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On The Letter-Brief

January 29, 2025

**LETTER IN LIEU OF BRIEF ON BEHALF
OF THE STATE OF NEW JERSEY**

**Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
Trenton, New Jersey 08625**

**Re: State of New Jersey (Plaintiff-Appellant) v.
Tybear Miles, (Defendant-Respondent)
Ind. No.: 22-06-0798-I
App. Docket No.: AM-000216-24
Criminal Action: On Motion for Leave to Appeal from
An Interlocutory Judgment of the Superior Court of
New Jersey, Appellate Division.
Sat Below: Hon. Jessica R. Mayer, P.J.A.D.
Hon. Patrick DeAlmeida, J.A.D.**

Honorable Justices:

**Pursuant to Rule 2:8-1(a), this letter in lieu of formal brief is submitted
on behalf of the State.**

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PRELIMINARY STATEMENT

In June 2021, Ahmad McPherson was shot and killed. The day after his death, officers spoke to a confidential informant (“CI”), who, after viewing CCTV footage recovered from the scene of the shooting, identified a suspect by his street name, “Fat Daddy.” The CI further provided to officers the suspect’s and the suspect’s girlfriend’s Instagram handles, the address of the suspect and his girlfriend, and the color, make, and model of the girlfriend’s vehicle.

After obtaining this information from the CI, officers retrieved a photograph from “Fat Daddy’s” Instagram profile. Using facial recognition technology, it was determined that this photograph was a positive match for defendant Tybear Miles (“defendant”). Officers later showed defendant’s mugshot photograph to the CI, who confirmed he was “Fat Daddy.”

Three days after speaking to the CI, officers interviewed defendant’s sister, defendant’s ex-girlfriend, and an individual who frequented the area where the shooting occurred. All three individuals identified defendant in either surveillance footage officers had obtained as part of their investigation of the homicide or in screenshots from the footage. Defendant’s sister and ex-girlfriend both identified defendant by name, while the third individual identified him by the street name “Fats” or “Fat Daddy.” None of these

identifications involved the use of FRT, and none of these individuals were shown photographs generated through the use of FRT.

The officers' use of FRT is completely removed from the CI's initial identification of defendant and from the three other individuals' identifications. The CI's information about defendant and his girlfriend would have inevitably led officers to speak to defendant's sister, his ex-girlfriend, and the individual who frequented the area regardless of whether officers used FRT. Because FRT is irrelevant, the motion court erred by compelling the State to produce FRT-related discovery.

Nevertheless, in an order and five-sentence opinion, the Appellate Division erroneously found that simply because FRT was used in this case, State v. Arteaga, 476 N.J. Super. 36 (App. Div. 2023), applies, and it was not improper for the motion court to compel the State to produce FRT-related discovery.

In so finding, the Appellate Division missed the mark. It misinterpreted Arteaga to require the State to provide FRT-related discovery any time FRT is used during the course of an investigation, regardless of how irrelevant or tangential its use is. Such an interpretation unreasonably extends Arteaga's holding to situations where, as here, FRT is not relevant to anything and will not lead to any relevant evidence.

Due to this injustice, the State urges this Court to grant leave to appeal.

PROCEDURAL HISTORY

On June 21, 2022, a Hudson County grand jury returned Indictment 22-06-0798, charging defendant with (1) first-degree murder, N.J.S.A. 2C:11-3(a)(1) (Count One); (2) second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a) (Count Two); and (3) second-degree unlawful possession of a handgun without a permit, N.J.S.A. 2C:39-5(b)(1) (Count Three). (Pa19-20).¹

On June 28, 2024, defendant moved to compel discovery relating to FRT, and on July 11, 2024, defendant filed a brief in support. (Pa17). On August 15, 2024, the State filed a brief in opposition.

The motion court heard oral argument on August 20, 2024. (1T). Following oral argument, the court permitted both parties to file supplemental briefs. (1T 29:19-22).

On September 17, 2024, the State filed a supplemental brief in opposition. On October 2, 2024, defendant filed a supplemental brief in support of his motion.

