

TO BE HEARD NOV. 28

Defense Wants Confessions Kept Out Of Cummings Murder Trial

BY ERIC CARLSON

A Nov. 28 trial was scheduled last week for the Robeson County man accused of shooting an Ash country store owner to death during an alleged cocaine-hunting murder spree that left two elderly robbery victims dead in two counties.

Daniel Cummings Jr., 39, of Red Springs could get the death penalty if he is found guilty in the killing of Burns Everette Babson, 74, who was shot to death during a robbery at his Bamboo Corner Ash Beverage store on Whiteville Road last April 22.

At his upcoming trial in Bolivia, Cummings will face charges of first-degree murder, robbery with a dangerous weapon and assault with a deadly weapon with intent to kill inflicting serious injury.

Cummings has also been charged with murder in the beating death of a Red Springs woman who was killed in her home by an intruder two days before Babson was murdered. He is also a suspect in the fatal beating of an 81-year-old Robeson County man murdered two years earlier.

Authorities say Cummings confessed to all three killings in statements made after his April 23 arrest in Sampson County.

In the opening round of their defense last week, Cummings' court appointed attorneys Michael Ramos and William Fairley asked Judge Gregory Weeks to keep those incriminating statements out of evidence during the trial.

Their motion made Tuesday (Oct. 25) claims that Cummings "was suffering from withdrawal from approximately one week's constant use of cocaine" and that his mental state during questioning made him unable to understand his Constitutional rights.

The statements made by the defendant between April 24 and 28 support the claim that Cummings was either smoking crack cocaine or looking for ways to steal money to buy more drugs during the time when the two murders occurred. But they also place him at the scenes of both killings.

In a series of three conversations with Brunswick County Sheriff's Detective Tom Hunter and two SBI agents, Cummings gave increasingly more incriminating descriptions of the events before and after Babson's killing.

Cummings' first statement claims that on Wednesday afternoon, April 20, he was picked up under a bridge near Lumberton by a black man named "Joe," who was driving a white Ford van. He said the two of them drove around for the next two days smoking crack and looking for places to steal money.

On Friday afternoon, after "smoking crack the whole time," Cummings said he and "Joe" were on their way to Wilmington when they passed through Ash.

"We stopped at several stores and I went in to scope them to rob," the statement said. When they got to Babson's store, Cummings said, "I went in and asked the old man for some water."

Cummings said he got a drink outside and left in the van with "Joe." About a half hour later, they went back "to rob the store," the first statement said. While outside, Cummings claimed he heard four gunshots.

"I ran back inside the store and saw the old man laying behind the counter," Cummings said. "I did not see Joe inside the store." But when he went outside, Cummings claimed he saw a lady running away. "Joe was on his knees at the corner of the store and he was shooting at this lady."

Investigators have said that witnesses interviewed after the murder saw a man in a white Ford van getting a drink outside Babson's store shortly before the killing. They did not mention seeing a black man with him.

Babson's wife Jewell had just walked into the couple's home next door when she heard gunshots. As she went to investigate, a man fired a pistol at her. Mrs. Babson told police she ran away and returned a short time later to find her husband lying on the floor behind the counter with his head resting in the chair. He had been shot at least three times.

Two days after his first interview with Hunter, Cummings allegedly told the detective a different story. This time there was no "Joe." This time Cummings said he stole a white van from Shannon, N.C., and "rode around and smoked crack cocaine for the next day or two."

Cummings said he was "scoping" stores to rob and "stopped at this one store and saw this old man running the store alone. This store looked easy to rob." He said he left and came back about 30 minutes later and went

back inside and "told the old man, 'Give me your money,'" according to the statement.

The old man went toward the cash register and "came back with a gun and shot at me," Cummings allegedly told Hunter. "We struggled over the gun. I believe I heard or counted about four shots that went off inside the store. I took the old man's wallet. I got the money out of the cash register and left the old man lying face down in the chair."

In the second statement, Cummings allegedly admitted firing the pistol as he left the store "to scare the lady. I did not aim the gun. I shot until the weapon was empty."

Cummings' third statement to Hunter gave much the same account. Again there was no "Joe." But this time there was no mention of "the old man" firing a shot at Cummings before they struggled over the gun.

Another of Cummings' statements to an SBI agent, included in court records, gives an account of him hanging out in the Red Springs area with several other crack users and looking for places to steal money for more drugs. In this statement, Cummings admits breaking into a home and struggling with an old woman before leaving with her pocketbook.

"She was behind the door, peeping around, looking out the storm door to the outside," Cummings allegedly told the SBI agent on April 26. "She must have heard something. I said give me your money. The lady said, 'Please don't hurt me. Don't hurt me. Don't hurt me.'"

In the statement, Cummings made no mention of harming the woman and claimed he left her lying on the bed.

