45</sup> May 21, 2009 Trial Transcript, at pg. 65.

<sup>46</sup> May 21, 2009 Trial Transcript, at pgs. 81-82.

<sup>47</sup> May 21, 2009 Trial Transcript, at pg. 66, 79-80.

ordered L.S. into the minivan.<sup>48</sup> L.S. complied. L.S. described her assailant as a Middle Eastern male with a thick accent, and black short, military-style hair. He was cleanly shaven and about 23-30 years of age.<sup>49</sup>

The assailant drove onto a bumpy road, stopped, and turned the car around.<sup>50</sup> The assailant ordered L.S. into the back seat where he anally raped her.<sup>51</sup> The assailant ejaculated.<sup>52</sup> The assailant drove L.S. back to the area from which he had abducted her, but forced her to perform oral sex along the way.<sup>53</sup>

L.S.'s boyfriend, who had become concerned when she had not returned from the gas station, went out looking for her. He found her by the Llangollen Apartments. She told him she had just been raped. He called 911 and notified the police of her sexual assault.<sup>54</sup>

The day of her assault, L.S. went to Christiana Hospital where a rape examination was performed and a rape kit was prepared. A S.A.N.E. (sexual-assault nurse examiner) evaluation and report was performed.<sup>55</sup> L.S. gave statements to the police on the day of her assault and then again 6 days later.<sup>56</sup>

As to L.S.'s assault, there were a few discrepancies. L.S. was not able to identify Defendant Sahin as her assailant at trial. Apparently, L.S. suffers from a disability which includes memory problems.<sup>57</sup> L.S. did, however, testify that the photograph of Defendant Sahin which was marked as State's Exhibit 8 was a photograph of the man that raped

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<sup>48</sup> May 21, 2009 Trial Transcript, at pgs. 67-69.

<sup>49</sup> May 21, 2009 Trial Transcript, at pgs. 160-61.

<sup>50</sup> May 21, 2009 Trial Transcript, at pgs. 71-73.

<sup>51</sup> May 21, 2009 Trial Transcript, at pgs. 75-76.

<sup>52</sup> May 21, 2009 Trial Transcript, at pg. 77.

<sup>53</sup> May 21, 2009 Trial Transcript, at pgs. 78-79.

<sup>54</sup> May 21, 2009 Trial Transcript, at pgs. 83-84; 92-100.

<sup>55</sup> State's Exhibit 3-L.S. SANE report; May 21, 2009 Trial Transcript at pg. 84.

<sup>56</sup> May 21, 2009 Trial Transcript, at pgs. 140-42; May 29, 2007 Trial Transcript, at pg. 28.

<sup>57</sup> May 21, 2009 Trial Transcript, at pg. 163.

her.<sup>58</sup> There was also an issue as to whether L.S. said that her assailant was driving a blue mini-van or a blue station wagon. On the 911 call to police, L.S.'s boyfriend told the dispatcher that the assailant was driving a blue station wagon.<sup>59</sup> L.S. was interviewed by the police on the day of the assault, March 24, 2007, at Christiana Hospital and then again six days later, on March 30, 2007, at the police station.<sup>60</sup> L.S. told Detective David Myers that her assailant was driving a blue mini-van.<sup>61</sup>

As previously stated, during the time period of L.S.'s sexual assault, Defendant Sahin was driving his father's blue/green van.<sup>62</sup> Moreover, Defendant Sahin admitted to the police during his interview after his arrest, that one of the women he picked up and sexually assaulted at the canal banks, he returned to the apartment complex where he picked her up at.<sup>63</sup> He admitted that he was driving his father's minivan at the time of this assault and that he picked this woman up near a gas station at the Routes 13 and 40 split. He admitted that he forced the woman at knifepoint to perform oral and have anal sex. He then took her back to the apartment complex where he picked her up.<sup>64</sup>

The discrepancies and L.S.'s memory issues could possibly have presented an issue as to whether Sahin was her assailant, were it not for the fact that Sahin's DNA was found inside L.S.'s body on the day of her assault.<sup>65</sup> The probability of finding an

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<sup>58</sup> May 21, 2009 Trial Transcript, at pg. 171.

<sup>59</sup> State's Exhibit No. 1-L.S. 911 call.

<sup>60</sup> May 21, 2009 Trial Transcript, at pgs. 140-42; May 29, 2007 Trial Transcript, at pg. 28.

<sup>61</sup> May 29, 2007 Trial Transcript, at pg. 28.

<sup>62</sup> State Exhibit 47, Sahin's Third Interview of October 16, 2007; Court Exhibit 2-Transcript of Sahin's Third Interview of October 16, 2007 at pgs. 2-3, 7, 26; May 21, 2009 Trial Testimony, pgs. 147-48(Defendant's father owned a 2002 Ford Windstar spruce metallic green van).

<sup>63</sup> State Exhibit 47, Sahin's Third Interview of October 16, 2007; Court Exhibit 2-Transcript of Sahin's Third Interview of October 16, 2007, at pgs. 3-5, 8-11.

<sup>64</sup> State Exhibit 47, Sahin's Third Interview of October 16, 2007; Court Exhibit 2-Transcript of Sahin's Third Interview of October 16, 2007, at pgs. 3-5, 8-11.

<sup>65</sup> State's Exhibit 5-DNA Unit Analysis Report; May 26, 2009 Trial Transcript, at pgs. 10-14.

unrelated individual whose DNA profile matched Defendant Sahin's is so infinitesimal, it is virtually nonexistent.<sup>66</sup>

Sahin's DNA inside L.S.'s body on the day of her sexual assault, where Sahin contended he never had any sexual contact of any nature whatsoever with L.S. and denied ever seeing her before in his life,<sup>67</sup> dispositively narrowed the class of possible assailants to one: Defendant Sahin.

### **Sahin's Car**

On or about April 16, 2007, after the sexual assaults of the first two victims (D.D.- sexually assaulted February 2007 and L.S.- sexually assaulted March 24, 2007), Sahin purchased a black two-door Honda Prelude.<sup>68</sup> The assaults of the other six victims all occurred after April 2007. Each of these victims identified their respective assailant as driving a black two door car. A couple of the victims even identified their assailant as driving a two-door black Honda Prelude.<sup>69</sup>

### **Victim 3- S.M.**

On May 6, 2007, around 11:00 p.m., S.M., a prostitute, was standing outside of Hak's Sports Bar on Route 13 looking for a client. A man in a 2 door, black sports car, asked if she was willing to go to his home near Route 896 for \$50. She agreed.<sup>70</sup> The man was Indian or Iranian, and looked fairly young maybe in his late 20s or early 30s.<sup>71</sup> The two door, black sports car, had a grayish blue interior, with a blue and red pattern.<sup>72</sup> Instead of going to his house, the man drove her down by the canal on a dirt road. He

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<sup>66</sup> State's Exhibit 5; May 26, 2009 Trial Transcript, at pgs. 17-19.

<sup>67</sup> June 1, 2009 Trial Transcript, pgs. 29-30.

<sup>68</sup> May 22, 2009 Trial Transcript, at pgs. 82-85; State's Exhibit 10- Sahin's Temporary Registration.

<sup>69</sup> Complaining Witness Four-, J.M.-May 22, 2009 Trial Transcript. pgs. 15-19, 82; Complaining Witness Five, L.T.- May 22, 2009 Trial Transcript, pgs. 58-59, 63-64.

<sup>70</sup> May 21, 2009 Trial Transcript, pgs. 173-175; May 22, 2009 Trial Transcript, pg. 78.

<sup>71</sup> May 21, 2009 Trial Transcript, pg. 176.

<sup>72</sup> May 21, 2009 Trial Transcript, pgs. 182-183.

pulled out a knife and forced her to perform oral sex on him.<sup>73</sup> She told him that she was HIV positive so he would not force her to have sexual intercourse with him.<sup>74</sup> After he forced her to perform oral sex on him, he told her to get out of the car and get paper towels from his trunk. When she got out of the car, he drove away leaving her at the canal banks.<sup>75</sup> She called 911 and told the dispatcher that she was left stranded at the canal banks; she did not report the rape.<sup>76</sup> The police responded to her 911 call and found her underneath the Summit Bridge.<sup>77</sup>

S.M. was interviewed by the police about the sexual assault on October 5, 2007, 11 days before Defendant Sahin was arrested.<sup>78</sup>

S.M.'s assailant told her he lived near Route 896.<sup>79</sup> Defendant Sahin was living in Beck Woods, which is on or near Route 896.<sup>80</sup> Defendant Sahin was driving a black 2 door sports car during this time period. The interior of Defendant Sahin's car was grayish blue.<sup>81</sup> Defendant Sahin had draped a Turkish flag on the back seat of his car and the flag was red and white.<sup>82</sup>

#### **Victim 4- J.M.**

On May 23, 2007, J.M., a prostitute, was raped. J.M. left a bar on Route 13 around midnight and was driving home with her boyfriend when they ran out of gas.<sup>83</sup>

They stopped at a gas station but did not have any money to purchase gas. She decided

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<sup>73</sup> May 21, 2009 Trial Transcript, pgs. 177-182.

<sup>74</sup> May 21, 2009 Trial Transcript, pgs. 183.

<sup>75</sup> May 21, 2009 Trial Transcript, pgs. 183-185.

<sup>76</sup> State Exhibit 9- S.M. 911 call.

<sup>77</sup> State Exhibit 9- S.M. 911 call; May 21, 2009 Trial Transcript, pgs. 186-187; May 22, 2009 Trial Transcript, pg. 78.

