

good day. Ladies and gentlemen of the jury who have been selected, let's begin this trial -- take a 15 minute break and begin at a quarter 'til the hour. We'll be in recess until that time. Mr. Harrell, the bailiff will tell exactly where you need to sit during trial, sir.

(RECESS)

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

THE COURT: State may address the jury.

(THEREUPON, Mr. Holt gave the State's Opening Statement, as follows:)

MR. HOLT: Thank you, Your Honor. May it please the Court, counsel and you, ladies and gentlemen of the jury. Good morning again. This is the portion of the trial known as Opening Statements, when myself and Mr. Luppen get to tell you what we anticipate the testimony will be. What we say isn't evidence, but it's an outline, framework for you to have in your minds what happened, and then for you to be able to listen to the statements of the people who were there, who saw, heard and experienced the different things, and that's the evidence. But this will kind of help you focus and to know what the pieces of the puzzle are going to look like. If the pieces look a little

different, you're to take the evidence as it's presented, because that's what the testimony is. What we do is just aide you in looking at what we anticipate it to be. In this case the State anticipates that the testimony will come from several people as to what they saw, heard and experienced. They'll set the scene for you if you will. On December the 13th it was a Wednesday. The victim in this case, 21 or 22 years old, John Rogers, he lived with two other people, James Weaver and Alan Hubbard. They had lived at an apartment. They had not lived there for long, approximately a month at this house on Young Road. Before that they lived in a trailer on Kanis with another young man. They moved out of that apartment, and they were in this house, three of them together, Alan Hubbard, John Rogers and the Defendant, James Weaver, who's charged as an accomplice in the murder of John Rogers. On December the 13th I anticipate the testimony to be that John Rogers' girlfriend, Angie Millan, who was a student at UAI,R, was with John during the day. That John didn't have much. That he did have a job, and his employer, Mike Roberts, will testify about what he saw and the events leading up to the murder. But, the testimony will be that John Rogers got off work early that day, approximately

twelve thirty, one o'clock, from working with Mike Roberts, his boss. Angie had bought him a Christmas presents, a sweater, pants and some boots. And they were going to go out and get their picture taken. He got off early. Angie came by the house. He didn't have a car, and they went --went and got something to eat, did whatever, did the plans that they had for that day, and then came back. And she, at some point she left that night. It was somewhere between nine and ten fifteen. She'll pin it down for you. But she left, and that was the last that she saw of John Rogers. She did, however, come back the next day, looking for John, and the Defendant gave her a story about where he was and what had happened. And she became suspicious. She later filed a missing person with the police later in the week after never seeing him again, and being told certain things by the Defendant. And she'll tell you what she saw, what she heard and his demeanor. She had two dogs over there. Finally, by Sunday, following that Wednesday, she went and got her dogs from that place and still hadn't seen the Defen- ??
Not true
dant who was arrested shortly thereafter. Another person who'll be a witness is Kelly Clark, and Kelly Clark was the girlfriend of Alan Hubbard. Alan Hubbard also lived at the apartment there at the house, and

the testimony -- You'll hear his statement. It's a joint exhibit by the Defense and the State, and he will say that he, in fact, that John Rogers died at his hands. That he took a four pound knocker bar used by truckers to test the trucks and beat John Rogers to death. You'll hear more than just his saying that he did that. You'll hear the involvement of James Weaver, and you'll hear everything leading up to that. And you'll hear the statement that James Weaver gave as well. This happened, or the last time that Angie Millan saw him was on a Wednesday late. The murder occurred sometime between Wednesday late and Thursday morning, and we have Mike Roberts, John Rogers' boss who came by, let him off work on Wednesday early to get his picture taken, came by the next day to pick him up for work at a quarter to seven or six thirty. His testimony will be that he saw blood everywhere on the porch and on the grass leading to where they usually parked a car, a car that belonged to Alan Hubbard. And you will see pictures of that car as well. That he was not around, and that the Defendant, James Weaver, gave them a story about some dogs getting into a fight, and that was the reason for the blood. And he came back a little later to get parts or something because he had a shop near there, and

John Rogers was nowhere to be found, and the blood had been washed up. Another witness the State anticipates calling are Al Caton, Sr. and Al Caton, Jr. Now, the State will try to give you some background on these three individuals. That Alan and John had known each other for a time, but this Kelly Clark will testify that this Defendant and the other person who admitted killing him with his hands, were the best of friends. They had known each other approximately four to six months, that they were always in agreement, that they did everything together, and they were close, and that they were having trouble with John. That John was behind on rent, and that John had gotten a job working -- was a paint contractor, and was -- But Al Caton, Sr., and Al Caton, Jr., will testify that two people came to their house. Al Caton, Jr., was friends with all three of them, John, Alan and James. That James and Alan came to his house and said that he needed to collect some money. And he will testify that James Weaver asked him if he could borrow his baseball bat, because Al Caton is crippled, and he keeps baseball bat around in case he's robbed because of the neighborhood he was living in. And he kept this knocker bar in his car. And he will testify that James asked him for that bar. That he had known James a long

