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February 9, 2025

Honorable Chief Justice and Associate Justices  
Supreme Court of New Jersey  
Richard J. Hughes Justice Complex  
25 W. Market Street  
Trenton, New Jersey 08625

**LETTER BRIEF ON BEHALF OF RESPONDENT,  
TYBEAR MILES, IN OPPOSITION TO THE STATE'S MOTION  
FOR LEAVE TO APPEAL FROM AN INTERLOCUTORY  
JUDGEMENT OF THE SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**

RE: **STATE OF NEW JERSEY, Plaintiff/Appellant**  
**vs. TYBEAR MILES, Defendant/Respondent**  
Indictment No. 22-06-0798-I  
Appellate Docket No. AM-00216-24

On Appeal from an Order Denying the State's Motion for Leave to  
Appeal an Interlocutory Order

Sat Below:  
Hon. Jessica R. Mayer, P.J.A.D.  
Hon. Patrick DeAlmeida

Honorable Justices:

Pursuant to R. 2:6-2(b) please accept this Letter Brief in lieu of a  
formal brief on behalf of the Defendant, Tybear Miles.

On the Letter Brief

**JOEL SILBERMAN, ESQ.**

Cc: Assistant Prosecutor, Colleen Signorelli (via eCourts and email)  
**DEFENDANT IS DETAINED**

## **PRELIMINARY STATEMENT**

On June 7, 2023, the Superior Court of New Jersey, Appellate Division (“Appellate Division,”) in a published opinion, held that a defendant in a case in which the State utilized or relied on Facial Recognition Technology (“FRT”) is entitled to broad discovery regarding FRT. State v. Arteaga, 476 N.J. Super. 36 (App. Div. 2023). The State concedes that they utilized FRT in identifying Tybear Miles (“Defendant”) as a suspect in this matter. Despite this concession, the State boldly avers that the trial court and Appellate Division abused their discretion in granting Defendant’s motion to compel FRT related discovery. The State’s argument lacks merit and should be denied.

On June 6, 2021, law enforcement were investigating a homicide when they met with a Confidential Informant (“CI”). The CI informed law enforcement that the suspect was known to him/her as “Fat Daddy” and utilized the Instagram handle “fatzbytheway.” In response to this information, law enforcement retrieved a photograph from “Fat Daddy’s” Instagram profile which they ran through FRT software. The FRT software provided a positive ‘hit’ for the Defendant. After receiving the positive ‘hit’ law enforcement retrieved a mugshot of Defendant which the CI positively identified as the individual he knows as “Fat Daddy.” With this positive identification in hand law enforcement then

interviewed family and friends of the Defendant who also positively identified him.

The Appellate Division affirmed the trial court's finding that that Defendant is entitled to discovery related to FRT pursuant to Arteaga. In arriving at this conclusion, the Appellate Division noted that the State conceded that they used FRT in identifying Defendant thus entitling him to broad discovery as laid out in Arteaga. The State has failed to argue, never mind demonstrate, that the trial court or Appellate Division abused their discretion. As such, the instant motion should be denied, and the Appellate Division and trial court Orders should be affirmed.

### **STATEMENT OF PROCEDURAL HISTORY**

Defendant adopts the State's Statement of Procedural History.

### **STATEMENT OF FACTUAL HISTORY**

Defendant adopts the State's Statement of Factual History.

### **LEGAL ARGUMENT**

#### **THE APPELLATE DIVISION DID NOT ABUSE ITS DISCRETION OR COMMIT AN ERROR OF LAW THAT WARRANTS THE INSTANT MOTION**

Courts of review “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.” State v. Ramirez, 252 N.J. 277, 298 (2022) (quoting State v. Brown, 236 N.J. 497, 521 (2019)). “A trial court can abuse its discretion

‘by failing to consider all relevant factors.’ [This Court should only] ... set aside or modify such decisions if they do not comport with the applicable law or do not give sufficient regard to pertinent considerations.” Ibid.