¹ The State designates the following abbreviation:

Pa – State’s appendix

1T – August 20, 2024 transcript of motion to compel oral argument

2T – October 11, 2024 transcript of oral opinion of motion to compel

3T – November 21, 2024 transcript of motion to reconsider oral argument

On October 11, 2024, the motion court issued a written decision, granting defendant's motion to compel discovery. (Pa1-14; 2T).

On October 28, 2024, the State moved for reconsideration of the court's October 11, 2024 order and filed a brief in support. (Pa18). On November 18, 2024, defendant filed a brief in opposition. The court heard oral argument on November 21, 2024. (3T).

On December 5, 2024, the court denied the State's motion for reconsideration. (Pa15-16).

On December 11, 2024, the State moved for a stay pending a motion for leave to appeal. (Pa38-39). On December 19, 2024, the motion court granted the motion for a stay. (Pa40-41).

On December 26, 2024, the State moved for leave to appeal. On January 2, 2025, defendant filed an answer in opposition. On January 13, 2025, the Appellate Division denied the State's motion. (Pa42-43).

This motion for leave to appeal follows.

STATEMENT OF FACTS

At approximately 10:03 p.m. on June 5, 2021, the Jersey City Police Department (“JCPD”) responded to the area of 239 Stegman Street in Jersey City based on a report of shots fired. (Pa1; Pa28). Upon arrival, a bystander directed officers to the decedent, Ahmad McPherson, who was lying on the sidewalk in front of 239 Stegman Street. (Pa1; Pa31). Approximately thirty-seven minutes later, McPherson was pronounced deceased at the Jersey City Medical Center. (Pa2). After an autopsy was conducted on June 8, 2021, it was determined that the decedent’s cause of death was gunshot wounds to the torso and right upper extremity, and the manner of death was homicide. (Pa2).

At approximately 10:56 p.m., the Hudson County Prosecutor’s Office (“HCPO”) Homicide Unit was notified of the decedent’s demise. (Pa2). Investigators recovered the decedent’s clothing, specifically blue-colored Nike shorts and a white t-shirt, as well as two zip lock bags with graphic designs containing suspected marijuana and \$180 from the decedent’s person. (Pa2).

A concerned citizen, who wished to remain anonymous, gave two handwritten notes to a JCPD officer on scene. One note stated, “The guy who did the shotting last name is Collins he has drads,” while the second note simply read “Maude,” an apparent reference to the decedent. (Pa2).

On June 6, 2021 a confidential informant (“CI”) went to the HCPO and viewed CCTV footage recovered from the scene of the shooting both prior to and after the homicide. (Pa2; Pa28). After reviewing the CCTV footage, the CI was immediately able to identify a suspect as “Fat Daddy” interacting with the decedent shortly before the shooting. (Pa2; Pa28-29). The CI also provided “Fat Daddy’s” Instagram handle “_fatzbytheway,” the Instagram handle of his girlfriend, their address, and the color, make, and model of the vehicle “Fat Daddy’s” girlfriend was known to operate. (Pa2; Pa28-29).

Officers subsequently retrieved a photograph from “Fat Daddy’s” Instagram profile, saved it as a JPEG, and imported the photograph into the NJ/NY HIDTA Facial Recognition module. (Pa2-3; Pa29). After using the NJ/NY HIDTA Facial Recognition module, it was determined that the photograph was a positive match for defendant, date of birth September 16, 1995. (Pa3; Pa21-25; Pa29). Officers later showed defendant’s mugshot photograph to the CI, who confirmed the individual in the photograph was “Fat Daddy.” (Pa3; Pa29).

During their investigation, officers examined and collected high-quality video footage from 158 Martin Luther King (“MLK”) Drive, which captured the decedent wearing blue Nike shorts and a white t-shirt. (Pa3). The video shows defendant and the decedent walk away from a group of black males that are part

of the same circle. (Pa3). This group of six black males were seen with defendant earlier in the night at the Kaelyn Grocery Store at 156 MLK Drive. (Pa3).

