

ment of the State, as follows:)

MR. HOLT: Thank you, Your Honor. May it please the Court, counsel, and you, ladies and gentlemen of the jury. On behalf of the State and Mr. Breeding, I'd like to thank you for your attention today. It's been a long day, and it's going to be a long night. The case before us is the State versus James Weaver, and some things in life are pretty simple. And you'll have these instructions before you, and you will see. You'll be able to read them, and you will be able to consider the testimony and the physical evidence, but this is not the most important day in James Weaver's life. The most important day in James Weaver's life was on December the 13th, where he and a friend of his procured this thing, and that his friend bludgeoned John Rogers to death. Now, the one thing that I tried to do in voir dire was to get you to look at the instructions and get you to look at the law. Because a lot of the facts -- I mean, the facts are pretty much there. We have three people who are arguing about rent at one location. They live with someone else. Then they move to another location, and they have different jobs, and they're arguing about rent there or different things, and you have that night where two of those people, James Weaver and Alan Hubbard, have decided to

move out. And as Angie Millan testified, they talked about well, let's pay these bills because I'm getting paid this weekend. So there was money that was coming. They had something to collect, pay for rent. More than that, John Rogers said something to James Weaver, and James Weaver responded. And now, James Weaver would have you believe that that's just a joke that he made concerning what it was, but he did say that they had argued before, and he and Alan Hubbard were moving out. Now, the State has charged him as an accomplice because, you know, you can use your common sense. You can't -- If one person's an accomplice and the other person pulls the trigger, certainly you don't have to have both people pulling the trigger at the same time. Because the other person can have as his purpose to facilitate the commission of that offense. So look at the law. Look at the instructions as they're given to you by the Judge. There's no doubt, I don't believe, in anybody's mind that Alan Hubbard is a coldblooded killer, and that Alan Hubbard formed premeditation and deliberation, because he struck John Rogers six times in the head, and the evidence shows that he struck him in the head with that. And how was the death of John Rogers facilitated? How did James Weaver aid in the facilitation of his death? Well, there were these

people who were friends of James Weaver, and he went over there, and besides that, he had been in his little tiff with John Rogers. And Alan Hubbard had also argued with him, and Alan Hubbard had even said we ought to kill him, ought to get rid of him, eliminate him as a our problem. The picture there goes to show the premeditation on the part of Alan Hubbard. The facilitation of that crime, the accomplice liability that lies with that crime that rests on James Weaver, is going over there to the Catons' house, asking for this pipe. What could he reasonably have thought that this was for? If you'll notice in his -- what he said today and how he appeared, he's smart. He's smart, and he's just as cold as Alan Hubbard, but today he's scared, too, because he realizes that there is a time for accountability, and that's today. That this isn't the biggest day in his life. That he's going to be held accountable for that biggest day in his life, that December 13th. Then he tells you these things like I'm sorry I did it. Well, did what? Or that I know have a chance to start my life over again. I submit that the Catons' testimony is consistent. That there had been a plan talked about to kill John Rogers, and that he remained silent? Well, he hasn't told you about anything that he said as far as that

plan goes. But he was ticked off that night. He'd been made fun of. He goes to someone who wouldn't know that he had something to collect, and that can show you right there that this person has heard something from that he would have no knowledge of. He wasn't the person there. James Weaver was. But he had this kind of an instrument available, that he procured it, and he even admitted because it's after the fact, and I'm sorry for that, too, but he's the one that takes it back. It's hard to believe that well, Alan borrowed it and Alan came up with this plan. But, I did the things afterwards. Well, he did do the things afterwards, because he's kind of caught. He's caught with the steam cleaner people bringing that back. He's caught with what he said to Mike Roberts, and that was very early on after John Rogers was dead. Was the dogs got into a fight. And then the next time well, John got into a fight. Yeah, that's it. John got into a fight. And then we have Angie coming over there and his saying I just don't know where he is. And saying things like you're better off without him. And he tried to say with some remorse I just couldn't tell her John was dead. Well, why couldn't he tell her John was dead? You can use your common -- The common sense instruction is also in here. Why couldn't he tell her? Be-

cause he had helped to kill him, and he had helped to conceal the body. You will need to pay very close attention to the accomplice instruction, because it, in fact, talks about promoting or facilitating the commission of an offense, on who advises, encourages, aids, agrees to aid, or attempts to aid someone committing that offense. The ironic part of this is he says -- It's kind of a tell tail sign. He says I thought it was a joke. And yet they go over there, and they get this. And this isn't a joke. Now, you can take that back into the jury room as well. Hitting someone six times in the head is not a joke. But what did that do, you know? I talked a little bit about you can't have both people on the -- pulling the trigger at the same time, but yet you can have accomplice liability. I really don't think that James Weaver could have killed him by himself, but without a doubt, he erased him from the picture, and he facilitated him being erased from the picture. Because look at him after this happened as well. He's got a nice apartment, and who is he with? He's with the person who has coerced him to do this, the person he lives in fear of. He's been alone by himself immediately after that. And he didn't tell Angie at all, because he would implicate himself as being part of this to get