<sup>78</sup> May 22, 2009 Trial Transcript, pg. 78.

<sup>79</sup> May 21, 2009 Trial Transcript, pg. 175.

<sup>80</sup> State Exhibit 44 Sahin's First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin's First Interview of October 16, 2007 at pg. 89.

<sup>81</sup> See, State Exhibit Nos. 11, 14.

<sup>82</sup> State Exhibit Nos. 24, 26; June 1, 2009 Trial Transcript, pg. 30.

<sup>83</sup> May 22, 2009 Trial Transcript, pgs. 11-16, 34-35.

to walk (or hitchhike) to a friend's house to get the gas money.<sup>84</sup> As she was walking north along Route 13, a man in a black car with temporary tags pulled up and the driver offered her a ride. J.M. got in the car and asked to be taken to the Beaver Brook Apartments about a mile down the road.<sup>85</sup> Instead, the driver made a U-turn on Route 13 and started heading south. J.M. asked him where he was going. He reached down by the driver's side door and pulled out a knife. The assailant put the knife to her throat.<sup>86</sup> The assailant told J.M. he was taking her to his home in Beck Woods.<sup>87</sup>

Instead of taking her to his home in Beck Woods, J.M. stated her assailant drove to a dirt road by the canal and parked at an area at the canal banks where there was white highway pylons, like the ones they use to block the lanes at a construction site.<sup>88</sup> There was graffiti on the pylons.<sup>89</sup> The assailant did a quick U-Turn so that the headlights of the car would face out the direction he drove in.<sup>90</sup> The assailant forced J.M. to perform oral sex and had vaginal intercourse with her. The assailant ejaculated.<sup>91</sup> Afterward, the assailant told her to get out of the car and get a paper towel from the trunk of his car. As soon as she got out, the assailant drove off.<sup>92</sup>

J.M. walked until she saw a development and then called 911.<sup>93</sup> J.M. told the 911 operator, among other things, that her assailant was driving a Honda or a Hyundai and that he smoked Marlboro Lights.<sup>94</sup>

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<sup>84</sup> May 22, 2009 Trial Transcript, pgs. 15-16.

<sup>85</sup> May 22, 2009 Trial Transcript, pgs. 17-19.

<sup>86</sup> May 22, 2009 Trial Transcript, pgs. 19-21.

<sup>87</sup> May 22, 2009 Trial Transcript, pgs. 21-23.

<sup>88</sup> May 22, 2009 Trial Transcript, pgs. 23-24.

<sup>89</sup> May 22, 2009 Trial Transcript, pgs. 23-24.

<sup>90</sup> May 22, 2009 Trial Transcript at pg. 24.

<sup>91</sup> May 22, 2009 Trial Transcript, pgs. 24-29.

<sup>92</sup> May 22, 2009 Trial Transcript, pg. 29.

<sup>93</sup> May 22, 2009 Trial Transcript, pgs. 31-32.

<sup>94</sup> State's Exhibit 2- 911 call of J.M.

Consequently, J.M. identified her assailant as driving a “2 door black car either a Honda or Hyundai with temporary tags.” Sahin was driving a 2 door black Honda with temporary tags on his car at the time of this assault.

Once the police responding to her 911 call located her, they took her to Christiana Hospital where she was examined and a S.A.N.E. evaluation and report was performed.<sup>95</sup> Sahin’s DNA was found inside J.M.’s body on the day of her assault.<sup>96</sup> The probability of Defendant Sahin’s DNA profile matching an unrelated individual is, as noted above, so infinitesimal as to be, for all practical purposes, nonexistent.<sup>97</sup>

J.M. identified Defendant Sahin as her rapist at trial.<sup>98</sup>

J.M.’s assailant told J.M. that he lived at Beck Woods.<sup>99</sup> Defendant Sahin lived at Beck Woods.<sup>100</sup> The assailant was driving a black car (either a Honda or a Hyundai) with temporary tags.<sup>101</sup> Sahin during the time at issue was driving a black Honda Prelude with temporary tags.<sup>102</sup> J.M. told the 911 operator that her assailant smoked Marlboro Lights.<sup>103</sup> Defendant Sahin smoked Marlboro Lights, among other types of cigarettes.<sup>104</sup> J.M. described her assailant on the 911 call as being of Mexican decent, speaking with an accent, having dark hair, a goatee and brown eyes.<sup>105</sup> She further described him as being

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<sup>95</sup> May 22, 2009 Trial Transcript, pgs. 33-34; State Exhibit 4-S.A.N.E. report of J.M.

<sup>96</sup> State’s Exhibit 6-DNA Unit Analysis Report; May 26, 2009 Trial Transcript, at pgs. 20-26.

<sup>97</sup> See, State’s Exhibit 6-DNA Unit Analysis Report; May 26, 2009 Trial Transcript, at pgs. 22-24.

<sup>97</sup> See, State’s Exhibit 6-DNA Unit Analysis Report; May 26, 2009 Trial Transcript, at pgs. 22-24.

<sup>98</sup> May 22, 2009 Trial Transcript, pg. 35-36.

<sup>99</sup> May 22, 2009 Trial Transcript, at pg. 22.

<sup>100</sup> May 22, 2009 Trial Transcript, at pg. 81; State’s Exhibit 44-Sahin’s October 16, 2007 Interview with Police; Court Exhibit 1-Transcript of the October 16, 2007 Interview, at pg. 26; June 1, 2009 Trial Transcript at pgs. 15-16.

<sup>101</sup> May 22, 2009 Trial Transcript, at pg. 82; <sup>101</sup> State Exhibit 44, Sahin’s First Interview of October 16, 2007; Court Exhibit 1-Transcript of Sahin’s First Interview of October 16, 2007 at pg. 77.

<sup>102</sup> May 22, 2009 Trial Transcript, at pg. 82; State’s Exhibit 10- Sahin’s Temporary Registration.

<sup>103</sup> State’s Exhibit 2- 911 call of J.M.

<sup>104</sup> State Exhibit 44, Sahin’s First Interview of October 16, 2007; Court Exhibit 1- Transcript of Sahin’s First Interview of October 16, 2007, at pg. 98(Sahin admitted smoking Newport and Marlboro Lights).

<sup>105</sup> May 22, 2009 Trial Transcript, pgs. 29-30; State Exhibit 2- J.M. 911 call.



5'6" in height, and about 26-27 years old at the oldest.<sup>106</sup> She said that her assailant wore white sneakers. Sahin wore white sneakers.<sup>107</sup>

The area at the canal banks where J.M. was sexually assaulted is referred to as the horseshoe. This area consists of cement pylons with graffiti on them.<sup>108</sup> The area where J.M. described she was sexually assaulted matched the area that Sahin showed the police where he sexually assaulted women during his crime scene interview on the day of his arrest.

Sahin's defense was that he never had any sexual contact whatsoever with J.M. Sahin's DNA, along with the overwhelming corroborative evidence, established conclusively otherwise.

#### **Victim 5- L.T.**

At the end of August 2007 at around 4-5 a.m., L.T., a prostitute, was standing by a bus stop on Route 9 outside the Rosegate community.<sup>109</sup> She had consumed crack cocaine and heroin earlier in the day.<sup>110</sup> A black 2 door Honda Prelude pulled into the neighborhood.<sup>111</sup> The driver offered her \$60 for a "blow job" so she got into the car.<sup>112</sup> L.T. fell asleep. Before she fell asleep, she asked the assailant how old he was and he responded that he was 22 or 23.<sup>113</sup> Defendant Sahin at the time was 22. The assailant

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<sup>106</sup>State Exhibit 2- J.M. 911 call.

<sup>107</sup> State Exhibit 47, Sahin's Third Statement of October 16, 2007; Court Exhibit 2-Transcript of Sahin's Third Statement of October 16, 2007, at pg. 14.

<sup>108</sup> May 26, 2009 Trial Transcript, pg. 97, 111; State Exhibits 13, 16, 17, 18, 31.

<sup>109</sup> May 22, 2009 Trial Transcript, pgs. 56-58.

<sup>110</sup> May 22, 2009 Trial Transcript, pgs. 56-58.

<sup>111</sup> May 22, 2009 Trial Transcript, pgs. 58-59, 63-64.

<sup>112</sup> May 22, 2009 Trial Transcript, pgs. 58-61.

<sup>113</sup> May 22, 2009 Trial Transcript, pg. 62.

also told her that his girlfriend had left the country.<sup>114</sup> Defendant Sahin's girlfriend had left the country and returned to Turkey.<sup>115</sup>

When L.T. woke up they were at the canal banks.<sup>116</sup> Her assailant had a Turkish accent.<sup>117</sup> She knew he was Turkish because she had been around Turkish people and recognized the accent.<sup>118</sup> He pulled a knife, pointed it at her neck, and vaginally raped her.<sup>119</sup> After he had sexually assaulted L.T., she asked her assailant for some napkins and he told her to get napkins from the trunk of his car. When she got out of the car, the assailant drove off.<sup>120</sup> L.T. spoke to the police about her sexual assault on October 13, 2007, 3 days before Defendant Sahin was arrested.<sup>121</sup> L.T. identified Defendant Sahin as her rapist at trial.<sup>122</sup>

Defendant Sahin is, in fact, Turkish. He was, in fact, driving a 2 door black Honda Prelude at the time at issue. He was 22 years old on the day L.T. was assaulted. Sahin had, in fact, broken up with his girlfriend and his girlfriend went back to Turkey.<sup>123</sup> Moreover, Sahin acknowledged that he told one of the women he sexually assaulted that he had broken up with his girlfriend and that she returned to Turkey.<sup>124</sup>

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<sup>114</sup> May 22, 2009 Trial Transcript, pgs. 62-63.