Cummings also has been charged with murder in the killing of Lena Hales, 80, of Red Springs, who was severely beaten in her home during an apparent robbery three days before Babson's murder. She died the next day at Duke University Medical Center.

The effort to suppress Cummings' pre-trial statements was one of several motions made by defense attorneys in the case last week. Judge Weeks did not rule on those motions, but he did agree to appropriate money to hire an independent ballistics expert to testify for the defense at the trial.

In other Superior Court action last week:

■ Jeffrey Allen Hicks, 24, of Oscar Long subdivision, Leland, was sentenced to 15 years in prison after pleading guilty to eight counts of felonious possession of stolen goods and tow counts each of felonious breaking or entering and larceny. He was ordered to pay \$250 for his court appointed lawyer.

■ Ronnie Mitchel Sarvis, 42, of Creekview Lane, Leland, was sentenced to six months in jail (with credit for 29 days served awaiting trial) after he pleaded guilty to two counts of taking indecent liberties and one charge each of possession with the intent to sell and deliver marijuana, manufacturing marijuana and possession of drug paraphernalia. He was also given a 10 prison sentence, suspended on the condition that he pay court costs and \$250 for his court-appointed lawyer.

■ Jerry Carl Harden, 53, of Shallotte was sentenced to 10 days in Brunswick County Jail after pleading guilty to driving while impaired. A one-year prison sentence was suspended on the condition that he pay a fine of \$200 and court costs and not operate a motor vehicle until licensed to do so. He was put on unsupervised probation for two years.

■ In a trial spanning two days, a jury found Joseph A. Tombro, 56, of Newport Street, Ocean Isle Beach, guilty of driving while impaired by alcohol. He was given a 60-day suspended jail sentence and was put on unsupervised probation for two years.

■ William J. Sisk Jr., 20, of NE 55th Street, Long Beach, pleaded no contest to a charge of possessing less than a half-ounce of marijuana. He had been charged with manufacturing marijuana. The judge issued a prayer for judgment continued on payment of court costs.

■ James Ellis Daniels, 20, of Ash-Little River Road, Ash, pleaded guilty to two charges of larceny and one count of breaking or entering. He was charged with larceny and second-degree burglary. The judge sentenced Daniels to six years, suspended on payment of \$862 restitution, \$250 attorney fees and court costs. He was put on supervised probation for five years.

■ In a sentencing hearing on an earlier conviction for possession with intent to manufacture, sell or deliver cocaine, Arnold Mercer, 40, of Route 2, Supply, was sentenced to three years in prison, suspended on pay-

ment of court costs. He was put on unsupervised probation for three years.

■ Sonja Smith of Route 2, Bolivia, pleaded no contest to one count of simple assault. She had been charged with misdemeanor assault with a deadly weapon. Smith was sentenced to 30 days, suspended on payment of \$284 restitution and court costs. She was put on unsupervised probation for a year.

■ Attorney Roy Trest entered guilty pleas on behalf of Jason Pelfree and Charles Earnest Pelfree of Park Avenue Southport, who did not appear in court to answer charges of simple assault. Each defendant was sentenced to 30 days in jail, suspended on payment of court costs. They were put on unsupervised probation for one year.

■ Marvin Ray Floyd, 40, of Sheila Drive, Long Beach pleaded guilty to a charge of possessing less than a half-ounce of marijuana. He was charged with manufacturing marijuana. Floyd was sentenced to 30 days in jail, suspended on the condition that he pay court costs and \$150 attorney fees.

■ Ronnie Harold Jones Jr., 22, of Blakes Circle, Leland, pleaded guilty to one county each of felonious burning of a building, breaking or entering and larceny. He was sentenced to six years in prison, suspended on payment of \$2,000 restitution, \$250 attorney fees and

court costs. He was put on supervised probation for five years.

■ Andrew Duane Trump, 28, of Piney Grove Road, Delco, pleaded guilty to one charge each of breaking or entering and larceny. He had been charged with second-degree burglary. Trump was sentenced to three years, suspended on payment of \$450 attorney fees, \$200 restitution and court costs. He was put on supervised probation for two years.

■ Bruce Lee Williams, 38, of Town Creek Road, Leland, pleaded guilty to one count each of driving while his license was revoked, driving while impaired, simple assault and second-degree trespass. Sentencing was continued.

■ Walter Washington of North Lord Street, Southport, admitted violating the terms of his probation and had it revoked. He was ordered to serve a two-year prison sentence in his 1992 conviction for possession with the intent to sell and deliver cocaine. He was recommended for the prison's Drug and Alcohol Rehabilitation Training (DART) program.

■ Ronald Lashley, 39, of Baldwin Estates, Leland, admitted violating the terms of his probation and was allowed to remain on probation on the condition that he complete any drug treatment or counseling recommended by this probation officer. He was ordered to pay \$150 in attorney fees.

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