The Kaelyn Grocery Store video provides a clear view of defendant, his clothing and his dreadlocks. (Pa3). The video captures the group interacting with both defendant and the decedent while outside the grocery store. (Pa3). Defendant and the decedent appear to be engaged in a heated argument or conversation prior to the homicide. (Pa3). The decedent is gesturing, stands facing the suspect, and appears to be shouting or speaking loudly. (Pa3). At one point defendant walks away but later returns. (Pa3). The decedent can be seen lighting up a cigarette and defendant proceeds to ride away on a scooter shortly thereafter. (Pa3).

Homicide detectives tracked defendant leaving 165 MLK Drive at approximately 9:55 p.m. and riding a small scooter to an unidentified address on the north side of Wegman Parkway. (Pa3-4). He later returns to Dwight Street and MLK Drive, where he and the decedent again engage in a verbal dispute. (Pa4). The decedent then walks to the area of 239 Stegman Street, and defendant joins him shortly after. (Pa4). A Ring doorbell video from 235 Stegman Street captures the continuation of the verbal dispute from MLK Drive. (Pa4). Although neither defendant nor the decedent is visible on the Ring video,

the same six or so black males from earlier in the night can be seen, and they can clearly be heard saying, “no, no, no, no” in an attempt to diffuse the situation. (Pa4).

The video footage captures two gunshot sounds followed by defendant leaving the area with an object in his right hand that appears to be a handgun. (Pa4). As the gunshots are fired, all the males, other than defendant, can be seen scattering east on Stegman Street. (Pa4). Notably, defendant is the only individual not running away from the gunshots. Instead, he is seen calmly walking west on Stegman Street while the other males walk east. (Pa4). Within seconds, the males return to the decedent and appear unsure about how to proceed. (Pa4). The Ring video contains audio of male voices saying, “Call an ambulance.” (Pa4). Video footage also shows defendant climbing over a metal gate or fence between 242 and 244 Stegman Street and running through the backyard of 242 Stegman Street into the yard of 229 Wegman Parkway. (Pa4).

On June 9, 2021, officers conducted recorded interviews with three individuals: (1) defendant’s sister, Stephanie Miles; (2) defendant’s ex-girlfriend, Tanashia Davenport; and (3) Howard Jones III, who has frequented the area around where the incident occurred for approximately twenty years. (Pa31-37). Officers showed three screenshots from surveillance footage recovered from Kaelyn Grocery to Ms. Miles, and she identified an individual

as defendant. (Pa34-35). Officers similarly showed three screenshots from surveillance footage to Ms. Davenport, who also identified an individual as defendant. (Pa36-37). Finally, officers showed surveillance footage to Mr. Jones, who identified defendant by the street name “Fats” or “Fat Daddy.” (Pa31-32).

On June 10, 2021, officers generated a complaint-warrant, charging him with murder and related offenses.

Defendant filed a motion to compel the State to provide discovery pertaining to FRT. (Pa18).

On August 20, 2024, the court heard oral argument on defendant’s motion. (1T). Defendant contended he was entitled to FRT discovery pursuant to State v. Arteaga, 476 N.J. Super. 36 (App. Div. 2023). (1T 3:21 to 6:20). By contrast, the State argued Arteaga was distinguishable based in part on the fact that unlike in Arteaga, three people identified defendant in surveillance footage from around the time of the incident, and the photographs generated by FRT were not used during those identifications. (1T 14:8 to 15:16). Moreover, the three people who identified defendant from the surveillance footage knew defendant, meaning they were confirmatory identifications. (1T 15:18-21). Additionally, the State argued these identifications would have inevitably occurred during the course of the investigation regardless of the results of FRT because officers had

defendant's Instagram handle and, thus, would have spoken to people who knew defendant based off of that information. (1T 20:20 to 22:7).