<sup>115</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1- Transcript of Sahin's First Interview of October 16, 2007, at pg. 28 (broke up with girlfriend about 6-7 months ago and she went back to Turkey); at pg. 100(broke up with girlfriend about 1-2 years ago and she went back to Turkey).

<sup>116</sup> May 22, 2009 Trial Transcript, pgs. 60-61, 65.

<sup>117</sup> May 22, 2009 Trial Transcript, pgs. 62-63.

<sup>118</sup> May 22, 2009 Trial Transcript, pg. 63.

<sup>119</sup> May 22, 2009 Trial Transcript, pgs. 63-66.

<sup>120</sup> May 22, 2009 Trial Transcript, pgs. 67-69.

<sup>121</sup> May 22, 2009 Trial Transcript, pg. 78.

<sup>122</sup> May 22, 2009 Trial Transcript, pg. 70.

<sup>123</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1- Transcript of Sahin's First Interview of October 16, 2007, at pg. 28 (broke up with girlfriend about 6-7 months ago and she went back to Turkey); at pg. 100(broke up with girlfriend about 1-2 years ago and she went back to Turkey).

<sup>124</sup> State Exhibit 44, Sahin's First Interview of October 16, 2007; Court Exhibit 1- Transcript of Sahin's First Interview of October 16, 2007, at pg. 28, 100.

### **Victim 6- T.P.**

On August 24, 2007, T.P., a prostitute, was “hanging out” at a bus stop on New Castle Avenue.<sup>125</sup> A car pulled up around 9:00 p.m. and the driver offered her \$200 to go to his house.<sup>126</sup> She described the car as a two-door dark color, maybe black, hatchback. The back windows were tinted. There was something hanging on the rear view mirror, a little string “with, like, a Mexican, or something sign. . .”<sup>127</sup>

T.P. got into the assailant’s car and fell asleep.<sup>128</sup> She awoke when the car stopped. The assailant pulled out a knife from the driver’s door. He then raped her vaginally and anally.<sup>129</sup> Her assailant ordered her out of the car and tried to push her out.<sup>130</sup> Her assailant told her to get his wallet from the trunk of his car.<sup>131</sup> When T.P. got out, her assailant threw her pocketbook out of the car and sped off.<sup>132</sup> She walked along the canal banks. She finally spotted a man in a boat and asked him to call 911.<sup>133</sup>

Detective Bartkowski confirmed that the 911 call was made on August 24, 2007 at 5:56 a.m. T.P. was found at the north side of the C&D Canal, at the canal banks, about 1 mile west of Route 896.<sup>134</sup> T.P. told the police that her assailant appeared Mexican.<sup>135</sup> T.P. did not immediately report the rape because she was scared and embarrassed and she did not want her family and friends to know she was a prostitute.<sup>136</sup> T.P. identified Sahin

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<sup>125</sup> May 27, 2009 Trial Transcript, pgs. 4-5.

<sup>126</sup> May 27, 2009 Trial Transcript, pgs. 6-10.

<sup>127</sup> May 27, 2009 Trial Transcript, pg. 26.

<sup>128</sup> May 27, 2009 Trial Transcript, pgs. 6-10.

<sup>129</sup> May 27, 2009 Trial Transcript, pgs. 10-23.

<sup>130</sup> May 27, 2009 Trial Transcript, pgs. 23-24.

<sup>131</sup> May 27, 2009 Trial Transcript, pg. 35.

<sup>132</sup> May 27, 2009 Trial Transcript, pgs. 24.

<sup>133</sup> May 27, 2009 Trial Transcript, pg. 25.

<sup>134</sup> May 27, 2009 Trial Transcript, pgs. 44-45.

<sup>135</sup> May 27, 2009 Trial Transcript, pgs. 41-42.

<sup>136</sup> May 27, 2009 Trial Transcript, pgs. 27-28, 31-32.

as her rapist at trial.<sup>137</sup> When asked at trial if she remembered what the assailant looked like, she responded: “exactly like him [referring to Defendant Sahin], but now he’s got more hair around his face.”<sup>138</sup>

After Defendant Sahin’s arrest on October 16, 2007, his car was impounded. The photographs show that there were hangings from his rear view mirror.<sup>139</sup> The necklaces hanging from the rear view mirror had a symbol on it that appeared to be the same symbol that was on the Turkish flag draped over the back seat of the vehicle.<sup>140</sup>

### **Victim 7- N.W.**

Late in September 2007, N.W., a prostitute was walking along the road in Elkton, Maryland looking for business. It was between 2:00 a.m. and 4:00 a.m.<sup>141</sup> A small, two-door, black car pulled up.<sup>142</sup> The driver offered N.W. \$200 to go with him to his parents house on Route 896 in Delaware.<sup>143</sup> Her assailant told her he lived on Route 896 with his parents.<sup>144</sup> Sahin lived on Route 896 with his parents. After she got into the car, her assailant told her that he changed his mind about going to his house and instead took her to a dirt road in a wooded area.<sup>145</sup> He drove all the way up the dirt road and made a U-turn so that he would be facing back out. He then stopped the car and turned off the headlights.<sup>146</sup> N.W. demanded the money, but her assailant told her that he did not have any money.<sup>147</sup> Instead, the assailant pulled a knife from the driver’s side door and forced

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<sup>137</sup> May 27, 2009 Trial Transcript, pg. 27.

<sup>138</sup> May 27, 2009 Trial Transcript, pgs. 26-27.

<sup>139</sup> State Exhibit Nos. 24, 25, 26.

<sup>140</sup> May 26, 2009 Trial Transcript, pgs. 114-115; State Exhibit 25, 26.

<sup>141</sup> May 26, 2009 Trial Transcript, pgs. 33-37.

<sup>142</sup> May 26, 2009 Trial Transcript, pg. 34.

<sup>143</sup> May 26, 2009 Trial Transcript, pg. 35.

<sup>144</sup> May 26, 2009 Trial Transcript, pg. 37.

<sup>145</sup> May 26, 2009 Trial Transcript, pgs. 33-37.

<sup>146</sup> May 26, 2009 Trial Transcript, pg. 37.

<sup>147</sup> May 26, 2009 Trial Transcript, pgs. 37-38.

her to perform oral sex on him.<sup>148</sup> She complied. He then forced her to take her pants off and get on top of him. She complied.<sup>149</sup>

After sexually assaulting N.W., her assailant told her to get out of the car and get him paper towels. He popped the trunk from the inside of the car.<sup>150</sup> As soon as she got out and started to walk to the back of the car, the assailant drove off.<sup>151</sup> N.W. did not know where she was, but knew she was by the water on a gravel road with no lights. After walking for a couple of hours, N.W. got to a Dunkin' Donuts about 6:00 a.m. or 7:00 a.m.

On October 10, 2007, before Defendant Sahin was identified and arrested six days later (October 16, 2007), N.W. was interviewed by the police.<sup>152</sup> She described her assailant before his identity became known.<sup>153</sup> N.W. described her assailant's car as a 2 door, black car that had a neon light and a stick shift.<sup>154</sup> Sahin's car had a stick shift.<sup>155</sup> She described her assailant as Turkish, Iraq or Arabian. He had short, low-cut dark hair, an olive complexion and was in his mid twenties.<sup>156</sup> At trial, she identified Defendant Sahin as her rapist.<sup>157</sup>

### **Victim 8- A.R.**

On September 30, 2007, at around 2:00 a.m., A.R., who had been drinking, got in an argument with her husband. A.R. decided to leave her brother's house in Glasgow, Delaware, and walk to her mother's house in Chesapeake City, Maryland, or at least to a

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<sup>148</sup> May 26, 2009 Trial Transcript, pgs. 39-42.

<sup>149</sup> May 26, 2009 Trial Transcript, pgs. 39-43.

<sup>150</sup> May 26, 2009 Trial Transcript, pgs. 43-44.

<sup>151</sup> May 26, 2009 Trial Transcript, pgs. 44-45.

<sup>152</sup> May 26, 2009 Trial Transcript, pgs. 103-04.

<sup>153</sup> May 26, 2009 Trial Transcript, pgs. 103-04.

<sup>154</sup> May 26, 2009 Trial Transcript, pg. 46.

<sup>155</sup> State Exhibit No. 11.

<sup>156</sup> May 26, 2009 Trial Transcript, pgs. 46-47, 56.

