

**January 26, 1994**

**THE COURT:** Alright, you may state your case.

**FOGLEMAN:** May it please the Court, Mr. Stidham, Mr. Crow, ladies and gentlemen of the jury, this is the stage of trial in which the attorneys for each side, myself on behalf of the state and either Mr. Stidham or Mr. Crow on behalf of the defense, get an opportunity to come before you and talk to you a little bit and explain to you what evidence is expected to come before you and what issues or questions you will be asked to resolve in reaching your verdict.

Our purpose in giving opening statements is to aid and assist you the jury, to help you, uhh, to assist you in understanding the issues or questions that you're going to be asked to resolve in reaching your verdict.

If you will recall in the jury selection process, we talked about the fact that the State had to prove the elements of the offense. Well, the issues or questions that you're going to be asked to resolve relate to those elements of the offense. You know, were the elements met.

And there'll be, in general, there will be two elements and I'll get to those a little bit more in a minute, but basically there will be two elements and you'll be, those are the issues or questions that you are going to have to resolve in your mind about whether the state has proven those things in order to reach a verdict.

The second purpose is to provide you, uhh, some indication, some uhhh, preview of what we expect that the evidence is going to be in this case.

Now some lawyers describe the trial of a, of any kind of law suit, civil, criminal or whatever is like putting the pieces of a jigsaw puzzle together. Now, any of you who have ever put together a jigsaw puzzle know unless you have the completed picture beside you as you put those pieces together, it's almost impossible to put the pieces together because you don't know what the completed picture looks like. Well, this opening statement is like that completed picture. It gives you a frame of reference, something to look back on as each witness testifies or each exhibit comes in as to where that particular piece of evidence fits into the overall picture of the case.

In this case, the defendant is charged with three counts of capital murder. In order for you to return a verdict of guilty for capital murder, in order for us to prove our case, the State must prove beyond a reasonable doubt and this is what I expect the judge will instruct you at the appropriate time. Number one that this defendant or an accomplice, somebody that he's helping or assisting, caused the death of, on one of the counts, Michael Moore, on another of the counts, Stevie Branch, and on another of the counts, Chris Byers. That's the first issue or question that you will be asked to resolve in reaching your verdict. Has the state proven that this defendant, or an accomplice, caused the death of these three boys.

The second issue or question that you are gonna have to be, that you're gonna be asked to resolve in reaching your verdict, or the second element that the State has to prove is that when these murders occurred, when the deaths were caused of Michael Moore and Stevie Branch and Chris Byers, that the defendant or the accomplice had the premeditated and deliberated purpose of doing so.

Now, what's the evidence going to be.

If you would, I want you to just kinda think back umm, May the 5th 1993. On May the 5th 1993, Michael Moore, Stevie Branch and Chris Byers were in school at Weaver Elementary School in the second grade, all of 'em eight years old. After they got out of school, umm, they're all friends, at some point after getting out of school, Stevie Branch goes over to Michael Moore's house, and Michael and Stevie they were both on their bicycles, uhh, one of them has a, uhh, Michael has a green bicycle and Stevie has a red and black bicycle, and they're riding around the neighborhood, uhh, just doing what eight year old kids do, just playing.

Well about, uhh, somewhere around 6:00, Michael's mother is outside and she sees Michael on his bicycle, and Stevie on his bicycle, and they've joined up with Chris Byers, who lived across the street from Michael, and I believe the proof's going to show that Chris is riding on the bicycle with Stevie and they're heading north on Goodwin.

Now, this is an aerial photograph and this shows part of Goodwin, is this street right here, and they were heading north on Goodwin, headed toward this area, which is referred to by the kids as Robin Hood area. And on the photograph, you'll be able to see all the trails and things that the kids ride their bikes on and play. And this area here, this wooded area here, uhh, the proof's going to show is an area that's called Robin Hood Hills and it's a wooded area, and believe it or not, in Crittenden County there's some, some higher elevations and lower elevations, and it's a place, a wooded area, I guess it's the kids' Sherwood Forest, it's where the kids play and uhh, do what kids do.

This is the interstate highway, I-55, this is what's called the Blue Beacon Truck Wash, proof's going to show that this is a Love's Truck Stop right here, this is all residential area in here.