After hearing oral argument and considering the parties' briefs and supplemental briefs, the court granted defendant's motion. (Pa1). In doing so, the court, relying on Arteaga, found FRT "is relevant, could lead to the discovery of relevant evidence, and has value for impeachment purposes." (Pa9). Thus, it held the State is required to provide defendant with the requested FRT discovery materials consistent with Arteaga. (Pa14).

The State moved for reconsideration. (Pa18).

On November 21, 2024, the court heard oral argument for the State's motion. (3T). The State contended the court overlooked facts that make Arteaga distinguishable. (3T 4:4-8). Specifically, the court failed to consider the fact that the CI identified the suspect as "Fat Daddy," provided the Instagram handles for "Fat Daddy" and his girlfriend, provided their address, and described the color, make, and model of the girlfriend's vehicle prior to officers using FRT at all. (3T 5:17 to 6:10). Thus, the State argued, even if officers did not have FRT, the CI's information would have led them to defendant. (3T 6:19-25).

The State also argued that unlike in Arteaga, the three other individuals who identified defendant did so from surveillance footage, not from a photograph generated using FRT. (3T 26:24 to 27:2). The State concluded that

for these reasons, FRT is not relevant in this case, and the State is not required to provide any more discovery relating to FRT's usage than what was already provided to defendant. (3T 16:1-8; 3T 18:10-13).

Defendant responded that Arteaga controls, and pursuant to Arteaga, he is entitled to discovery relating to FRT. (3T 22:10 to 23:24).

After considering the parties' submissions and hearing oral argument, the court denied the State's motion to reconsider on December 5, 2024. (Pa15-16). In doing so, the court reiterated that Arteaga controls, and pursuant to Arteaga, the State must provide discovery relating to FRT because the State used and relied on FRT during the course of its investigation for this case. (Pa16).

The State moved for a stay, which the court granted. (Pa38-41).

In its motion for leave to appeal, the State argued the court erred by granting defendant's motion because FRT is not relevant and, therefore, not subject to disclosure. The State also distinguished Arteaga from this case, as, unlike in Arteaga, the identifications are not tied to the officers' use of FRT.

In response, defendant reiterated he is entitled to discovery under Arteaga.

In a five-sentence opinion, the Appellate Division denied leave to appeal because "Arteaga applies and the judge did not abuse his discretion in compelling the State to produce the relevant FRT related discovery." (Pa43).

This motion for leave to appeal follows.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD REVERSE THE MOTION COURT’S ORDER COMPELLING THE STATE TO PRODUCE FACIAL RECOGNITION TECHNOLOGY-RELATED DISCOVERY BECAUSE THE FACIAL RECOGNITION TECHNOLOGY IS NOT RELEVANT, AND THEREFORE IT IS NOT SUBJECT TO DISCLOSURE. (Pa1-16; Pa42-43).

Generally, the standard of review of a trial court’s disposition of discovery matters is abuse of discretion. State v. Ramirez, 252 N.J. 277, 298 (2022). “[A]ppellate courts ‘generally defer to a trial court’s disposition of discovery matters unless the court has abused its discretion or its determination is based on a mistaken understanding of the applicable law.’” Ibid. (alteration in original) (quoting State v. Brown, 236 N.J. 497, 521 (2019)). If a trial court fails to “comport with the applicable law or do[es] not give sufficient regard to pertinent considerations,” then an “appellate court[] will set aside or modify such decisions” accordingly. Ibid.

“In New Jersey an accused has a right to broad discovery after the return of an indictment in a criminal case.” State v. Hernandez, 225 N.J. 451, 461 (2016). Our “open-file approach to pretrial discovery in criminal matters post-indictment” aims “[t]o advance the goal of providing fair and just criminal trials.” State v. Scoles, 214 N.J. 236, 252 (2013).