time, and that -- He will tell you what he said, but the testimony will be from Al Caton, Jr., that James Weaver took that bar, which, I anticipate to be admitted into evidence, and he took it and took it back to the house for the purpose of facilitating the crime that was to occur. He will also testify that James Weaver brought it back. There will be further testimony that after Alan Hubbard and James Weaver had killed the victim, that they went to Kroger and attempted to rent a steam cleaner to clean where all the blood had spilled in the house, and that they were denied the use of it because of a bad check, but they were together. And that they left, and this same person who denied them on the 14th, that Thursday, they came back with the steam cleaner on the 18th, returned it, that they had gotten there. And they worked together again. And that Mr. Weaver was there, and that he whispered something into Alan Hubbard's ear, and left and went out of the store. That there will be testimony that boots belonging to John Rogers were recovered by jailers and logged into evidence that belonged to John Rogers, worn by James Weaver in the jail. There will be Dr. Malak who will testify that yes, the cause of John Rogers' death was being struck in the head six times by a four pound knocker

bar, or an instrument consistent with that. At the close of all the evidence, I'll get back up here, and at that time I'll argue the law and how it applies to those facts. And at that time you'll go back and deliberate, and I submit to you the State does, that you'll return a verdict of guilty of premeditated and deliberated murder, capital murder in this case charging James Weaver as an accomplice to John Rogers' murder. Thank you.

(THEREUPON, Mr. Luppen gave the Opening Statement of the Defense, as follows:)

MR. LUPPEN: Your Honor, ladies and gentlemen of the jury. As Mr. Holt said, what I'm about to say and what he has just said is not evidence and should not be considered by you as evidence in the case. It's just a way for you to get an idea of what is going to be presented to you today. And he said some things that I may differ about as to what is going to come out, but I won't get into that now. I will tell you this, you will hear that on December 14th, 1989, in the early morning hours Alan Hubbard hit John Rogers six times with a blunt hard object causing his death. You will hear that Alan Hubbard and John Rogers were best of friends, had been friends since the third grade. You will then hear two statements, a statement

give by James Weaver to the police and a statement by Alan Hubbard given to the police. Alan Hubbard told Detective Stafford of the Little Rock Police Department after being informed of his rights that he had killed John Rogers. That he had killed John Rogers while he was lying on the couch asleep in the living room in the apartment that James Weaver and Alan Hubbard shared with John Rogers. He will tell you in a statement, and he told Detective Stafford I don't know why I killed him. It was just anger. He was just somebody that got on my nerves, and it just built up. I don't know why I did it. He will say in his statement he did not even know why he did it. That he just didn't like him. That was his reason for killing him. He will also tell you that James Weaver never struck a blow against John Rogers. Alan Hubbard will tell you that. You will then hear James Weaver's statement, and he will tell you the nightmare that he went through. That he met Alan Hubbard and John Rogers a couple of months before the 14th. That he lived with them. That he was friends of Alan Hubbard. That he saw Alan Hubbard and John Rogers constantly arguing. They were arguing about the rent. They'd argue about petty things. They would argue about anything. They had an ego clash if you can call it that. That a couple of

around seven or eight o'clock at night. They then go, Alan Hubbard and James Weaver, go cruising up and down Geyer Springs Road like kids do every night. And during that time, Alan Hubbard never talked about killing John Rogers with that steel pipe. They were just talking about girls, or picking up girls, or whatever. They then went home at about ten or eleven o'clock. John Rogers was up with two friends watching TV. Alan Hubbard went to bed. James Weaver sat up watching TV with John Rogers. About twelve o'clock James got tired. John Rogers was falling asleep on the couch. The two friends left. James went in to go to bed. Alan Hubbard was already asleep. At about between three and four o'clock James and Alan woke up. They had to throw a paper route. James saw John Rogers asleep on the couch. They go out. They throw the paper route. Alan Hubbard never says anything about killing John Rogers while they're throwing the paper route. They get back around four thirty. James is in the kitchen of their apartment. Alan Hubbard comes in, and he says I'm going to kill John Rogers. James is tired. I mean, he's tired of hearing it. He says oh, you know, gets mad and says that's ridiculous. No, you're not and just leaves the kitchen, goes back to bed. He's tired. Alan Hubbard comes into his bedroom, sits

