

IN THE SUPREME COURT OF THE STATE OF ALASKA

KALEB LEE BASEY,)	
)	Supreme Court Case No. <u>S-17099</u>
)	
Appellant,)	Superior Court Case No. <u>4FA - 16 - 02509CI</u>
)	
vs.)	
)	APPEAL FROM THE SUPERIOR COURT,
STATE OF ALASKA,)	FOURTH JUDICIAL DISTRICT AT
)	FAIRBANKS, THE HONORABLE DOUGLAS
Department of Public Safety,)	L. BLANKENSHIP PRESIDING
)	
Division of State Troopers,)	
)	
Bureau of Investigations,)	
)	
<u>Appellee.</u>)	

APPELLANT KALEB LEE BASEY'S REPLY BRIEF

KALEB LEE BASEY (17753-006)
Cardinal Unit
Federal Medical Center Lexington
P.O. Box 14500
Lexington, KY 40512-4500
Appellant in Pro Se

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ARGUMENT

I. The Trooper Disciplinary Records Cannot Currently be Produced in Basey's Criminal or Civil Cause

In addition to relying on inappropriate caselaw pertaining to the standards for release of personnel files in state criminal cases, the State ignores several fundamental flaws with its argument.

1. Basey's criminal case is currently before the Ninth Circuit, thus the trial court will not open discovery again.
2. A simple check of Basey's civil case on PACER would reveal that the case has been stayed pending the final disposition of Basey's criminal case. This Court may take judicial notice of this fact. Thus, discovery cannot be had in this case until some undetermined point in the future.
3. Assuming Basey could seek Trooper disciplinary records in his criminal case, "the federal government [has] no duty to obtain from state officials documents of which it was aware but over which it had no actual control." U.S. v. Chavez-Vernazo, 844 F.2d 1368, 1375 (9th Cir. 1987); U.S. v. Higginbotham, 539 F.2d 17, 21 (9th Cir. 1976) (request for production of photographs denied because they "were never in possession of the United States..."). Since the disciplinary records at issue are *State* records and

not in the custody or control of the United States, these records are not required to be disclosed in a federal criminal case.

4. Subject only to the State-litigation exemption (AS 40.25.122), the Alaska Public Records Act imposes no requirement that individuals involved in federal court proceedings to utilize those proceedings instead of a public records request for information.

In short, this is the only forum in which the Trooper disciplinary records can be obtained. Finally, the State makes a factual claim that is untrue, that “Basey was provided in connection with the federal prosecution...all of the materials he again has been provided in this civil public records case.” Opp. at 10. The State digital forensic examination records from the illegal search of Basey’s devices were not provided to Basey in his federal criminal case. These records may have been critical to exposing the tainted nature of the government’s investigation, but were obtained by Basey only after he was convicted.

CONCLUSION

The Trooper disciplinary records are disclosable and this forum is the proper place for their disclosure.

Typeface Certificate

The undersigned certifies that this brief uses 13 point Times New Roman typeface for the body of the text.

Respectfully submitted this 3rd day of October, 2018.

Kaleb Lee Basey
Kaleb Lee Basey, Appellant in Pro Se

CERTIFICATE OF SERVICE

I certify that I mailed (by first class mail) or hand-delivered a copy of Appellant's Reply Brief.

Name of Other Party or Attorney: John J. Novak

Address: 310 K Street, Suite 403

Anchorage, AK 99501

Date: October 3, 2018

mailed hand-delivered

Kaleb Lee Basey
Signature of Person Filing
APPELLANT'S REPLY BRIEF