Rule 3:13-3(b)(1) codifies the criminal defendant’s “right to automatic and broad discovery of the evidence the state has gathered in support of its charges.” State v. Stein, 225 N.J. 582, 594 (2016) (quoting Scoles, 214 N.J. at 252). That Rule “obligates the State to provide full discovery...when an indictment is returned or unsealed,” State v. Robinson, 229 N.J. 44, 72 (2017), “[e]xcept for good cause shown,” R. 3:13-3(b)(1). Full discovery, under Rule 3:13-3(b)(1), “shall include exculpatory information or material.” The Rule thus explicitly renders automatic the turnover of exculpatory evidence mandated by the United States Supreme Court’s holding in Brady v. Maryland, 337 U.S. 83 (1963). State v. Desir, 245 N.J. 179 (2021).

“While discovery in criminal cases is broad,” however, “it is not unlimited.” Hernandez, 225 N.J. at 463. The discovery process is not “a fishing expedition,” State v. Broom-Smith, 406 N.J. Super. 228, 239 (App. Div. 2009), aff’d, 201 N.J. 229 (2010), nor is it “an unfocused, haphazard search for evidence,” State v. D.R.H., 127 N.J. 249, 256 (1992). Therefore, “information must be shown to be relevant to the issues in the case in order to be subject to disclosure.” Ramirez, 252 N.J. at 296; see R. 3:13-3(b)(1) (providing that post-indictment discovery “shall . . . include, but is not limited to [a list of] relevant material”).

“Relevance is measured in terms of the opportunity of the defendant to present a complete defense.” Pressler & Verniero, Current N.J. Court Rules, cmt. 3.2 on R. 3:13-3 (2020). “To qualify as ‘relevant material,’ the evidence must have ‘a tendency in reason to prove or disprove [a] fact of consequence to the determination of the action.’” State v. Richardson, 452 N.J. Super. 124, 132 (App. Div. 2017) (alteration in original) (quoting State v. Gilchrist, 381 N.J. Super. 138, 146 (App. Div. 2005)).

For the reasons set forth below, the motion court in this case erred by finding FRT is relevant, could lead to the discovery of relevant evidence, and has value for impeachment purposes. Furthermore, the Appellate Division erroneously applied Arteaga’s holding when it denied the State’s motion for leave to appeal.

Here, the CI provided defendant’s street name “Fat Daddy,” his Instagram handle, the Instagram handle of his girlfriend, their address, and the color, make, and model of the vehicle his girlfriend was known to operate. (Pa28-29). Notably, the CI provided this information prior to the officers’ use of FRT. (Pa28-29). This information alone could have and would have led officers to investigate defendant.

Moreover, three people who knew defendant identified him in surveillance footage from around the time of the incident and/or in screenshots

taken from said surveillance footage. (Pa31-37). Those three people included defendant's ex-girlfriend and sister, who both knew him by his name, as well as an individual who frequents the area of the incident and who knew defendant by his street name of "Fats" or "Fat Daddy." (Pa31-37). None of these three identifications involved the use of FRT, and none of these individuals were shown photographs generated through the use of FRT. And it was only after these three individuals identified defendant from surveillance footage that he was finally charged relating to this incident.

When officers did use FRT, they obtained defendant's name and date of birth. (Pa29). They subsequently showed the CI defendant's mugshot photograph, and the CI confirmed defendant was "Fat Daddy." (Pa29). This confirmatory identification is not suggestive and does not affect the reliability of the identification in any way. See State v. Pressley, 232 N.J. 587, 592-93 (2018) (noting that a confirmatory identification, which "occurs when a witness identifies someone he or she knows from before but cannot identify by name," is "not considered suggestive").

In sum, officers received a lead from a CI, which ultimately led to them speaking to defendant's ex-girlfriend, sister, and a person from the neighborhood. All four of these individuals identified defendant in surveillance footage from around the time of the incident or in screenshots taken from said

surveillance footage. These identifications are completely removed from the officers' use of FRT, and the lead from the CI pre-dated their use of FRT. Furthermore, the State will not be relying on FRT at trial. Thus, under these circumstances, the officers' use of FRT simply is not relevant, will not lead to the discovery of relevant evidence, and has no value for impeachment purposes. Therefore, it is not discoverable.