rid of somebody out of their life. It's like life. We can start again. This is my new beginning with Alan. We're best of friends, and we can just go on from here. You're to consider all the instructions, not singling out any particular one. He says again, says that well, I don't know how John got out there to the car. But this guy is supposed to have carried this guy out there. And here we have the car that he was taken in and blood in the back. And here we have the boots of John Rogers. That's relatively minor, but as you consider these instructions, remember that capital murder is premeditation and deliberation. That there was some kind of plan, that people had to take steps to do this, and that neither person had to take part in every step, but the Defendant took part in steps that promoted the commission of this offense. You will have to look at that capital murder, and before you can consider murder in the first degree, which is only that he--And you can read it. It's knowingly. Well, purposely, I should say. Purposely caused the death of another person. James Weaver and an accomplice did cause the death of John Rogers. Before you can even look at that, you have to acquit him of capital murder, and there's only sentence on capital murder. Once you decide it's capital murder, the sentence is

there, but you have to acquit him on capital murder before you can consider first degree murder. And likewise you have to acquit him on first degree murder before you can consider him on second degree murder. And you have to acquit him on second degree murder before you can consider him for manslaughter. Now, we can't -- It's a good thing that the State doesn't have to prove motive, because how can we delve into the mind of someone who would do this, or someone who would promote this? Is this-- It's senseless. There is just not a reason why, except that I got mad. I wanted him out of the way. He was a problem to us. He was a thorn in our side. It just doesn't make sense. But those are the things you're going to have to consider and judge from the evidence as far as what these people said, and why part of this is a conspiracy against James. That friends of his that he's known for a long time like Jon Surlles and Al Caton and Al Caton, Sr. Why would they lie? Has there been any showing that there is some sort of a conspiracy between these folks? Or even the other people who came along and saw the blood, and then there wasn't blood. And say yes, I talked to that person. That no, that Alan Hubbard is tall and skinny. I didn't talk to him. I talked to that person who gave me a story and gave me a story

more than once. And you can consider his demeanor on the witness stand as well. I submit, ladies and gentlemen, he is as cold as Alan Hubbard is. But he is scared now, because today is the day that we find justice. That he is held accountable, and we show the community that no, you can't do this. You can't do this and say I'm sorry, I want a new beginning. We'll move, and it'll never happen again. You can't do that. You can do that in a lot of things. You can mess up in a lot of things, but this is not one of them. Because as a jury, you have the duty to protect the other people in this community as well. And that's what I expect you'll do. Thank you.

THE COURT: Mr. Luppen.

(THEREUPON, Mr. Luppen gave the Closing Argument of the Defense, as follows:)

MR. LUPPEN: I want to thank you all. It's been a long day, and your day is really just beginning, and my day is ending, but this is the last time I'll get to talk to you. And I want to talk first about the witnesses in this case, and what they've said and what their credibility is. ① First, I'll take Miss Millan. She testified that James Weaver and John Rogers got into a little argument, and that James Weaver always just kind of went with the flow. He wasn't somebody

that would argue all the time. ② Then let's look at Al Caton, Jr., and Al Caton, Sr. They were caught in about three different lies between themselves and ended up calling each other liars. Al Caton, Jr., said that James Weaver didn't ask him for anything. That Alan Hubbard asked him for something to get rid of John Rogers. He said when that happened, his dad wasn't even there. Well, then we have his dad saying yeah, I was there the whole time, and it was James Weaver, but he said I need something to collect some money. And then Al Caton, Jr., said this conversation happened at eight o'clock at night. Take in mind this is December the 13th. Al Caton, Sr., says it wasn't quite dark yet. Well, I told you. Remember about your common sense experience. You know at eight o'clock it's dark out. So, he doesn't even know when any of this stuff happened. And Mr. Holt asked why would they lie? Why would they be trying to confuse the issue? Well, I can tell you why. Because they gave a murder weapon to Alan Hubbard. Then it was taken back to them, and they never said a thing about it. Why aren't they here today sitting next to James Weaver? That's a big question I've got, and that's something Mr. Holt's going to have to answer to. ③ Next, let's look at Mr. Hubbard. He gave you a statement. They