The State’s argument flunks at its inception. The State continually suggests that the courts below “erred.” First, the courts below did not “err.” The courts below considered all the relevant factors and issued salient well thought out opinions. Second, and more importantly, the standard of review is not error but abuse of discretion. The State fails to articulate, never mind demonstrate, that the trial court or the Appellate Division abused their discretion.

A. The Arteaga Decision

In Arteaga, the Appellate Division held that a Defendant in case in which the State utilized or relied on FRT to identify a Defendant is entitled to the following discovery regarding the FRT:

1. The name and manufacturer of the facial recognition software used to conduct the search in this case, and the algorithm(s) version number(s) and year(s) developed;
2. The source code for the face recognition algorithm(s);
3. A list of what measurements, nodal points, or other unique identifying marks are used by the system in creating facial feature vectors including, if those marks are weighted differently, the scores given to each respective mark;
4. The error rates for the facial recognition system used, including false accept and false reject rates (also called false match and false non-match rates—FMR and FNMR), as well as documentation as

- to how the error rates were calculated, including whether they reflect test or operational conditions;
5. The performance of the algorithm(s) used on applicable Face Recognition Vendor Tests, if available;
  6. The original copy of the query or "probe" photo submitted;
  7. All edited copies of the query or "probe" photo submitted to the facial recognition system, noting if applicable, which edited copy produced the candidate list that the defendant was in, and a list of edits, filters, or any other modifications made to that photo;
  8. A copy of the database photo matched to the query or "probe" photo and the percentage of the match, rank number, or confidence score assigned to the photo by the facial recognition system in the candidate list;
  9. A list or description of the rank number or confidence scores produced by the system, including the scale on which the system is based (e.g. percentage, logarithmic, other);
  10. A copy of the complete candidate list returned by the face recognition or the first [twenty] candidates in the candidate list if longer than [twenty], in rank order and including the percentage of the match or confidence score assigned to each photo by the facial recognition system;
  11. A list of the parameters of the database used, including:
    1. How many photos are in the database;
    2. How are the photos obtained;
    3. How long the photos are stored;
    4. How often the database is purged;
    5. What the process is for getting removed from the database;
    6. Who has access to the database;
    7. How the database is maintained;
    8. The Privacy Policy for the database;
  12. The report produced by the analyst or technician who ran the facial recognition software, including any notes made about the possible match relative to any other individuals on the candidate list; and

13. The name and training, certifications, or qualifications of the analyst who ran [the] facial recognition search query.

B. The Trial Court's Decision

The trial court below granted Defendant's Motion to Compel FRT related discovery based on Arteaga. In granting Defendant's motion the trial court held:

“[T]hat the FRT used is relevant, could lead to the discovery of relevant evidence, and has value for impeachment purposes. The Appellate Division in Arteaga found that the request for FRT discovery was relevant because it affected the defendant's ability to impeach both the police officers' identification and the investigation as well as the defendant's overall ability to establish reasonable doubt at trial. See State v. Arteaga, 476 N.J. Super. 36, 61 (App. Div. 2023) (“Defendant must have the tools to impeach the State's case and sow reasonable doubt.”) Similarly, here, the information regarding the FRT used to discover Defendant's identity and date of birth is relevant because the information could be used to assess the reliability of the software or to impeach the police officers' identification and/or investigation. Further, details surrounding the FRT used and the reliability of the facial recognition software itself could allow Defendant to test the thoroughness of the State's investigation. Since the requested information regarding the FRT could affect Defendant's impeachment capabilities and ability to establish reasonable doubt at trial, this Court finds that the requested FRT information is relevant and could lead to the discovery of relevant information...