<sup>157</sup> May 26, 2009 Trial Transcript, pgs. 47-48.

location where she could call her mother without incurring long distance fees.<sup>158</sup> A.R. had a cell phone with her but did not have any minutes remaining on the phone.<sup>159</sup> As she was walking along Route 40, a little black, 2 door car pulled up and the driver asked if she wanted a ride.<sup>160</sup> The driver was a man in his mid 20's, with olive skin, dark hair which was cut short on top.<sup>161</sup> A.R. accepted the ride. The assailant told her that he had to stop at his house before taking her to Chesapeake City.<sup>162</sup> Instead, the assailant drove down a dark road by the C& D Canal, turned around, and parked.<sup>163</sup> A.R. tried to get out of the car, but the assailant grabbed her shirt.<sup>164</sup> He then pulled out a knife and demanded that she take her clothes off. He also ordered her to perform oral sex.<sup>165</sup> While trying to escape she hit her assailant with the car door to make him let go of her shirt so that she could run and get away.<sup>166</sup> A.R. managed to free herself and she ran into the woods.<sup>167</sup> She had her cell phone and called 911 and reported the attempted assault. The police eventually found her in the woods.<sup>168</sup>

At trial, A.R. identified Defendant Sahin as her assailant.<sup>169</sup>

Detective Mary Bartkowski from the Delaware State Police confirmed that A.R. placed a 911 call from her cell phone on Sunday, September 30, 2007 at 3:15 a.m.<sup>170</sup>

Defendant Sahin admitted that a few of the women he tried to sexually assault managed to get away and ran from him.<sup>171</sup> Defendant also admitted that he picked up a

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<sup>158</sup> May 26, 2009 Trial Transcript, pgs. 59-61.

<sup>159</sup> May 26, 2009 Trial Transcript, pg. 62.

<sup>160</sup> May 26, 2009 Trial Transcript, pgs. 62-63, 70-72.

<sup>161</sup> May 26, 2009 Trial Transcript, pgs. 70-72.

<sup>162</sup> May 26, 2009 Trial Transcript, pgs. 63-64.

<sup>163</sup> May 26, 2009 Trial Transcript, pgs. 64-65.

<sup>164</sup> May 26, 2009 Trial Transcript, pg. 65.

<sup>165</sup> May 26, 2009 Trial Transcript, pgs. 65-70.

<sup>166</sup> May 26, 2009 Trial Transcript, pgs. 67-68, 77-78.

<sup>167</sup> May 26, 2009 Trial Transcript, pg. 70.

<sup>168</sup> May 26, 2009 Trial Transcript, pgs. 70-71.

<sup>169</sup> May 26, 2009 Trial Transcript, pgs. 72-73.

<sup>170</sup> May 26, 2009 Trial Transcript, pgs. 95-96.

woman on Route 40 in Maryland that was “legitimate looking” (A.R. was not a prostitute) and took her to the canal banks. The woman closed the door on his arm and hurt his arm.<sup>172</sup>

### **Police Surveillance Leading to Sahin’s Arrest**

By October 2007, the Delaware State Police, Governor’s Task Force, realized there was an assailant picking up women (mostly prostitutes), taking them to the canal banks, forcing them at knifepoint to perform sexual acts, and then leaving them stranded at the canal banks.<sup>173</sup> The police reviewed the 911 tapes of the women who reported being left stranded at the canal banks but had not reported being sexually assaulted, and continued to investigate if there were additional unreported sexual assaults.

Complaining Witness Three, S.M., who had called 911 the night she was sexually assaulted and reported that she was left stranded at the canal banks, came forward on October 5, 2007 (11 days before Sahin was arrested) and told the police the details about her sexual assault.<sup>174</sup> Complaining Witness Five, L.T., came forward on October 13, 2007 (3 days before Sahin was arrested), and told the police the details about her sexual assault.<sup>175</sup> Complaining Witness Seven, N.W., came forward on October 10, 2007 (6 days before Sahin was arrested) and told the police the details about her sexual assault at the canal banks.<sup>176</sup>

By October 2007, the Delaware State Police set up surveillance at the canal banks.<sup>177</sup> On October 16, 2007, Detective Dudzinski, Detective Popp, and Detective Eric

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<sup>171</sup> State Exhibit 44, Court Exhibit 1, pg. 108.

<sup>172</sup> State Exhibit 44, Court Exhibit 2, pgs. 67-70.

<sup>173</sup> May 26, 2009 Trial Transcript, pgs. 108-110.

<sup>174</sup> May 22, 2009 Trial Transcript, pg. 77-78.

<sup>175</sup> May 22, 2009 Trial Transcript, pgs. 69-70, 77-78.

<sup>176</sup> May 26, 2009 Trial Transcript, pgs. 103-04.

<sup>177</sup> May 22, 2009 Trial Transcript, pg. 84; May 26, 2009 Trial Transcript, pgs. 83-84.

T. Houston were conducting the surveillance.<sup>178</sup> The police were looking for a person fitting Sahin's description, driving a car fitting the description of the car that Sahin was driving, with knives in the car, and most likely having a prostitute as a passenger.<sup>179</sup>

On October 16, 2007, the police stopped a black Honda Prelude with Delaware tags at the canal banks.<sup>180</sup> Defendant Sahin was driving the car and a female prostitute, who Sahin said he met in Maryland that evening, was in the front passenger seat.<sup>181</sup>

On October 16, 2007, when he was stopped by the police, Sahin told that the police officers that he was lost.<sup>182</sup> Once the police became aware that the female passenger was a prostitute everything started adding up. Sahin fit the profile of the suspect, his car fit the profile of the assailant's car, (after the car was impounded) knives were found in his car, and his female passenger was a prostitute.<sup>183</sup>

Sahin was arrested and taken into custody. His vehicle, a 2001 Honda Prelude, was also seized. It was towed to Delaware State Police Troop 2.<sup>184</sup>

After being taken into custody on October 16, 2007, Sahin was interviewed by the Delaware State Police. He was first interviewed at the Interview Room at Delaware State Police Troop 2, Newark, Delaware by Detectives Mary Bartkowski and Timothy Harach.<sup>185</sup> Following that first interview with the Delaware State Police at Troop 2, on the same day as his arrest, October 16, 2007, Sahin then accompanied the Delaware State Police to the canal banks where he showed the police the areas where he committed his

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<sup>178</sup> May 26, 2009 Trial Transcript, pgs. 85-86.

<sup>179</sup> May 26, 2009 Trial Transcript, pgs. 91-92; May 22, 2009 Trial Transcript, pgs. 90-91.

<sup>180</sup> May 26, 2009 Trial Transcript, pgs. 88-90.

<sup>181</sup> May 22, 2009 Trial Transcript, pgs. 84-86; May 26, 2009 Trial Transcript, pgs. 89-92.

<sup>182</sup> May 26, 2009 Trial Transcript, pg. 91.

<sup>183</sup> May 26, 2009 Trial Transcript, pgs. 90-92.

<sup>184</sup> May 26, 2009 Trial Transcript, pgs. 92-93, 128-29; May 22, 2009 Trial Transcript, pg. 84.

<sup>185</sup> State Exhibit 44; Court Exhibit 1; May 26, 2009 Trial Transcript, pg. 129.



sexual assaults.<sup>186</sup> Sahin was then brought back to the Interview Room at Delaware State Police Troop 2 where he was interviewed a third time. This time he was interviewed by Detective David Myers.<sup>187</sup> All of these interviews were videotaped.

As previously discussed, once Sahin was taken into custody, he admitted to the police that he sexually assaulted women at knifepoint at the canal banks. He admitted to having committed assaults in the same precise manner, at the same location, and in the same way as the complaining witnesses reported they were assaulted.

### **Sahin's Statements**

At trial, Sahin described his arrest on October 16, 2007 as the night he was *caught*.<sup>188</sup> On the day of his arrest, he explained to the police that when he saw the police car at the canal banks, he was trying to run from them but they pulled him over.<sup>189</sup>

Sahin made a series of inconsistent statements to the police. When he was first stopped by the police at the canal banks, he told the police officers that he was lost.<sup>190</sup> After he was arrested and taken into custody, during his first interview at the Delaware State Police Troop 2, he told the police that he had never been to the canal banks before.<sup>191</sup> He told the police that he never picked up a prostitute before and that it was his first time.<sup>192</sup>

Later, he admitted to the police that he wanted sex but did not have money, so he forced prostitutes to have sex with him.<sup>193</sup> He told the police that he started forcing

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<sup>186</sup> State Exhibit 46; May 29, 2009 Trial Transcript, pgs. 12-13.

<sup>187</sup> State Exhibit 47; Court Exhibit 2.

<sup>188</sup> June 1, 2009 Trial Transcript, pg. 20 (“The night that I was caught . . .”).

<sup>189</sup> State Exhibit 44, Court Exhibit 1, pg. 18.

<sup>190</sup> May 26, 2009 Trial Transcript, pg. 91.

<sup>191</sup> State Exhibit 44; Court Exhibit 1, pg. 20.

<sup>192</sup> State Exhibit 44; Court Exhibit 1, pg. 13.

<sup>193</sup> State Exhibit 44, Court Exhibit 1, pg. 27.

women to have sex with him only in 2007 and only at the canal banks.<sup>194</sup> He admitted that contrary to his previous representation he was, in fact, at the canal banks on other occasions.<sup>195</sup> Sahin told the police that when he got to his spot of choice at the canal banks, he would usually make a U-turn and turn his car around so it was facing out.<sup>196</sup> He would then force the women at knifepoint to have sex with him.<sup>197</sup>

After he had sexually assaulted the women, Sahin acknowledged that he would ask the women to bring him something from his trunk usually a napkin or paper towel. When the women got out of the car to get him something from his trunk, he would push the trunk down from the inside of his car and leave.<sup>198</sup>

He explained that a prostitute had once taken him to the canal banks and then he started taking all the other women there. He explained that he left the women he assaulted stranded at the canal banks because he was scared and did not want to get pulled over after he had assaulted them.<sup>199</sup>

At one point during his interview, Defendant Sahin stated that he took about 5 or 6 women to the canal banks.<sup>200</sup> At another point he stated that he took about 6-7 women to the canal banks, of which maybe 4 of them he gave money to.<sup>201</sup> At another point, he said he forced women to have sex with him at knifepoint on about 4 occasions.<sup>202</sup> At another point, he said that he forced women to have sex with him at knifepoint 6 or 7

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<sup>194</sup> State Exhibit 44, Court Exhibit 1, pgs. 78-79, 87-89.