on the end of the bed. This is shortly after this
kitchen incident. Sits on the bed at the end of the
bed. James is trying to go to sleep, lying in bed.
Alan Hubbard doesn't say anything. As Alan Hubbard
leaves, James sees that he has the pipe. Then the next
thing he hears is a thud. The bedroom and the living
room are right -- The walls are thin. He could hear
it. He knew then that Alan Hubbard was trying to kill
John Rogers. He ran to the hall. He's paralyzed with
fear. He couldn't believe it, and you'll hear. This is
a 19 year old man, inexperienced in life, never ex-
perienced anything, and I doubt if -- I hope nobody in
this room has ever experienced something like that and
how he would react. He stood in the hallway, and he
heard -- He knew Alan Hubbard was beating John Rogers
to death. He just stood there paralyzed. The next
thing he remembers is Alan Hubbard coming up to him
and saying come on, you've got to help me get this
body out of here. And James says, no, I'm not going to
help you do anything like that, and Alan Hubbard says
listen, you're in as much trouble as I am, because you
didn't do anything about it. And James will tell you
that at this time he knew Alan Hubbard was crazy. He
feared for his life. Here was a man who just beat his
best friend to death for absolutely no reason, for no

good reason at all. If there is ever any reason to kill someone, this was a reason that no one could fathom. It was just impossible. He couldn't believe it. He says no, I'm not going to help you. He said you better come with me right now. Alan Hubbard had already put the body in Alan Hubbard's car. James went with him, afraid for his life. They drove around. James is looking for a way to get out, hoping that Alan Hubbard would stop the car, and maybe he could get out, and run or do something. He wanted to get out of there. Alan Hubbard then drives to Cabot. They take the body up to a deserted road, AP&L access line or something out there, and Alan Hubbard again says come on. You're going to help me get this body out of the car. And James Weaver said no, I'm not. I'm staying in the car. And he said you better help me get that body out of the car. And James again, out of fear, helped him take the body out, but that's as far as he went. He saw Alan Hubbard drag the body out, into the woods. Then Alan Hubbard gets back in the car, and he tells James. He says, you better hope I never get mad at you, or I'll have to kill you. It's what he tells James, and there he is sitting there. He's already heard and seen the results of what happened when Alan Hubbard gets mad. He knows he's riding with a maniac.

Alan Hubbard takes him back to the apartment. Alan Hubbard begins to try and clean up the blood with the bleach and whatever he can. It isn't working. He says James, you better help me, and James halfheartedly begins, and Alan Hubbard takes the rag away from him. He says you're a wimp. You're not helping me and takes over the job himself. At this point Alan Hubbard, James Weaver will tell you, that Alan Hubbard was saying boy, that's the biggest smile I've had in a long time. You know, a big burden's lifted off my shoulder. He was happy about it like he had done something good. James, he's scared for his life. After that, that morning, James Weaver did tell John Rogers' girlfriend that lie. He did tell her that he didn't know where John Rogers was, or that he'd left with somebody else that morning, and he didn't know where he had gone. But he told her that because he was still in shock. That was just the next day, and he was afraid of Alan Hubbard, because since that time, Alan Hubbard had not let him out of his sight. Alan Hubbard said you're coming with me to get this steam cleaner to clean up this rug. Alan Hubbard, you will see that Alan Hubbard was the one who rented the steam cleaner, not James Weaver. He didn't rent the steam cleaner. He didn't write the check. It was Alan Hubbard. James Weaver was

with him. They rent the steam cleaner. Then, again, another contention that I don't agree with Mr. Holt, will be evidence that Alan Hubbard took the pipe back to Alan Caton, Sr., and Alan Caton, Jr. At that time, he asked them for a shovel to bury the body. He told them, and I'm going to tell you this, Alan Caton, Jr., and Alan Caton, Sr., when they loaned that pipe to Alan Hubbard, they knew. If you hold James Weaver to know that he knew something was happening, they knew just as well as he did. And I believe that when you hear the facts and the law about accomplices, you'll see that they are accomplices to this if James Weaver is. They take the pipe back. It's on a Saturday. No one says -- Al Caton, Sr., Al Caton, Jr., they don't tell anybody that a murder's been committed even though Alan Hubbard's told them that it has. As Mr. Holt said, the police then, after the missing person report, saw blood, became suspicious. They drive up to the residence of James Weaver and Alan Hubbard. They say we want to question you about John Rogers. James Weaver goes with them. When he gets in the car, they first ask him, you know, what about John Rogers? He's afraid. He says I don't know. No, I don't know what happened to him. And then finally he realizes, you know, here I am in the police car. I'm safe, and

he tells them what I just told you. I know when you hear all the evidence and listen to the law, you will find him innocent because he did no act with the purpose of facilitating the murder of John Rogers. He merely acted out of fear, immaturity and shock. Thank you.

THE COURT: Counsel, come forward just a moment before we call our first witness.

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

THE COURT: You told me this morning you were wanting to introduce the statement of Mr. Hubbard as a joint exhibit. I will tell counsel that under Rule 804 it is not admissible by the State under any circumstances. If you want to let it come in as a joint exhibit, I would make sure that counsel's aware of the rule, and that you are agreeing to let it come in as a joint exhibit.

MR. LUPPEN: I want it to come in.

THE COURT: I'm just making sure that -- I understand that you could get it in, but introducing it as joint exhibit, you understand this rule, and you have no objections?

MR. LUPPEN: No. That's right.

OK
 2/1 29 p.m. to
 allow Hubbard's
 statement
 The State could not
 introduce it by
 itself