[T]he Court finds that, even though the State does not intend to rely on any FRT in trial and did not use the mugshot in a photo array, the State is still obligated to provide the requested FRT discovery pursuant to Arteaga, the New Jersey Court Rules, and the case law. The State's duty to provide discovery is not preconditioned on whether it intends to rely upon that evidence at trial. The State does not dispute that FRT was used in this case; rather, the State contends that FRT was not relied upon in this investigation to the same extent as in Arteaga. It is undisputed that FRT produced mugshots that included a photo of Defendant, his

name, and date of birth. It is also undisputed that the CI was shown that FRT photo, and the CI in turn positively identified Defendant as “Fat Daddy.” However, based on the oral argument and briefs, the exact timeline of the investigation and the positive identifications of Defendant are unclear. Since FRT was utilized as an investigative tool in this case, the Court finds that Defendant’s request for FRT discovery is not a “fishing expedition” or an attempt to “transform the discovery process into an unfocused, haphazard search for evidence.” Ramirez, 252 N.J. at 296. Rather, this Court finds that Defendant’s request for FRT discovery is in accordance with the same request in Arteaga. This Court further finds that the FRT discovery is important based on its novelty, and as a result, Defendant may challenge the State’s investigation and use the FRT discovery for possible impeachment purposes.” (Pa1-14).

### C. The Appellate Division’s Decision

In reviewing the trial court’s decision the Appellate Division held:

“The trial court is afforded substantial deference in its ongoing management of discovery or other pretrial matters. Payton v. N.J. Tpk. Auth., 148 N.J. 524, 559 (1997). The court rules provide a criminal defendant with broad pretrial discovery. State v. Scoles, 214 N.J. 236, 251-52 (2013).

Additionally, the issue raised in the State’s motion was addressed in State v. Arteaga, 476 N.J. Super. 36 (App. Div. 2023)(holding a defendant entitled to discovery in matters where the State uses or relies on facial recognition technology (FRT)). The State does not dispute it used FRT in this case. Therefore, Arteaga applies and the judge did not abuse his discretion in compelling the State to produce the relevant FRT related discovery.” (Pa42-43).

### D. Analysis

The Appellate Division, like the trial court below, considered the issue and facts and applied the binding authority as established by Arteaga. The State does not point to any abuse of discretion. Rather, the State brings the instant motion in effort to rewrite the Appellate

Division's holding in Arteaga; a holding that the State accepted and did not seek this Court's review of.

The State, as the Appellate Division saliently noted, concedes that FRT was utilized in identifying Defendant. Law enforcement met with a CI that told the officers that the suspect is known to him/her as "Fat Daddy" and that the suspect utilized the Instagram handle "fatzbytheway." Law enforcement then retrieved a photograph from "Fat Daddy's" Instagram profile which was imported in FRT software providing a match for Defendant. Law enforcement then showed the CI a mug shot of Defendant who he/she positively identified as "Fat Daddy." With this information in hand, law enforcement then interviewed Defendant's family and friends to further confirm Defendant's identity.

Neither the trial court nor the Appellate Division abused their discretion in granting Defendant's motion to compel discovery related to FRT. The trial court issued a thorough and detailed written opinion that analyzed the facts and applied the law. The State fails to demonstrate that the trial court or Appellate Division overlooked any facts or law that would constitute an abuse of discretion. Instead, the State argues that, in their opinion, FRT is 'irrelevant' in the instant matter. Based on the record this argument appears disingenuous and is instead a rouse to cover up the fact that the State does not possess the requisite FRT discovery.

At oral argument before the trial court the State conceded that Artega is the controlling and binding authority as it relates to FRT

discovery. (1T: 11:24-12:9). The State further indicated that they requested the requisite FRT materials from the New York/New Jersey Facial Recognition Unit which could not locate a file for this matter. (1T: 13:1-5; 18:20-19:3). The State also indicated that they requested the required materials from the New Jersey State Regional Operations and Intelligence Center and received no discovery or documentation. (1T: 13:18-23).

The State's real gripe in this matter does not appear to be with any abuse of discretion committed by the trial court or Appellate Division but rather with the fact that the required evidence is not currently in the State's possession. (1T: 23:2-8). The fact that the State fears they may not be able to satisfy their lawful discovery obligations under Arteaga does not establish that the trial court nor the Appellate Division abused their discretion. The State's potential inability to satisfy their discovery obligations is not a reason to invalidate or delay the State's, well settled, responsibilities to provide FRT discovery pursuant to Arteaga.

### **CONCLUSION**

For the forgoing reasons the State's motion for leave should be denied.

Respectfully yours,

*s/ Joel Silberman*

Joel Silberman, Esq.