<sup>195</sup> State Exhibit 44, Court Exhibit 1 pg. 29.

<sup>196</sup> State Exhibit 44, Court Exhibit 1, pg. 94.

<sup>197</sup> State Exhibit 44, Court Exhibit 1, pgs. 58-59, 72-73.

<sup>198</sup> State Exhibit 44, Court Exhibit 1, pgs. 70-71, 77, 105-106.

<sup>199</sup> State Exhibit 44, Court Exhibit 1, pg. 51.

<sup>200</sup> State Exhibit 44, Court Exhibit 1, pg. 36.

<sup>201</sup> State Exhibit 44, Court Exhibit 1, pg. 56.

<sup>202</sup> State Exhibit 44, Court Exhibit 1, pg. 60.

times.<sup>203</sup> Later, he said he forced women about 3 times, maybe more.<sup>204</sup> He admitted that he did not keep track of the women he sexually assaulted in any way and could not remember or estimate how many women he forced to have sex with him.<sup>205</sup>

Sahin told the police that he left about half the women he took to the canal banks stranded there.<sup>206</sup> At one point, he stated that he left about 4-5 women at the canal banks, but admitted that he could not recall the exact number.<sup>207</sup> At another point, he stated that he stranded about 6-7 of the women at the canal banks forcing them to walk back.<sup>208</sup> Defendant Sahin stated that he did not keep track of the women he assaulted in any way.<sup>209</sup>

Sahin told the police that he disclosed personal information about himself to some of the women he assaulted.<sup>210</sup> Sahin admitted that some of the women he tried to sexually assault ran from him.<sup>211</sup> He estimated that maybe 1-3 of the women ran from him.<sup>212</sup>

Sahin told the police that before he picked up the women, he would put a knife under the carpet by the driver side.<sup>213</sup> He represented to the police that he did not have any knives in his car at the time of his arrest.<sup>214</sup>

During his interview with the police on the day of his arrest, the following exchange took place:

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<sup>203</sup> State Exhibit 44, Court Exhibit 1, pg. 60.

<sup>204</sup> State Exhibit 44, Court Exhibit 1, pg. 61, 76.

<sup>205</sup> State Exhibit 44, Court Exhibit 1, pgs. 73-76.

<sup>206</sup> State Exhibit 44, Court Exhibit 1, pg. 70.

<sup>207</sup> State Exhibit 44, Court Exhibit 1, pg. 70.

<sup>208</sup> State Exhibit 44, Court Exhibit 1, pg. 82.

<sup>209</sup> State Exhibit 44, Court Exhibit 1, pg. 73.

<sup>210</sup> State Exhibit 44, Court Exhibit 1, pg. 78.

<sup>211</sup> State Exhibit 44, Court Exhibit 1, pg. 108.

<sup>212</sup> State Exhibit 44, Court Exhibit 1, pg. 108.

<sup>213</sup> State Exhibit 44, Court Exhibit 1, pg. 61; June 1, 2009 Trial Transcript. pg. 27.

<sup>214</sup> State Exhibit 44, Court Exhibit 1, pg. 62.

Detective Harach: Do you have any knives in your car right now?  
Defendant Sahin: No.  
Detective Harach: None at all?  
Defendant Sahin: No.<sup>215</sup>

Although Sahin denied having knives in his car on the day of his arrest, he was not, in fact, being truthful. There were two knives found in Sahin's car. Both of the knives were found in the driver side interior door panel.<sup>216</sup>

Sahin also made several inconsistent representations to the police about his living situation. He first told police that he lived with his parents in Beck Woods in Delaware but that he used to live in downtown Elkton, Maryland.<sup>217</sup> He even told the police where he had lived in Elkton and the names of his friends with whom he lived.<sup>218</sup> He then changed his story and told the police that he never lived in Elkton, Maryland and that he only ever lived in Delaware. He told police that he lived in Delaware for 4 years.<sup>219</sup> Still later, he changed his story again, stating that he had actually lived in Delaware for about 8 or 9 years.<sup>220</sup>

At trial, Defendant Sahin testified that all his statements to the police during his interviews were true.<sup>221</sup>

Sahin's defense at trial was that although he had sexually assaulted other unknown women at the canal banks, he denied ever having any contact, let alone sexual contact, with the complaining witnesses.<sup>222</sup>

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<sup>215</sup> State Exhibit 44, Court Exhibit 1, pg. 62.

<sup>216</sup> May 26, 2009 Trial Transcript, pgs. 116-119; State Exhibit 13, 41, 42.

<sup>217</sup> State Exhibit 44; Court Exhibit 1, pgs. 2-9, 18, 28.

<sup>218</sup> State Exhibit 44; Court Exhibit 1, pg. 3.

<sup>219</sup> State Exhibit 44, Court Exhibit 1, pgs. 78, 92-93.

<sup>220</sup> State Exhibit 47; Court Exhibit 2, pg. 28.

<sup>221</sup> June 1, 2009 Trial Transcript, pg. 18.

<sup>222</sup> June 1, 2009 Trial Transcript, pgs. 20, 22-23, 29-31.

#### **IV. SAHIN'S POSTCONVICTION CLAIMS**

In the subject Rule 61 postconviction motion, the only issues that Sahin has raised pertain to statements made by trial counsel. Sahin contends only that he is entitled to postconviction relief because: 1) his counsel told the trial judge that Sahin should have accepted a plea offer; and 2) his counsel told that trial judge that Sahin was untruthful about his need for an interpreter.

It is important to emphasize that Sahin does not challenge any of the evidence offered at trial. There is no claim that any of the evidence was improperly admitted or considered at trial. Indeed, Sahin raises no challenge to the testimony of the complaining witnesses, their respective 911 calls, their respective statements to the police, the police testimony, the police surveillance, the DNA testing, his arrest, his police interviews, his statements and admissions to the police, or to his testimony at trial.

##### **First Issue: Trial Counsel's Comments Regarding Plea Agreement**

Defense counsel at a pretrial conference that was held on May 19, 2009, advised the trial judge that Sahin was offered a plea by the State which he declined to accept and that proceeding to trial instead of taking the plea offer that was extended by the State was against counsel's judgment under the circumstances.<sup>223</sup>

After making this statement, Defense Counsel stated:

I will support him in this, and I will defend him to the best of my ability, but the record should reflect that the potential consequences are such that it is not in his best interest to go forward, given what the State has offered to resolve this case, and I just wanted to make sure the record was clear on that.<sup>224</sup>

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<sup>223</sup> May 19, 2009 Pretrial Conference Hearing Transcript, pgs. 18-22.

<sup>224</sup> May 19, 2009 Pretrial Conference Hearing Transcript, pgs. 20-21.

The Court responded:

Well, I'll review this with Mr. Sahin when we have the benefit of the interpreter, but I will tell you, Mr. Sahin, that I am sworn to uphold the law and to be fair and impartial, and I will listen to all the evidence and I will be fair, and I want you to know that.

So, I understand where we are, and I understand that you have exercised your Constitutional right to a trial and to put the State to their proof, and that is your Constitutional right, and that is an important Constitutional right, and we will move forward with the trial . . .<sup>225</sup>

Defense counsel explained in response to Sahin's Rule 61 motion that given the overwhelming evidence against Sahin, the almost certain conviction, and the mandatory sentences that Sahin would be facing if convicted, he was frustrated by Sahin's refusal to accept the plea offer. That being said, defense counsel, in his Affidavit and at the hearing held on Sahin's motion, recognized that even so, he should not have remarked on the plea offer to the trial court.

Although the trial judge was made aware that a plea offer was made and rejected, against counsel's advice, it is important to point out that the trial judge was not made aware of the specifics of the plea offer.

**Second Issue: Trial Counsel's Comments Regarding Interpreter**

An issue arose at the pretrial conference as to whether Sahin would require the assistance of an interpreter for the trial. Sahin is of Turkish decent. Sahin came to the United States when he was around 13 or 14 years old.<sup>226</sup> He was 22 years old at the time of his arrest, and about 24 years old at the time of trial.

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<sup>225</sup> May 19, 2009 Pretrial Conference Hearing Transcript, pgs. 21-22.

<sup>226</sup> State Exhibit No. 47; Court Exhibit 2 at pg. 28 (Defendant lived in Delaware for 8-9 years at the time of his interview in 2007. He was 22 at the time of his interview. Therefore, he came to Delaware at the age of 13 or 14.).

Defense counsel told the trial court that in the past he had worked with an interpreter but that counsel felt that Sahin had a good understanding of the English language and that the last 4-5 times they met they did not use an interpreter. Defense counsel conveyed his belief that Sahin wanted an interpreter more for his parents than for himself.<sup>227</sup>

Defense counsel stated that he:

. . . met with [Sahin] the last four or five times with no interpreter. We just talked, and today, he . . . needs an interpreter. He doesn't need an interpreter to understand the colloquy. He wants an interpreter to explain things to him, and my impression is, in looking at the very minutes of disks, that now he decides he wants an interpreter.