State v. Arteaga, 476 N.J. Super. 36 (App. Div. 2023), does not support a different conclusion. There, an armed robbery occurred in a West New York store. Id. at 42. After reviewing the surveillance footage, the store manager indicated she recognized the actor as someone who had entered the store on a prior occasion. Ibid. Officers subsequently sent all the raw footage to a New York-based organization for facial recognition analysis. Id. at 43. A detective from that organization captured a still image from the footage, compared it against the center's databases, and indicated the defendant was a possible match. Ibid. West New York detectives then created two different photo arrays comprising of five filler photos and one photo of the defendant, which was provided by the New York-based organization's database. Ibid. Detectives showed one array to the victim of the robbery and one array to the store manager. Ibid. Both identified the defendant's photo as the actor. Ibid.

The defendant moved to compel discovery of FRT, id. at 49, which the motion court denied, id. at 51. On appeal, the Appellate Division reversed the motion court's denial, finding that FRT was relevant because it was used to identify the defendant as a potential suspect and resulted in officers using his photograph in the two photo arrays. Id. at 57, 62-63. The court further observed, "FRT's reliability has obvious implications for the accuracy of the identification process because an array constructed around a mistaken potential match would leave the witness with no actual perpetrator to choose." Id. at 61.

By contrast, here, the CI identified defendant by his street name in surveillance footage before officers used FRT. At the time the CI identified him, the CI also provided defendant's Instagram handle, his girlfriend's Instagram handle, their address, and the color, make, and model of the vehicle the girlfriend was known to operate. Three days later, officers interviewed defendant's ex-girlfriend, defendant's sister, and an individual from the neighborhood, and all of them identified defendant in surveillance footage or in screenshots taken from the surveillance footage.

Thus, unlike in Arteaga, where the witnesses did not know the defendant and where the only information that led officers to identify the defendant as a potential suspect was through the use of FRT, the officers here received information from the CI. Furthermore, neither the CI's initial identification of

defendant nor the identifications made by the three other individuals were tied to the officers' use of FRT. In other words, FRT's reliability does not implicate the accuracy of the identification process because all four identifications were confirmatory in nature, and the individuals identified defendant from surveillance footage rather than from anything generated through the use of FRT. This case is thus distinguishable from Arteaga. To hold otherwise – as the Appellate Division has done so here – would unreasonably extend Arteaga's holding and force the State to provide much more than what is required in this case under Rule 3:13(b)(1).

POINT II

THIS COURT SHOULD GRANT THE STATE LEAVE TO APPEAL BECAUSE THE STATE HAS DEMONSTRATED GRANTING LEAVE IS NECESSARY TO PREVENT IRREPARABLE INJURY.

Rule 2:2-2(a) provides that “[a]ppeals may be taken to the Supreme Court by its leave from interlocutory orders . . . [o]f the Appellate Division when necessary to prevent irreparable injury.” Although “[i]nterlocutory review is ‘highly discretionary,’” Grow Co., Inc. v. Chokshi, 403 N.J. Super. 443, 461 (App. Div. 2008), an appellate court may grant a motion for leave to appeal if the moving party establishes the appeal has merit and demonstrates “justice calls for [an appellate court’s] interference in the cause, Brundage v. Est. of Carambio, 195 N.J. 575, 599 (2008).

For the reasons set forth in Point I of the State’s brief, the motion court erred when it granted defendant’s motion to compel and denied the State’s motion to reconsider. When denying the State’s motion for leave to appeal, the Appellate Division then erroneously applied Arteaga. Without this Court’s interference, the State will not have another opportunity to appeal for relief from this opinion and will be overburdened with producing evidence it would not otherwise be required to produce. Regardless of whether defendant is ultimately acquitted or convicted, the issue will be moot. Therefore, justice calls for this court to grant the State’s motion for leave to appeal.

CONCLUSION

Based on the foregoing, the State submits that the State's leave to appeal should be **GRANTED**, the trial court's orders granting defendant's motion to compel and denying the State's motion to reconsider should be **REVERSED**, and the matter should be **REMANDED** for further proceedings.

Respectfully submitted,

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