asked him. The policeman asked him why did you do it? I don't know. Did you do it for money? No. I don't know why I did it. I guess I was just mad. He was a guy that got on my nerves. Did he ever say once James Weaver and I got together and planned this thing out? No, he never said that. He admitted that he went in there and hit that man six times. He admitted, and he told the truth that James Weaver never hit him. And now, last of all, look at ⁽⁴⁾ James Weaver and his testimony. If that's a coldblooded murderer, I'm a fool. You saw him. That's a nineteen-year-old kid that is scared to death. He sat there and told you straight what had happened. He's young. He's immature. He's 19 years old. A maniac just killed his roommate. What would a reasonable person do, not alone a nineteen-year-old kid when he confronts the guy, and he starts making threats to him? What would a reasonable person do? Is that something that he should be charged with murder for? That he helped a maniac move a body who had threatened him. And said I hope I don't get mad at you, because I might have to do to you what I did to John Rogers. Look at ⁽⁵⁾ Ms. Reed, the lady at Kroger. What did she say? Alan Hubbard, he came in. He's the one who asked for the steam cleaner. What did James Weaver do? He stood behind, mute, like a zombie. I

mean, the kid's in shock. What does he do? And Mr. Holt has talked to you a lot about looking at the law, and that's what you have to do. You have to apply the facts to the law. An accomplice is somebody who aids, agrees to aid or attempts to aid the other person in planning or committing the offense. The offense here is a murder that Alan Hubbard committed. Not anything that James Weaver did after the fact. It's what did he do before? And did he do that with the purpose of committing that offense? You heard him. He didn't get that pipe. He didn't get it. Alan Hubbard did. The Catons have no credibility whatsoever. I wouldn't believe anything they said, but James Weaver has taken that oath. He's withstood cross examination, and his story has been the same. He didn't think that Alan Hubbard was serious about this, and what reasonable person would? They weren't arguing about anything big. Nobody had stolen somebody's girlfriend. Nobody had stolen somebody's wife. Nobody had done anything. Who would believe that, this guy would do that? You cannot hold him accountable for what someone else did, and that's what they're asking you to do. We don't live in a perfect society. We aren't our brothers keepers. We just aren't. I see you all read the newspaper. Don't you read some woman getting raped in New

York, and the people close their windows to keep out the screams? Do the police go up there and say you're under arrest because you didn't help them? You didn't help that lady down there. I wish we did live in a perfect society where everyone did that, that would help people, but I can tell you right now, if I knew that one of you was going to rob someplace and had a gun, and you went in there and you robbed it, and I didn't do anything about it, nobody's going to be charging me with a crime, but that's what they've done to James Weaver. Because he didn't tell anybody afterwards. And why didn't he? Because he was afraid. He had been threatened. He was living with a maniac. What would a reasonable person do? Alan Hubbard, he admitted to you that he got the pipe out of the car. He said that. He got it out of the car, not James Weaver. Alan Hubbard got the pipe out of the car. He's the one that took it in there and killed John Rogers. Look at all the instructions on murder, ladies and gentlemen of the jury. There's not one that fits James Weaver. Not one. He is innocent. He is weak. He is weak, and he knows that he should have probably gone to the police after this happened, but he didn't. And that's why he's here today. Because of something that he did that he didn't do after his roommate killed

somebody in cold blood. And that is not murder. That may be something else, maybe he hindered the apprehension of a felon, but they didn't charge him with that. That's their mistake. You cannot convict him of murder. This is a kid who has never been in trouble in his life. He's innocent. He's weak, but we don't convict the weak. We forgive them and let them go. I think you'll do that.

(THEREUPON, Mr. Holt gave the final part of the State's Closing Argument, as follows:)

MR.HOLT: I'm sorry that there is not an instruction that will say that we don't convict the weak. We convict people who take measures to promote, or facilitate or aid the commission of an offense. I said early on that I don't think that this Defendant could have done that by himself. But these two individuals, friendship that they had, whatever they got out of that friendship with each other, the way, however they massaged each other's egos, they had a conflict with John Rogers. And they shared that conflict. They shared that conflict in that they were going to move out. This person owed them money. Did you notice the witnesses how they just can't get away from saying they? That these people never, these two people, Alan Hubbard and James Weaver, never had a disagreement.