Now, the proof's going to show, as I said that Dana Moore saw these boys heading on these two bicycles headed north on Goodwin Street and she sent her daughter to go get them, it's time for supper, it was about 6:00, and the daughter couldn't catch up to him, and later, I think a neighbor who uhh, somebody that lives on, I believe it's this circle right here, in one of these houses, saw the kids headed toward that area, they had been kinda riding through her yard and she said you know ya'll don't ride in my yard, ya'll are gonna run over my trees and the last they were seen, they were headed toward this area. That was the last time that the kids were seen alive, that we know of.

Now, some time a little bit later, I believe the Byers family, uhh, Chris wasn't supposed to be out there, he was supposed to have been at home, I think maybe cleaning up the garage or something, he wasn't supposed to be out there and uhh, when Mr. Byers gets home, uhh, the wife's there and they see that Chris is not there and after a period of time, they begin to look. Uhh, a little bit later, the Moores begin to look, and can't find the kids, you know they're going around the neighborhood. Now, at this time, uhhm, Stevie Branch's mother was working at Catfish Island which is a restaurant over near the interstate and uhh, her husband was at home and he had begun to look.

Well, the parents begin to get a little frantic and they end up spending a, really a frantic night of searching for these kids. Uhhh, they search and search and search and they don't find their children.

Well, on May the 6th '93, the, there's a full scale search out, uhhh, people searching all over, not only in this area but all over anywhere, you know, that the kids might possibly be.

Sometime around 1:00, in this area, and in this area by the way, the proof's going to show that there's a creek that uhh, I use the term loosely for our area because it's some kind of a drainage ditch but it, it's more like a creek, flows through this wooded area into, this is a major drainage canal right here, and it flows into that, somewhere about right in here. Now, right here, and of course you can't see it from there, but there's a large pipe that the kids use to cross this ditch to get into this wooded area.

Now the proof's going to show that sometime around 1:00 the next day, the uhh, police get a call that, you know, somebody needs to come out here and one of the officers goes out to this area and there floating in the water, in this creek has about 2 and 1/2 feet, maybe 2 and 1/2 feet of water, maybe knee deep water, he sees a tennis shoe and maybe a couple of tennis shoes. And he tries to cross over to the other side where he thinks that he can get to it and falls in the water and uhh, you'll actually even see photographs of before he actually got in the water, and then where he fell in the water and then he gets up and goes around and he gets back into the water to get this tennis shoe and see whether it's something that might mean something and as he's going towards the tennis shoe, his foot hit something. And when he lifts up his foot, Michael Moore's body comes up.

At this point, the scene is secured, the uhh, other investigators are called and they try to get all the searchers out of the area who have been searching all over the place, and they begin a search of the area, they remove Michael's body, he's nude, he's tied, uhh, hand to foot, with the shoestrings out of his shoes from left hand to left foot and right hand to right foot, and one of the officers has to get down and inch by inch go through that creek and they find, they found a Cub Scout hat one of the, Michael, uhh, is a big Cub Scout and he liked to wear his uniform a whole lot and was wearing his Cub Scout shirt and his hat that day and, anyway, they find the Cub Scout hat, they find the other shoes, they find the kids, some of the kids' pants, and I believe at

least two pair of the pants were turned completely inside out and, and, and snapped, they were inside out, but they were snapped.

He continues down and as he goes down about, well, I don't remember, it was some distance from where Michael was find, found, they find Stevie Branch. His head's in the opposite direction in the creek, he's submerged, umm, they remove Stevie from the creek, he's tied the same way, he's nude.

They go a little bit further downstream and then they find Chris, and he's nude, tied the same way.

The officer had to go as I said, inch by inch they, uhh, at least apparently had found all the kids' clothes, uhh, they found Michael's Cub Scout shirt, uh, they, some of the clothes were actually crammed down into the water. Uh, I mean, into the mud, they were pushed down into the mud, they were concealed in the mud, uhh, in fact there was a stick, a large stick that was stuck in the mud, pushed down, and when the officer first came in to start searching, it fell over and as it came up one of the kids' shirts or pants or something was on the end of the stick and you'll see that evidence.

