

1 from what h'ed received. So he told you that he pursued
2 the vehicle and pulled it over there in Pulaski County.
3 Now Trooper Freeman indicated that the first thing he
4 said to Tuggle after he asked him to get out of the car
5 or advised him, was he asked him if he'd been around at
6 the Riverside Exxon. And, that Tuggle said, "Yes, I
7 was, I robbed it, the money's--"

8 MR. JOHN TATE: Your Honor, we object to this comment. We
9 move the Court for a mistrial based on improper argument
10 of the Commonwealth. He knows that is not admissible in
11 this case and we move the Court for mistrial.

12 THE COURT: Gentlemen, you are the judges of the testimony of
13 the witnesses and not either of the attorneys. Your
14 motion for a mistrial is denied.

15 MR. JOHN TATE: Your Honor, we would ask the Court to instruct
16 the Jury that in their deliberations in this case they
17 shall not and cannot consider that statement that was
18 made and that they must wipe it from their minds.

19 THE COURT: I--members of the Jury, you are the judges of the
20 evidence and what's been testified to. Not the judge,
21 not the attorneys, no one but you.

22 MR. GREER: So he made the statement concerning the gun being in
23 the truck and the Trooper told you at that time he placed
24 him under arrest, put him in his cruiser and that he went
25 to this vehicle, and he retrived .25 caliber pistol,
.25 automatic. And he described the pistol and the
serial number. That he advised Mr. Tuggle of his rights
there at the scene and he transported him to the Pulaski

1 County Jail. Now, he didn't question Mr. Tuggle there.
2 He advised him of his rights and he didn't question him.
3 But, Mr. Tuggle volunteered a statement to him, that,
4 "I'm wanted in Smyth County in regards to a missing
5 person." And he further made the statement, "I'm tired
6 of running, I'm glad to get it over with." Now when
7 they went to the Pulaski County Jail, the Smyth County
8 Sheriff's Department was notified because Mr. Tuggle
9 indicated he would rather talk to a Smyth County deputy
10 or investigator. On that same morning, Officer Fields
11 from the Chilhowie Police Department, Investigator Joe
12 Kenney, Investigator Bill Blevins went to Pulaski.
13 Arrived there sometime approximately at six o'clock.
14 They had a discussion there with the officers in Pulaski
15 and then they interviewed Mr. Tuggle at seven-o-four.
16 Prior to interviewing him they advised him of his rights.
17 You were read the rights that he was advised of and you
18 were shown the waiver that he signed. Now he told Joe
19 Kenney that, "You know how you get off at Seven Mile Ford
20 to go across Hubble Hill?" He said, "There's a spot
21 where you'll pull off the road, where you can park. If
22 you look there you'll find Jessie." And he also, Deputy
23 Kenney told you, that that's what Mr. Tuggle told him.
24 Said, "That's all I want to say at the moment. I'd like
25 to talk to an attorney. I'll probably talk to you later
and tell you the full story later. But that's where the
body is." And at that time, Investigator Kenney did not
question Mr. Tuggle any further. But he did tell you

1 that when he left Pulaski that they drove straight to
2 the scene that was described to him by Mr. Tuggle, th
3 drove straight to the scene and they found the body.
4 He told you what he found there at the scene and he
5 told you that this was there in the Hubble Hill secti
6 that it was in Smyth County, and about a mile and a h
7 from where Trooper Smith had stopped the car. Officer
8 Fields, who was with Investigator Kenney that day in
9 Pulaski testified and he told you that he received a
10 pistol and he described the pistol, .25 automatic wit
11 the bullets from Trooper Freeman, and he told you tha
12 he brought them back and he kept them in his briefcas
13 in his possession till later on the same day and he
14 turned the gun over to Investigator Henderlite. Inve
15 gator Henderlite tells you that he went to the scene
16 he helped find the body. And he described the physic
17 scene there and he had photographs of the scene. And
18 you could see from the photographs, the Commonwealth'
19 exhibits, the wide place in the road where they pull
20 off, the place where there was a path going down towa
21 the body, the bank there and the body itself there, a
22 the other shoe that was found there at the scene but
23 not on the body. He also told you that he took the
24 pistol from Officer Fields and he hand-delivered it to
25 Roanoke to the laboratory so that it could be compare
for ballistics purposes, if possible, with the bullet
from Jessie Geneva Havens. And I will call your atten
and you will have all of the exhibits with you when yo