That they acted in concert with one another. That John was the problem in their life. We'll never know exactly what James Weaver said to Alan Hubbard to make him think that he could take this, and he could erase that problem from their lives. We'll never know, and he'll never tell us. But we can see what he did, and Mr. Luppen is doing his job, and he does a good job. But he's playing the shell game with you. It's somebody else. It's -- Well, the Catons killed him. You know, the Catons' story is not inconsistent. As I pointed out, how does Al Caton, Sr., know there's money involved to collect something? He's the one who knows James. James does all the talking. Well, of course, James does all the talking, because he knows him, and he can get it from him. But, Alan knows Al Caton, Jr., and he just comes out and tells him. He says we're going to beat him up. I want something to beat him up with. So then, what does James do? Does James say no, oh, you're just joking? Blow it off. Let's buy some pot and get out of here. No, it's not what he says. He gets it. He says, and it's totally consistent with what Al Caton, Sr., says and morally how you feel about that is another matter, but Mr. Luppen's playing that shell game with that. But he says I'm not saying you can. I'm not saying you can't.

It's out in the car. Well, who retrieves it? He doesn't know who retrieves it, but he knows who asked him, and that's the shell game part. Is he a cold-blooded murderer? He's cold. He's cold, because this eliminated his problem, and he could on from there. And he wants you to feel sorry for him. Well, it says in these instructions as well, you can't use that sympathy as a basis for determining what the facts are, and you have heard the facts. And you have the law. Mr. Luppen made the comment about you're going to go out and rob a store with a gun. Well, I submit to you if he gives you the gun and he knows what you're going to do, he's an accomplice to that. But let's get back to this. He said early on that James' life is in your hands. But I ask you, whose life was in James' hands that Wednesday and that Thursday? John Rogers was. Thank you.

THE COURT: The jury will now retire to consider its verdict. If you'll go with the bailiff, ladies and gentlemen.

(THEREUPON, the Court released the alternate juror, and then at 5:13 p.m. the jury retired to the jury room to consider its verdict. At 6:49 p.m. of the same day, the jury returned into Open Court with a question, and the proceedings continued, as follows:)

THE COURT: Mr. Kullander, I see you carrying what appears to be instructions. Have you been elected Foreman, sir?

MR. KULLANDER: Yes, sir. I volunteered for it. Everyone else was quiet.

THE COURT: All right. Has the jury reached their verdict, sir?

MR. KULLANDER: No, sir, we haven't. We'd like to ask a question or clarification on Instruction 13.

THE COURT: All right, sir. What's your question?

MR. KULLANDER: Our question is whether -- It says -- concerns on deliberation, and whether the consequences of a course of conduct, whether that refers to what happened to the victim, or what will happen to the person considering the act after the fact. I've got it written down here.

THE COURT: Consequences of a course-- I'm not sure I understand your question, sir.

MR. KULLANDER: Where it came from as a result of a weighing in the minds of the consequences of a course of conduct as distinguished from acting upon sudden impulse without the exercise of reasoning powers. We're -- The consequences of a course of conduct. Is that before, or is it after the fact that something has happened, then this is what's going to

happen to them?

THE COURT: All right, I think I understand what you're talking about. Counsel, come up for a minute.

(THEREUPON, out of the hearing of the jury, the following conversation took place between counsel and the Court:)

THE COURT: He's asking about---

MR. LUPPEN: Isn't that what they're saying? Whether he premeditated and deliberately caused the death?

MR. HOLT: No.

THE COURT: I think it can actually refer to either, depending on the situation. What I'm not prone to do is to go to try to explain what a definition means in other terms. Because what this might be interpreted as a comment on the evidence.

MR. HOLT: Uh huh (Meaning yes).

THE COURT: Unless counsel tells me something other, what I'm going to tell them is that the definition that they have is something that they have to work out, and under the law, I cannot explain that one any further. Is that satisfactory, or words to that effect?

MR. HOLT: Yes.

MR. LUPPEN: That's fine.

(THEREUPON, in Open Court, the proceedings continued, as follows:)

THE COURT: Mr. Kullander, I'm afraid I'm going to have to decline to answer your question. Under the law, I cannot explain this to you further. I know what you're working with is the definition there, but you have to accept what you have. After speaking with counsel, I don't feel that under the law I would be permitted to explain that to you further.

MR. KULLANDER: Okay.

THE COURT: The best I can do. I apologize for that. So, if there's nothing further, I'll ask you to again-- Do you have any other questions first?

MR. KULLANDER: Not at this time.

THE COURT: All right, sir. If you will return with the bailiff to the jury room.

(THEREUPON, at 6:53 p.m. the jury returned to the jury room to consider its verdict, and then at 8:32 p.m. of the same day, the jury returned into Open Court, and the proceedings continued, as follows:)

THE COURT: Mr. Foreman, has the jury reached its verdict, sir?

MR. KULLANDER: Yes, sir, we have.

THE COURT: And is that verdict unanimous, sir?

MR. KULLANDER: Yes, sir.

*out at 5:13
in at 6:53*