

Record of detective questioned: Louisiana official accused of trying to elicit false jailhouse confession testimony in death penalty case

Written by John S. Adams Tribune Capital Bureau

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ONLINE EXTRA

Visit www.greatfallstribune.com to view Jay Via's personnel file and Charles Parker's written declaration in the Jimmie Duncan murder case.

HELENA —Documents show the Louisiana detective who in 1983 wrote down Barry Beach's confession to murder had a long disciplinary record spanning his law

enforcement career.

A file obtained by the New Jersey-based innocence group Centurion Ministries and given to the Tribune Capital Bureau indicate that over a 26-year period former Ouachita Parish Sheriff's Office detective John "Jay" Via had been suspended without pay on at least four occasions, was placed on a one-year probation, was ordered to undergo an examination by a neurosurgeon and was twice threatened with the possibility of termination.

Via was also repeatedly admonished at various points throughout his career for failing to file timely investigative reports in major cases, including homicide cases.

Via, reached Friday while traveling in Mississippi, said he voluntarily retired from the Ouachita Parish Sheriff's Office after 29-years of "impeccable service" in which he was promoted in rank. Via said Centurion's effort to make his disciplinary record public is an attempt to smear him after all other legal remedies for Beach have failed.

“They’re grasping at straws,” Via said. “With the department I worked at, if there had been any question about credibility, truthfulness or honesty I would have been dismissed, without a doubt.”

A Montana jury in 1984 convicted Beach of the 1979 slaying of Poplar teen Kim Nees after Beach confessed to the killing to Via and another Louisiana investigator, Alfred Calhoun. Beach, who had been living in Monroe, La., with his father at the time, was picked up in 1983 on allegations that he contributed to the delinquency of a minor for allegedly encouraging his step-sister to run away.

After a lengthy interrogation Beach initially admitted to killing Nees as well as three Louisiana women. Beach was later cleared of the Louisiana murders when it became known that Beach was not in Louisiana at the time of the killings.

Via later obtained two more confessions to one of those Louisiana murders from convicted felons Henry Lee Lucas and Ottis Toole. However, newly tested DNA evidence in 2007 linked a Monroe, La., man already serving a life sentence for burglary to the murder.

Beach has maintained his confession to the Nees murder was also false and was coerced by Via and Calhoun through the use of aggressive interrogation techniques and graphic threats of the electric chair.

On May 14 the Montana Supreme Court, in a 4-3 decision, overruled a district judge’s ruling that new evidence in the Nees murder case, which pointed to a gang of jealous teenage girls as the real killers, was compelling enough to merit a new trial. The high court ruled district Judge E. Wayne Phillips did not put enough emphasis on Beach’s confession when he ordered a new trial and released Beach from prison after 29 years in state custody.

The Supreme Court dismissed Beach’s petition for post-conviction relief and ordered that he return to prison to serve out the remainder of his 100-year prison sentence.

On May 15 Beach turned himself over to Yellowstone County Sheriff’s Office authorities and is now back in Montana State Prison in Deer Lodge.

'New evidence'

Jim McCloskey, who has been working for nearly two decades to free Beach,

said Jay Via's personnel records show a pattern of misfeasance which casts doubt on the veracity of "the architect of the Beach confession."

On a recent visit to Helena McCloskey, the director of the Princeton, N.J.-based Centurion Ministries, said Beach's legal team last summer requested and received Via's personnel file in anticipation of a new trial. McCloskey said Beach's lawyers planned to present the information to a jury in a new trial to impeach Via's credibility as a witness.

"This goes to his credibility, and his credibility is an issue when assessing the Barry Beach's confession," McCloskey said. "I think it's important for people to understand the character of the man who was the architect of the Beach confession as reflected in his own history documented by his own sheriff's department."

Missing reports

McCloskey points to numerous admonitions in Via's personnel file for failing to turn in investigative reports as reason for concern about Via's credibility as an investigator.

"His inability over years and years to produce investigative reports is a troubling," McCloskey said. "Even Mr. Calhoun, wrote about his habitual practice of not submitting reports, which he found unacceptable."

Centurion also requested Calhoun's personnel file, which contained no admonishments from superior officers.

On May 5, 1986 Calhoun, wrote that Via "has a bad track record as far as making reports" that was "unacceptable" and "would not be tolerated."

"But that practice of Via to not write investigative reports, not document his investigations, continued even until 2001, when another memo appears in the file about his inability or refusal to write investigative reports for all kinds of felony cases," McCloskey said .

In 2001 Capt. Scott Rowdon, head of the department's investigation division, repeatedly tried to get investigative reports from Via regarding a homicide. After Via failed to turn over the reports, Rowdon audited Via files and found "a clear pattern of Lt. Via's failure to properly document his investigations."

Rowdon wrote that Via's failure to comply with department reporting procedures "could jeopardize or at least hamper" investigations.

Via was suspended for two days without pay for dereliction of duty stemming from that incident.