The scene itself, there was, you couldn't tell if, there wasn't blood around, it was just, uhh, the only thing that indicated that there was something odd was on the, on this ditch it's a fairly steep bank into the ditch, but then as you get down to the area where Michael Moore was found, there's kind of a flattened off area and you'll see that on some crime scene diagrams, and in the pictures, that which is lower than the bank but then higher than the level of the water, and then where Chris and Stevie are found, there's also a bank on the opposite side that is similar.

Now on these banks, the officers noted that the uhh, there wasn't the normal debris that you'd expect to find there, it was uhh, there was some grass it was all bent down covered with mud, all scuffed around on the bank.

Michael Moore had severe head injuries. Uhh, fractured skull in several places, and we expect that the proof is going to show that he died as a result of drowning, aspirating water.

Stevie Branch, we expect that the proof is going to show also died of drowning, but he also had uhh, multiple skull fractures, and he also had, uhh, some mutilation to the left side of his face.

Chris Byers, he also had skull fractures. Chris Byers didn't drown, he bled to death. And he was mutilated in the genital area.

The proof's going to show that there were multiple weapons involved, uhh, including at least, uhh, two different sizes of uhh, blunt objects and uhh, at least one knife was involved.

Now, after this discovery, of course the uhh, the uhh, police did an extensive crime scene search, searching this wooded area shoulder to shoulder, inch by inch, found very little uhh, in the area.

After about a month, or during this month, during the course of this investigation, the officers, uhh, talked to a number of people, had a number of potential suspects, and the proof's going to show that one of the potential suspects was a person by the name of Damien Echols and there was a lady who was a, uhh, a friend of Michael Moore's family, her son played with Michael Moore, and she had decided more or less that she was gonna play detective and see what she could find out, she had moved to an area close to where these people hung out and she became acquainted with the defendant, Jessie Misskelley.

And she got the defendant to introduce her to Damien Echols and as a result of this, uhhh, got information about some cult type activities, even went to one of these things, I think they may call it an esbat or esbot or something like that.

And, uhh, she went, she told the police, she gave a statement to police about what she had seen and as a result of this, uhh, the officers decided that they needed to talk to the defendant, uh, to see if he might have any information about Damien Echols.

On June the 3rd, 1993, uhh, the defendant was asked if he would mind coming down to the police department, to, uhh, talk to the police, I think Officer Mike Allen is the person who went to get him. They brought him in, talked to him for a while and, umm, denied various things and there were some things that he said that, uhh, denied for instance being involved in any kind of cult type activities I believe and as a result of their conversations it ended up that, uhh, Inspector Gitchell and Detective Bryn Ridge, uhh, began to question him about cause they, they questioned him about information that he might have about this Damien Echols.

Well, ultimately, the defendant admitted to the officers that he was present when this occurred and at that point, the officers began to tape record the entire statement and at that point, of course, you will, you'll hear everything that the defendant said after that point, uhh, related to this case.

Now, the defendant, through his jury selection process, has asked you questions about false confessions and that kind of thing. Well, we expect the proof's going to show that this defendant confessed, that he was not coerced, uhh, the, we do not contend that the proof's going to show that every word that came out of his mouth was the truth. Uh, we expect the proof's going to show that at times he was confused, at times he was trying to lessen his own involvement, and tell you that he was less involved than he really was.

But after you hear the tape recording of his confession, after you consider the other evidence that corroborates the things that he said in his confession, and after you consider the fact that this defendant told the officers that one of the boys had been cut in the face, and only one of them,

that one of the boys had been cut in the genital area, after you consider that and the fact that that was not public knowledge, that was information that was only within the police department, I expect that you are going to find that this statement this defendant gave was his statement about what he saw, I think you'll find that he lessened his own involvement, and I submit ladies and gentlemen, that the proof is going to show that this defendant was an accomplice to Damien Echols and Jason Baldwin in the commission of these horrifying murders, and I submit that at the appropriate time, after all of the evidence is in, after all of the witnesses have testified, after all of the exhibits are in, after Judge Burnett has instructed you as to the law in this case, that we will come back before you and we will ask you to return your verdict of guilty on three counts of capital murder. Thank you.