We have to- - my opinion, he does not need an interpreter. He understands.<sup>228</sup>

Defendant Sahin reiterated his request for an interpreter and the court ordered the presence of an interpreter for the trial in accordance with his request.<sup>229</sup>

Defense counsel then stated:

I've met with [Sahin] probably five or six times, recently. . . , without an interpreter, and we've had really no difficulty in communicating about—a problem with language – about the concepts and principles and the ideas here.

It was my impression in dealing with him that the necessity of an interpreter probably was not- - was not—was not required to be in attendance, and there's been no issue raised about that.

The only hesitation I had is I know that the defendant's mother does not speak English, and there was a possibility that maybe an interpreter could help advise members of the family

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<sup>227</sup> May 19, 2009 Pretrial Conference Hearing Transcript, pgs. 8-13.

<sup>228</sup> May 19, 2009 Pretrial Conference Hearing Transcript, pg. 8.

<sup>229</sup> May 19, 2009 Pretrial Conference Hearing Transcript, pg. 12.

what was being stated in the courtroom and could help mom- - his mother, but I did not foresee any need for him to require the need of an interpreter to assist him in this, because both he and members of my office staff, who have been in prison a lot to see him, determined he was very cognizant of what was being discussed, and he didn't need an interpreter.<sup>230</sup>

After determining that an interpreter would be obtained for Sahin for the trial in accordance with his request, the matter then turned to whether Sahin required the assistance of an interpreter for the colloquy regarding his decision to waive a jury trial. The court conducted that colloquy, without an interpreter.<sup>231</sup> After conducting the colloquy, the court was satisfied based on the in-court observations of Sahin that he understood the colloquy without the assistance of an interpreter.<sup>232</sup>

An interpreter was obtained for the trial which began on May 21, 2009. Headsets to listen to the interpretation were apparently handed out to Sahin as well as his parents.<sup>233</sup>

As the trial progressed, an issue arose regarding the handling of the interpretation of the 911 calls that were made by the respective complaining witnesses. The first time a 911 tape was played at trial, it became apparent that the interpreter could not keep up with the tape.<sup>234</sup> The issue was resolved without any further objection. Similarly, an issue was also resolved as to how to handle the statement to the police of one of the complaining witnesses.

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<sup>230</sup> May 19, 2009 Pretrial Conference Hearing Transcript, pgs. 12-13.

<sup>231</sup> May 19, 2009 Pretrial Conference Hearing Transcript, pgs. 14-16.

<sup>232</sup> See, May 21, 2009 Trial Transcript, pgs. 123-124.

<sup>233</sup> See, May 21, 2009 Trial Transcript, pgs. 133-134.

<sup>234</sup> May 21, 2009 Trial Transcript, pgs. 120-121.



The discussion then turned to how to handle the playing of Sahin's three taped interviews with the police.<sup>235</sup> The court expressly recognized that the statements made by others, such as the 911 calls and the victim statement, were in a different category from those statements that Sahin made himself.<sup>236</sup>

It was in this context that defense counsel made the rest of the comments that Sahin takes issue with in his Rule 61 motion.

On the day of Sahin's arrest, he was interviewed at length by the Delaware State Police. His first interview was held at the Interview Room at the Delaware State Police Troop 2. The interview was videotaped and the DVD, as redacted, was going to be shown to the trial judge. The interview was over one hour in length, as redacted.<sup>237</sup>

The second interview was held after the interview at the Delaware State Police Troop 2. Sahin accompanied the police to the crime scene and walked around with them conversing about the crimes he committed. This interview, as shown to the trial judge at trial, was about 25 minutes in length.<sup>238</sup>

The third interview was held following Sahin's crime scene interview and also took place at the Interview Room at the Delaware State Police Troop 2. This interview, as redacted and shown to the trial judge, was about 25 minutes in length.<sup>239</sup>

Sahin participated in each of these interviews, never once requesting an interpreter. Irrespective of any opinion held by defense counsel, the trial judge would soon be viewing for herself over 2 hours of communication and interaction between Sahin and the police. The trial judge would have the opportunity to personally observe

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<sup>235</sup> May 21, 2009 Trial Transcript, pgs. 120-121.

<sup>236</sup> May 21, 2009 Trial Transcript, pgs. 130-131.

<sup>237</sup> State Exhibit No. 44; Court Exhibit 1.

<sup>238</sup> State Exhibit No. 46.

<sup>239</sup> State Exhibit 47; Court Exhibit 2.

the nature, extent and limitations of Sahin's ability to communicate and understand the English language without the use of an interpreter.

After the discussion took place addressing how to handle the use of an interpreter for translating Sahin's interviews with the police, Sahin agreed with defense counsel that he did not need an interpreter to review his interview tapes with him because he had already heard them two or three times, and because he was a participant in the exchange.<sup>240</sup> Consequently, although the potential issue was discussed as to how to handle Sahin's interview tapes, the issue never became contentious as Sahin agreed that he did not need the assistance of the interpreter for the playing of those tapes at trial.

During the discussion as to how to handle Sahin's interview tapes, defense counsel commented:

. . . I've met with him- - I would say eight times at Gander Hill, sometimes alone and sometimes with another member- - with an assistant of mine, and we have shown him tapes and disks and reviewed this matter with him, and I think he is- - he is capable of understanding, and - - and I think there's a bit- - my impression, there may be some insecurity on his part. I don't know that, and I'm not saying he's a - - malingerer, but I know I'm confident he understands what is going on.<sup>241</sup>

The discussion continued and the trial judge stated:

It appears to me, based on everything I have observed in the courtroom, including his ability to understand me when I told him to sit down and his ability to understand me during my colloquy about whether or not he wanted a bench trial, it appears to me that he understands English just fine. I- - I think that the interpreter's in the courtroom largely for the benefit of his father and I do not intend to have the interpreter sit there and interpret the police questioning and his answers on those tapes in light of this, because . . . he knows what he said. He said it, and he spoke

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<sup>240</sup> See, May 21, 2009 Trial Transcript, pgs. 134-135; May 26, 2009 Trial Transcript, pg. 133.

<sup>241</sup> May 21, 2009 Trial Transcript, pgs. 121-122.

English, never asked for an interpreter and seemed to be just fine. .<sup>242</sup>

Defense counsel noted that Sahin had concerns about understanding legal concepts, but that legal concepts were not at issue with Sahin's interview tapes.<sup>243</sup> Defense counsel further stated: "They are not words of somebody else. He is responding to questions. . . I don't think there's a need for an interpreter to interpret what his spoken word is."<sup>244</sup>

The discussion continued.

Defense Counsel commented:

My impression is that I don't know. I don't think that he has solicited the help of an interpreter necessarily for his father. I think he does it because he seeks- - he seeks refuge in the fact that he is not particularly fluent in English, and he then can decide if he doesn't want to answer me, or he doesn't want to answer the Court, he can play dumb.

I don't know that. That's my opinion from dealing with him, and I talked to him a lot. . .<sup>245</sup>

The trial judge directed defense counsel to speak with Sahin to determine his position on whether he wanted an interpreter for his interview tapes. If Sahin wanted an interpreter, an interpreter would be arranged to translate the tapes outside of court.<sup>246</sup> Defense counsel spoke to Sahin and Sahin agreed that an interpreter was not needed for the playing of his interview tapes.<sup>247</sup>

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<sup>242</sup> May 21, 2009 Trial Transcript, pgs. 123-124.

<sup>243</sup> May 21, 2009 Trial Transcript, pg. 125.

<sup>244</sup> May 21, 2009 Trial Transcript, pgs. 125-126.

<sup>245</sup> May 21, 2009 Trial Transcript, pg. 127.

<sup>246</sup> May 21, 2009 Trial Transcript, pgs. 128-129.

<sup>247</sup> May 21, 2009 Trial Transcript, pgs. 135-135; May 26, 2009 Trial Transcript, pg. 133.

Defense counsel went too far in his comments to the court. Defense counsel believed his duty of candor to the court required him to acknowledge that he did not believe that a translator was necessary. Even if defense counsel had a duty to advise the court of his opinion on the necessity of an interpreter, his comments were inappropriate and should not have been made. In fact, defense counsel concedes that he went too far, he was wrong for making the comments that he did, and acknowledges that he would not make those comments again.<sup>248</sup>

That being said, judges are trained to disregard improper extraneous comments and to stay focused on, and to decide cases, based on admissible evidence properly presented. Routinely, courts (in both jury and bench trials) hear suppression motions, motions to exclude evidence, motions to withdraw pleas, and a litany of other motions *in limine* to preclude testimony and/or to otherwise attack evidence.

From a full and thorough review of the record in this case, there is not even a hint of bias or prejudice by the trial judge created by defense counsel's comments. There is no indication of any kind whatsoever that the comments made by defense counsel impacted any decision by the court. As a practical matter, the trial judge would have developed her own opinion as to Sahin's needs for an interpreter once she viewed the interview tapes for herself. If Sahin had insisted on having an interpreter for his interview tapes, the trial court would not need to consider or substitute defense counsel's opinions, she would have formed her own based on her own personal observations. After she watched the interview tapes she would make her own impressions and form her own opinions. Since Sahin acknowledged that, in fact, he did not need an interpreter for the viewing of his interview tapes, the potential issue never actually came to fruition.

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<sup>248</sup> Affidavit of Trial Counsel in Response to Rule 61 motion.