Missing property

McCloskey also pointed to documented instances in which either money or property under Via's control disappeared without explanation.

On two occasions Via was ordered to return non-evidence property to crime victims.

A 1978 memo details how a stolen ring that had been recovered years earlier disappeared while in Via's possession. No report or complaint of the theft was ever made, according to Via's file.

When asked about the ring Via said he didn't know what happened to it. According to the file, Via's superiors "interrogated" him about the whereabouts of the ring and wrote in their report that "No plausible excuse was made as to why (Via) did not make a report."

As a result of that incident Via was ordered to undergo a neurological examination to see if there was anything "organically or physically wrong with his ability to think and remember."

The tests came back negative for any neurological problems, but Via was docked a day's pay for the hospital stay.

An audit of Via's reports stemming from that incident also found Via "had more than his share of resisting arrest charges against those that he had arrested."

Then-Sheriff Baily Grant wrote that Via was nearly fired following the inquiry in to the missing ring.

"Deputy Via was ... informed that the PSE examinations conducted in regards to the lost ring were not in his favor, and that we were stretching the facts to keep him on the job," Grant wrote.

Grant suspended Via for a year and warned him that any infraction of the rules of

the department, personal misconduct or insufficient performance of duty would lead to his termination.

In 1986 Calhoun documented how he contacted Via repeatedly to get non-evidence items released to the mother of a homicide victim. According to Calhoun's account, the woman had tried for several weeks to get the items back.

"The items were not evidence and had been in Via's possession for approximately one year and had not been secured in the evidence room," Calhoun wrote.

There's no mention in the file of the outcome of that letter and what, if any, discipline Via received.

Other incidents involving money or property popped up in Via's file over the years, including a 1987 admonishment for abusing department credit cards and vehicles, for which he was suspended two days without pay.

In 1991 he was suspended for three days for failing to turn in time sheets after repeated requests by his superior officers.

After days of trying to get Via to turn in the time sheets Maj. Mike Worley wrote: "I feel that Sgt. Via has lost his regard for authority and his responsibility to his supervisors and to the operation of this department."

A few months prior to that incident Via was admonished for playing golf at a country club while on duty and then misleading his superior officers about his whereabouts. Via told his superiors that he was working on "putting together a deal," a story Worley didn't buy.

"I told Sgt. Via that I doubted the truthfulness of his answer and that, if he were caught lying about anything and I could prove it, I would suspend him on the spot," Worley wrote.

In 1992 Via was transferred out of the metro narcotics unit for the unauthorized use of credit cards. During that process an audit found that a \$900 informant fund was missing and Via could not account for it either in cash or receipts.

Soliciting false testimony

McCloskey said another troubling piece of information which recently came to

his attention is Via's alleged involvement in a controversial capital murder case.

According to a signed declaration, Via in 1995 approached one-time FBI informant Charles Parker, at the Ouachita County Courthouse jail and asked Parker to provide testimony in the murder trial of Jimmie Duncan, a man accused of raping and murdering his live-in girlfriend's 23-month old daughter.

Parker, who served time in jail with Duncan, told Duncan's attorneys in a signed statement that via provided him with details about Duncan's case and asked him to testify that Duncan had admitted committing the crime.

"He gave me details of the crime, saying that the child was less than two years (old) and that she had been anally raped," Parker said. "He told me that when I came forward I was to say that Jimmie had confessed to biting the child while he was raping her."

Parker told Duncan's post-conviction attorneys that in exchange for his testimony Via "would talk to the DA and would get my sentence reduced."

Duncan said he refused Via on several occasions and was eventually transferred out of the jail.

Via denies having any involvement in the case or ever talking to anyone about Jimmie Duncan.

"That is totally false, it never happened," Via said.

'I've always been honest'

Via said he made mistakes during his 29-years at the Ouachita Parish Sheriff's Office, but he said he was always honest and always truthful. He said Centurion digging into his past is a desperate, last-ditch attempt to try to free their client, whom he said is guilty of Kim Nees' murder.

"The bottom line is this: I've never been untruthful and nothing I have ever testified to was not factual," Via said. "Whatever was in my personnel records before or after has nothing to do with Barry Beach."

McCloskey said Via's record should be taken into account when viewing the Beach confession, upon which the four justices ruling against a new trial for Beach placed so much weight.

“It brings into question his conduct as an officer and this entire confession,” McCloskey said. “Via’s superiors cite case after case after case that he didn’t document his investigation. If you don’t document your investigation how is anyone able to understand what you really did or what witness did what? Without documenting your investigation it gives them wide latitude to say things that might not necessarily have been true. Which is what we believe happened in the Beach case.”

Beach’s legal team plans to ask the Montana Supreme Court to reconsider their ruling.

Via said the high court’s initial ruling is a vindication of his record and involvement in the case and he said Beach belongs in Deer Lodge for the rest of his life.

“My personnel records are irrelevant. The facts speak for themselves. The truth is the truth and that’s what I stand on,” Via said.

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