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1 go back to the jury room, but I'll call your attention
2 to Commonwealth's Exhibit Eleven, and this is the
3 ballistics report that has been introduced into evidence.
4 And this report tells you that the pistol which was taken
5 from Lem Tuggle by Trooper Freeman, from Freeman to
6 Fields, Fields to Henderlite, and Henderlite to the
7 lab, that this pistol fired the bullet that killed
8 Jessie Geneva Havens. Next witness for the Commonwealth
9 was R.L. Allison. He's also an investigator with the
10 Sheriff's Department. Many of us--anybody that knows
11 him, knows him by "Bunk." But he tells you that he
12 obtained a search warrant and got Mr. Tuggle's partial
13 plate. That he delivered Mr. Tuggle to the Graham--to
14 the office of Dr. Henderson Graham, and he remained in
15 the office of Dr. Henderson Graham while certain impres-
16 sions and molds were made of Mr. Tuggle's mouth, of his
17 teeth. And he tells you that after these impressions
18 and models were made that he took possession of them
19 from Dr. Graham, Dr. Graham marked them and dated them,
20 he marked the containers that they were placed in and
21 he told you that he hand-delivered these to Roanoke so
22 that they could be examined by Dr. Kagey. Now Dr.
23 Graham came and he testified to you and he told you
24 that he's been practicing dentistry here since 19--I
25 think either '54 or '55--told you the experience that
he's had and the number of times that he makes these
particular types of impressions and molds. He told you
the procedure that he went through to make these molds.

1 He took you through this procedure step by step, from
2 the time that Mr. Tuggle was brought to his office
3 until the time the final models were there for delivery
4 by Investigator Allison. And Dr. Graham told you that
5 the procedure he used is the standard procedure that's
6 used by dentists to obtain molds. Now Dr. Graham also
7 told you that he had an occasion, while he had Mr.
8 Tuggle there, to examine his teeth and examine the
9 molds. His testimony was that there were no flaws in
10 the molds of the teeth. No flaws in the model of the
11 teeth. Now here is the experienced dentist who has the
12 model there to examine that and Mr. Tuggle, and he said
13 there were a couple of what may be air bubbles or
14 something in the gum. And these were marked for you
15 and you were able to see them when he was testifying.
16 And the exhibit was passed among you and you'll have
17 an opportunity once again to see that exhibit. Next
18 witness that we have is Dr. Kagey. And Dr. Kagey gave
19 you his educational background. In addition to being
20 a practicing dentist he told you that he was one of
21 only fifty-two forensic odontologists. One of fifty-two
22 that had been certified in the United States and Canada.
23 And he told you what it meant to be a forensic odontolog
24 And he advised you that on the day that the body was
25 received in Roanoke that he was called by Dr. Oxley to
examine the body because of a bite mark. Now Dr. Kagey
demonstrated to you what he did in trying to determine
the origin of the bite mark. He took, I believe he said

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1 somewhere from seventy-five to eighty photographs of the
2 body, from different angles, or of the bite mark from
3 different angles. And the one that he used basically
4 here to you he had a life-size photograph showing the
5 bite mark and he showed you how he could demonstrate
6 that it was life-size because he had the little measure.
7 And he says, "I've got the measure," and he placed it
8 on there for you to see. And he told you how you first
9 look for a general description of the mold to see if
10 this could possible be from the same impression of teeth.
11 Then when he found that the basic outline was the same
12 he demonstrated that to you and showed you with enlarged
13 photographs how he was able to take the molds and the
14 molds and his pictures and take the identifying distinct
15 characteristics of these particular teeth and match them
16 to the bite mark. He showed you, I think he said, tooth
17 number twenty-seven in their numbering system, and he
18 showed you the impression made by that particular tooth.
19 He showed you the impressions made by other teeth in the
20 bite mark and he told you that this one, this number
21 twenty-seven, stayed constant, which indicated two things
22 from the bruising there and the bite marks. Indicated
23 that the victim was still alive at that time and she
24 was moving. He showed you how he arrived at that con-
25 clusion because of the scratch from the teeth mark.
And the other thing that he told you from the stand,
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1 the Court please advise me when I've used twenty-five
2 minutes of my time?

3 THE COURT: Alright.

4 MR. JOHN TATE: Members of the Jury, I want to also thank you
5 for your attention to the case, the evidence yesterday
6 and your patience with the case yesterday and today.
7 And I would say to you as I begin the closing arguments
8 that there are a number of matters that need to be
9 discussed before you hear a closing argument that you
10 have heard from the witness stand that probably are
11 not normally the subject of polite conversation. But,
12 members of the Jury, these are things that need to be
13 considered by you scientifically and maturely today in
14 the determination that you will make of this case. Now
15 it has been said in the opening argument by the Common-
16 wealth--and members of the Jury, the Commonwealth will
17 also get to close. But it has been said that Dr. Oxley
18 testified to areas in the vaginal tract of the decedent,
19 and of course, that is a crucial matter with regard to
20 the first charge here. And that is the charge of capital
21 murder. The Court has told you that you can return four
22 possible verdicts in this matter. You can return a
23 verdict of capital murder, murder in the first degree,
24 murder in the second degree, or not guilty. And those
25 are the verdicts. And I would suggest to you that you
think also about what the Court has told you that you
know about the law without reference to the evidence.
And in the Court's instructions, the Court has told you