## V. ANALYSIS

Sahin contends that the statements made by his defense counsel prior to and during the bench trial violated his Sixth Amendment Right under the United States Constitution to the effective assistance of counsel.<sup>249</sup> On direct appeal, Sahin raised the same issue. The Delaware Supreme Court declined to consider Sahin's ineffective assistance of counsel claim on direct appeal in keeping with its general practice not to do so.<sup>250</sup> On Sahin's direct appeal, the Delaware Supreme Court affirmed the judgment of the Superior Court without prejudice to the ineffective assistance of counsel claim being raised in a timely filed Rule 61 motion, at which time a complete record could be developed.<sup>251</sup>

This is Sahin's timely filed Rule 61 motion. A complete record has been developed, and the issue has been re-raised and is ripe for consideration.

An ineffective assistance of counsel claim is controlled by one of the two standards set by the United States Supreme Court. Either the *Strickland*<sup>252</sup> or the *Cronic*<sup>253</sup> standard is to be employed. In most cases, the *Strickland* standard is to control the analysis.

Under the *Strickland* standard, a defendant, in order to establish an ineffective assistance of counsel claim, is required to show both that: (1) counsel's performance was deficient, and 2) that the deficient performance prejudiced the defense.<sup>254</sup> In assessing prejudice, the court must decide whether the error is such that there is reasonable

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<sup>249</sup> *Sahin v. State*, 7 A.3d 450, 454 (Del. 2010).

<sup>250</sup> See, *Malin v. State*, 2009 WL 537060, at \*5 (Del.Super. 2009); *Desmond v. State*, 654 A.2d 821, 829 (Del. 1994).

<sup>251</sup> *Id.*

<sup>252</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>253</sup> *United States v. Cronic*, 466 U.S. 648 (1984).

<sup>254</sup> *Strickland v. Washington*, 466 U.S. at 687-692.

probability that, but for the error, the result of the proceeding would have been different.<sup>255</sup>

The second standard set by the United States Supreme Court, the *Cronic*<sup>256</sup> standard, created an exception to the *Strickland* standard. The United States Supreme Court in *Cronic* held that there are certain circumstances that are so egregiously prejudicial that the inquiry into actual prejudice should be forgone and prejudice is presumed without any inquiry into counsel's actual performance at trial.<sup>257</sup>

The *Cronic* standard is an exception to the general standard, and is to be employed only if the record reveals presumptively prejudicial circumstances such as: 1) an outright denial of counsel; 2) where counsel is asked to provide assistance in circumstances where competent counsel likely could not; and 3) where counsel entirely fails to subject the prosecution's case to adversarial testing.<sup>258</sup>

The United States Supreme Court in *Cronic* warned that, in most cases, a showing of actual prejudice remained a necessary element.<sup>259</sup> The *Cronic* Court stated that there is generally no basis to finding a Sixth Amendment violation unless the accused can show how specific errors of counsel undermined the reliability of the finding of guilt.<sup>260</sup>

In the subject action, the Delaware Supreme Court on direct appeal has already held that it is the *Strickland* standard that controls in this case.<sup>261</sup>

Indeed, none of the circumstances specifically listed in *Cronic* were presented in the subject case. From a thorough and detailed review of the record in this case there can

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<sup>255</sup> *Strickland*, 466 U.S. at 687-88.

<sup>256</sup> *United States v. Cronic*, 466 U.S. 648 (1984).

<sup>257</sup> *Cronic*, 466 U.S. at 662.

<sup>258</sup> *Cronic*, 466 U.S. at 659-662.

<sup>259</sup> *Cronic*, 466 U.S. at 659.

<sup>260</sup> *Cronic*, 466 U.S. at 659, n. 26.

<sup>261</sup> *Sahin v. State*, 7 A.3d 450, 452 (Del. 2010).

be no question that defense counsel who is very experienced, provided capable and experienced assistance at trial. Defense counsel made appropriate motions, objections, contested facts where he could and fully participated in all aspects of the trial. He cross-examined witnesses, put on a defense case, and made the best arguments (in light of what he had to work with) in his opening and summation.

Sahin argued in his direct appeal that this case fell within the *Cronic* exceptions to the *Strickland* prejudice test. The Delaware Supreme Court rejected this contention, holding that the *Cronic* exceptions were not applicable and that the *Strickland* standard applied.<sup>262</sup>

Sahin in his Rule 61 motion again argues that this case should be controlled by the *Cronic* exception. Sahin makes no attempt in his Rule 61 motion to show how defense counsel's statements actually prejudiced him at trial. Instead, Sahin repeatedly asserts that prejudice should be conclusively presumed without any inquiry into the facts of this case and without any inquiry as to whether Sahin suffered actual prejudice as a result thereof. Sahin argues only that the *Cronic* exception should control this case, that a showing of actual prejudice should not be a necessary element, and that there should be no consideration of the actual facts in this case.

As previously noted, the Delaware Supreme Court has already held that this case is governed by the *Strickland* not the *Cronic* standard. Therefore, this court's analysis of Sahin's Rule 61 motion is based on the *Strickland* standard.

#### **Application of Strickland Standard to this Case**

As stated above, under the *Strickland* standard, a defendant, in order to establish an ineffective assistance of counsel claim, is required to show both that: (1) counsel's

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<sup>262</sup> *Sahin*, 7 A.3d at 452-453.

performance was deficient, and 2) that the deficient performance prejudiced the defense.<sup>263</sup> Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.<sup>264</sup> Furthermore, an error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of conviction if the error had no effect on the judgment.<sup>265</sup>

### **Trial Counsel's Conduct was Deficient**

The first prong of the *Strickland* test, deficient performance, has been satisfied. Defense counsel himself concedes he went too far in his comments regarding the plea agreement and in the discussions regarding whether an interpreter was needed by Sahin for the trial.

### **Counsel's Deficient Conduct Did Not Result in Actual Prejudice**

In order to satisfy the second prong of the *Strickland* standard, Sahin must show that defense counsel's deficient conduct resulted in actual prejudice. Actual prejudice under the *Strickland* test is not automatically presumed. Defense counsel's deficient conduct must be judged in light of the whole record, including the facts of the case, the trial transcript, the exhibits, and the applicable substantive law.

In those cases, like the case presented here, where the conviction is supported by overwhelming evidence of guilt, even serious errors by counsel do not warrant granting postconviction relief.<sup>266</sup> In this case, the evidence against Sahin was overwhelming. There was a large quantity of undisputed corroborating evidence and Sahin made many

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<sup>263</sup> *Strickland v. Washington*, 466 U.S. at 687-692.

<sup>264</sup> *Younger*, 580 A.2d at 556.

<sup>265</sup> *Strickland*, 466 U.S. at 687-88, 691.

<sup>266</sup> See, *Scarpa v. DuBois*, 38 F.3d 1 (1<sup>st</sup> Cir. 1994); *United States v. Reiter*, 897 F.2d 639, 645 (2<sup>nd</sup> Cir. 1990); *Wise v. Smith*, 735 F.2d 735, 739 (2<sup>nd</sup> Cir. 1984)(overwhelming evidence indicating that the defendant committed the crime overcame any possible prejudice.); *Poindexter v. Mitchell*, 454 F.3d 564, 581-82 (6<sup>th</sup> Cir. 2006)(even if defense counsel conceded defendant's guilt, in light of the overwhelming evidence establishing defendant's guilt, there was no showing of actual prejudice.).



material inconsistent statements to the police. The evidence in this case was so one-sided in favor of the prosecution that no reasonable fact finder could have failed to convict. There was no reasonable probability that the outcome of the trial would have been different absent counsel's statements. Sahin cannot establish actual prejudice under the facts of this case.

On the other hand, a conviction only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support.<sup>267</sup> *Baker v. State*<sup>268</sup> and *Watson v. State*<sup>269</sup> are examples of cases only weakly supported by the record. Both of those cases involved "he said/she said" credibility determinations.

In *Baker*, a daughter accused her father of sexual abuse and rape. The father had 15 children by 2 different wives and also had several grandchildren. The father's youngest daughter made the accusation. There were no accusations made by any of the father's other children and, in fact, several of his other children testified that the complaining daughter was untruthful. The father's other daughters testified that he never sexually abused them.<sup>270</sup> Many defense witnesses testified that the daughter was untruthful.<sup>271</sup> The daughter's story was also inconsistent at points.<sup>272</sup> There was no physical evidence in the case.

The prosecutor in *Baker* asked a question that lacked any foundation. The unfounded question permitted the jury to draw an impermissible conduct-from-character inference which was entirely unjustified.<sup>273</sup> The prosecutor questioned the father as to his

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<sup>267</sup> *Strickland v. Washington*, 466 U.S. at 696.

<sup>268</sup> *Baker v. State*, 906 A.2d 139 (Del. 2006).

<sup>269</sup> *Watson v. State*, 934 A.2d 901 (Del. 2007).

<sup>270</sup> *Baker*, 906 a.2d at 142-146.

<sup>271</sup> *Baker*, 906 A.2d at 142-146.

<sup>272</sup> *Baker*, 906 A.2d at 153-155.

<sup>273</sup> *Baker*, 906 A.2d at 153.

“familiarity with sex offenses”. The prosecutor admitted that he did not have a good faith basis for asking the question. The prosecutor’s question implied the existence of a predicate fact-that Baker has some familiarity with sex offenses-from which the jury, could have drawn extremely damaging character inferences. *Given the closeness of the case, and the fact that defendant’s credibility was the critical issue in the case, the Baker court determined that the prosecutor’s conduct resulted in reversible error.*

Likewise, in *Watson v. State*, a girlfriend claimed that her boyfriend raped her. The boyfriend admitted that he had sexual contact with the girlfriend but claimed that it was consensual. At trial, the girlfriend testified inconsistently with the three prior statements she had given to the police. There was no forensic or physical evidence that supported the complaining witness’ accusations. The evidence against the defendant consisted almost entirely of the complaining witness’ adverse testimony- testimony the defendant pointedly disputed. <sup>274</sup> *Because there was no substantial evidence against the defendant, the assessment of his credibility became critically important.* <sup>275</sup>

While *Baker* and *Watson* are examples of “he said/she said” cases only weakly supported by the record, and which consisted only of testimonial evidence that was not corroborated either by physical evidence or corroborating testimony, the subject action is overwhelmingly supported by physical evidence and corroborating testimony. The subject action should properly be couched as a “he said/his DNA and the other overwhelming corroborative evidence established dispositively otherwise” type of case.

Indeed, *Baker* would more closely resemble the subject case if: 1) 7 of the father’s other daughters testified that the father sexually abused them in a manner similar

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<sup>274</sup> *Watson*, 934 A.2d at 906-907.

<sup>275</sup> *Watson*, 934 A.2d at 907-908.

to that which the complaining witness testified that she had been abused; 2) if the father admitted to sexually abusing some of his other daughters in the precise manner which the complaining daughter claimed she was sexually abused but the father denied that the 7 daughters testifying at trial were the daughters that he had sexually abused; and 3) if 2 of the 7 daughters who claimed they had been sexually abused by their father, which he denied were among the daughters he sexually abused, had his DNA inside their bodies on the day of their respective assaults. Obviously, this factual scenario presents a far different case from that presented in *Baker*.

### **Evidence Against Sahin was Overwhelming**

In the subject action, Sahin admitted that he sexually assaulted a number of different women. Sahin admitted that each of his sexual assaults followed a precise *modus operandi*. He admitted that he only committed sexual assaults in 2007 and that all of his sexual assaults were committed at the canal banks by the C&D Canal. Sahin acknowledged that he did not keep track of the women he assaulted in any way. He acknowledged that he could not remember nor estimate how many women he sexually assaulted at the canal banks.

Sahin admitted that he would drive around and pick up women (mostly prostitutes) and take them to the canal banks. When he reached the canal banks with his victims, he would usually make a U-turn so that his car would be facing the way he came in. He would then retrieve a knife and force the women to perform sexual acts at knifepoint. After he completed his sexual assault, he would usually direct his victims to get out of the car to get him something out of his trunk, usually he would tell them to get napkins or paper towels. He would pop the trunk from the inside of his car. When the

women got out of the car, he would drive off leaving them stranded in the dark at the canal.

Sahin admitted that some of the women he attempted to sexually assault managed to free themselves at the canal banks and ran from him. Sahin also admitted that on one occasion, he picked up a woman, sexually assaulted her at the canal banks, and returned her to the apartment complex where he picked her up at.

The 8 complaining witnesses were all sexually assaulted in 2007, at the canal banks, by someone fitting Sahin's profile and driving a car fitting the description of Sahin's car. Many of the women knew personal details of their assailant which matched Sahin's personal life. The women were sexually assaulted in the same manner that Sahin sexually assaulted women. All eight of the women were forced to perform sexual acts at knifepoint. Six of the eight women were directed to get out of the car and retrieve something, usually napkins or paper towels, from the trunk of the car after they were assaulted. These six women were each left stranded at the canal banks.

One of the other claimants was a woman who managed to get away after being taken to the canal banks. The last claimant was the woman who was sexually assaulted at the canal banks and then returned to the apartment complex where she was picked up from. Two of these women had Sahin's DNA inside their bodies after they were sexually assaulted.

Sahin's defense at trial was that although he sexually assaulted women at knifepoint at the canal banks, he never had any contact, let alone sexual contact, with any of the complaining witnesses at trial. Sahin's DNA and the overwhelming corroborative evidence established conclusively otherwise. The overwhelming evidence of Sahin's

guilt is cited at length in the summaries of each of the victims' testimony, supra at pages 8-22, and need not be repeated again.

In summary, each of the women's respective sexual assaults corroborated the others and Sahin's admissions corroborated each of their assaults individually and all of their assaults collectively. This case was corroborated by 911 calls; police statements; Sahin's DNA inside the bodies of complaining witnesses; the physical evidence: the knives found in Sahin's car and the white sneakers found in Sahin's car; Sahin's admissions as to the sexual assaults he committed corroborated the complaining witnesses respective assaults, and the police surveillance corroborated the sexual assaults of the complaining witnesses as well as Sahin's admissions.

Sahin, in his Rule 61 motion, takes umbrage with the fact that the trial judge did not take long to make her decision to convict Sahin of the sexual assaults for which he was charged. The State, however, had provided clear testimony that Sahin committed the sexual assaults, Sahin did not provide any defense that might have given the fact finder pause. The evidence of guilt was simply overwhelming. It only took a short time to reach a verdict because there was no other verdict that could have been reached.

Additionally, Sahin, in his Rule 61 motion, takes issue with what he views a weak summation by trial counsel. Sahin does not, however, provide guidance or any clear examples as to how the summation should have been strengthened. In reviewing the trial transcript, it is apparent that trial counsel did the best he could with what he had to work with. With one complaining witness (L.T.) testifying that her assailant was Turkish, 22 years old, driving a 2 door black Honda Prelude, whose girlfriend had left the country, and who looked exactly like Sahin; and with another complaining witness (J.M.)

testifying that her assailant lived in Beck Woods, drove a 2 door black Honda or Hyundai with temporary tags, looked like Sahin, wore white sneakers like Sahin, smoked the cigarettes that Sahin smoked, and who also shared the same DNA as Sahin; and with the other complaining witnesses all sharing similar accounts of their respective assaults and knowing personal details of their assailant that matched Sahin, and with Sahin admitting that he sexually assaulted women the precise way these complaining witnesses claimed to have been assaulted, it is hard to envision the record support for a stronger summation.

To complete this analysis, Sahin's credibility needs to be addressed. As previously discussed, this case did not turn on Sahin's credibility at trial. Sahin is an admitted rapist. His only defense was that he never had any contact with any of the complaining witnesses at trial. Sahin's DNA and the overwhelming corroborative evidence established dispositively that Sahin did, in fact, sexually assault the complaining witnesses.

Focusing on Sahin's credibility, Sahin had made many material inconsistent statements prior to trial. Tellingly, Sahin refers to the night of October 16, 2007, the date of his arrest, as the night that he was *caught*. He admitted during his interview with the police that he was trying to run from them but that he was unable to do so and was stopped.

When he was first stopped by the police on October 16, 2007, he told them he was lost. During his first interview with the police, he told them he had never been to the canal banks before. He then changed his story, and admitted that he forced women to have sex with him at the canal banks, and that, contrary to his previous representation, he had been there before.

At one point, he told the police that he took about 5 or 6 women to the canal banks. At another point, he changed his story and said he took about 6 to 7 women to the canal banks, of which maybe he forced 2 or 3 to have sex with him and the other 4 were consensual. At another point, he said he forced about 4 women to have sex with him. At another point, he said he forced about 6 or 7 women to have sex with him.

Sahin told the police that he left about half the women he took to the canal banks stranded there. At one point, he put that number at around 4-5 women he left stranded. At another point, he put that number at around 6-7 women whom he left stranded. Sahin then admitted that he did not keep track of the women he sexually assaulted in any way.

Sahin first told the police that he presently lives with his parents in Beck Woods, Delaware, but that he had previously lived in Elkton, Maryland. He even gave the name of his friends and the location where he claimed to have lived in Maryland. He then changed his story and told the police that he really never lived in Maryland and always just lived with his parents in Delaware.

Sahin first told the police that he had been living in Delaware for 4 years. Sahin then changed that story and told the police that he had really been living in Delaware for about 8 or 9 years.

Sahin represented to the police on the night of his arrest that he did not have any knives in his car. In fact, Sahin was not telling the truth. Sahin had two knives in his car at the time of his arrest.

Given Sahin's material inconsistent statements on critical issues during his interviews with the police, the State, during the hearing on Sahin's Rule 61 motion, couched Sahin's credibility as "entirely incredible."

Be that as it may, the overwhelming evidence and Sahin's testimony overshadowed any effect trial counsel's comments had on the outcome of the case. The risk of prejudice from trial counsel's comments was minimized by the one-sidedness of the case. Sahin had not identified any promising line of defense or constructed a plausible scenario that might have given a fact-finder pause. Because there is neither a reasonable probability that the outcome of the trial would have differed had counsel not made those comments nor any solid basis for believing that the trial was fundamentally unfair or unreliable, no Sixth Amendment violation inheres.

Sahin has failed to establish actual prejudice as a result of defense counsel's remarks. Likewise, defense counsel's statements did not create an objective stigma surrounding the appearance of an inability to assess credibility fairly.<sup>276</sup> There was no objective appearance of prejudice. Defendant's claim fails.

## **VI. CONCLUSION**

Because there was overwhelming evidence of Defendant's guilt, there is no basis for concluding that counsel's remarks seriously affected the fairness, integrity, or public reputation of the proceedings. There was no grave miscarriage of justice. For the reasons stated above, Defendant's Motion for Postconviction Relief should be denied.

**IT IS SO RECOMMENDED.**

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Commissioner Lynne M. Parker

oc: Prothonotary  
cc: Peter Letang, Esquire

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<sup>276</sup> See, *Sahin*, 7 A.3d at 453.