

TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	iii
STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE CASE .....	1
SUMMARY OF THE FACTS .....	1
SUMMARY OF THE ARGUMENT .....	9
ARGUMENT .....	9
I.    The trial court correctly denied McDonald's Motion for a New Trial as the verdict was supported by the overwhelming weight of the evidence. .....	9
II.   The trial court acted within its discretion to deny McDonald's request for a mistrial based on a comment regarding the his exercise of his right to remain silent. .....	13
CONCLUSION .....	18
CERTIFICATE OF SERVICE .....	19

## **TABLE OF AUTHORITIES**

### **STATE CASES**

Amiker v. Drugs For Less, Inc., 796 So.2d 942, 947 (Miss.2000) .....	10
Austin v. State, 384 So.2d 600 (Miss. 1980) .....	15
Gossett v. State, 660 So.2d 1285, 1291 - 92 (Miss. 1995) .....	15
Neal v. State, 15 So.3d 388, 410 (Miss.2009) .....	9
Rollins v. State, 970 So.2d 716, 720 (Miss. 2007) .....	13

### **STATE STATUTES**

Mississippi Code Annotated section 63-11-30(5) (Supp.2008) .....	10
--	----

## **STATEMENT OF THE ISSUES**

- I. The trial court correctly denied McDonald's Motion for a New Trial as the verdict was supported by the overwhelming weight of the evidence.
- II. The trial court acted within its discretion to deny McDonald's request for a mistrial based on a comment regarding the his exercise of his right to remain silent.

## **STATEMENT OF THE CASE**

On or about July 19, 2007, Greg McDonald was indicted for wilfully, unlawfully and feloniously operating a motor vehicle while under the influence of intoxicating liquor, having refused to submit to a chemical test of his breath. Greg McDonald operated a motor vehicle in a negligent manner by driving on the wrong side of a public road, thereby causing an accident resulting in major injuries to Kerry Smith, the driver of the motorcycle involved in the accident. (C.P. 2) McDonald was tried on or about the 16<sup>th</sup> day of April, 2009. He was found guilty of DUI maiming (63-11-30 MCA) and was sentenced to twenty years in the custody of the Mississippi Department of Corrections with thirteen (13) years suspended with seven (7) years to serve initially and ten (10) years post release supervision. (C.P. 106-7) The instant appeal ensued.

## **SUMMARY OF THE FACTS**

### **Testimony of Kerry D. Smith**

Kerry D. Smith testified that he left work around 4:15 or 4:30 on July 19, 2007. He was driving his 2003 Honda CBR 600 motorcycle. (Tr. 143-4) Smith was planning to eat at El Norte in Meridian. He left Collinsville and took Highway 19 South to State Boulevard Extension. He turned left and traveled to the bridge. Smith testified that he drove 65 miles per hour on

Highway 19 South. He did not have any problems with his bike. When Smith turned onto State Boulevard Extension, he did not see any other vehicles until he saw a black extended cab GMC on the other side of the bridge. Smith was driving 50-55 miles per hour on State Boulevard Extension. Conditions were dry and the road was clear. (Tr. 147) It was still very light outside. (146)

Smith testified that due to his experience with motorcycles, he watched the vehicle carefully. He testified that when he first saw the black GMC, it was coming straight. He testified that it appeared to slow a little bit and then to veer to the centerline just slightly. At that time the black GMC was in the proper lane for westbound traffic. (Tr. 149) The black GMC then veer again over towards the center line and crossed the center line a bit. (Tr. 149) Smith decelerated and put both hands on his front brake and his rear brake and continued to watch the truck carefully. (Tr. 149) Smith testified that there was a turnoff on the right side of the road where people occasionally pulled off down through the grass to the bank to go fishing. Smith was headed east and the turnoff was on the south side of the road. (Tr. 150)

Smith was on guard due since he could not tell what the intentions of the driver of the black GMC were. (Tr. 150) Smith testified that he had steel braided brake lines which are the best brake lines you can put on a motorcycle and have the best stopping power available. (Tr. 150) He had his right hand on his front break and his right foot on his rear break. (Tr. 150) Smith testified that the front brake has the most stopping power. (Tr. 150) He testified that he applied a small amount of brake pressure to the front brake to slow down just a little bit. (Tr. 150) The driver of the black GMC veer left again and then stopped his left turn. (Tr. 150) Smith testified that he thought that the driver of the black GMC must have seen him at that point. (Tr.

150) Smith decided to just go around him, staying in his own lane, thinking that the driver was going to stay his current course. (Tr. 150) That the driver of the black GMC had slowed and appeared to be looking for the left turnoff to pull off onto the bank and go fishing. (Tr. 151)

Smith testified that he continued slowing and that it appeared that the driver of the black GMC had seen him and was going to continue in a forward direction. (Tr. 151) Smith testified that he eased off his breaks thinking everything was ok. Smith remained in his lane and was planning to go around the black GMC. He gave the truck a little bit of extra space since he was no sure what was going on. (Tr. 151) Smith testified that he was in the center or right center portion of his lane and was not near the centerline. (Tr. 152) The driver of the black GMC then hit the gas and turned left completely across in front of Smith. (Tr. 152) Smith testified that he jammed on every bit of brake he had and tried to maneuver to the right. (Tr. 153) Smith was unable to avoid the truck and collided with the left front end of the truck. (Tr. 153) At the time of the collision, the black GMC was at least two thirds of the way across the eastbound lane with the rear of the vehicle at the centerline of the road. Smith's motorcycle impacted the truck at approximately a 45 degree angle. (Tr. 154) Smith testified that he had been through multiple riding schools to enhance his riding skills. He testified that applying the front break to stop the bike does not cause skidding. (Tr. 155)

Smith testified that it seemed like a millisecond from the time that he realized that the driver of the black GMC was going to turn left until the vehicle was across Smith's lane. Due to the power of the front brake, the rear end of Smith's motorcycle came off the ground and Smith was thrown over the hood of the truck and landed in the roadway. (Tr. 156) Smith testified that on the moment of impact, the handlebars torqued when he hit the front end of the truck and the

left handlebar penetrated all the way down to his femur and took a plug of tissue off his leg. Smith testified that in addition to the penetrating wound to his left leg, he received extensive trauma to his right shoulder. His clavicle was crushed and bone fragments were exposed. He also had severe abrasions and deep gouges down his right side and his hip, and on both arms, elbows and knees. (Tr. 158) Smith's body slid and tumbled on the pavement and came to a stop in the grass on the right side of the road. (Tr. 159) Smith testified that he could not breathe and he began to panic at that point. He testified that he focused every bit of his energy on moving just the smallest amount of air in and out of his lungs just to keep breathing. He was unable to move and could not see his bike or what condition it was in. (Tr. 159) A passerby stopped and called 911. Smith testified that because he was wearing a full face helmet and carbon gloves, his hands and face were spared. (Tr. 160) Smith testified that he has permanent scarring due to the abrasion of sliding along the pavement. He testified that he still had scars and nerve damage to his hip and pelvis area from the impact of hitting the ground. (Tr. 163) Smith testified that he had nerve damage from the incision made to repair his clavicle and from the impact due to the severe trauma to his shoulder. (Tr. 163) Smith testified that he has feeling loss in his should and feeling loss down the outside of his arm. Smith testified that he has permanent nerve damage down the outside of his hip and leg. (Tr. 164) Smith testified that he also had several broken ribs on the right side and that this injury was extremely painful. There was no treatment other than time. (Tr. 164) Smith also suffered a broken finger. (Tr. 166) Smith testified that he had permanent nerve damage to his right hip and thigh area, his right shoulder and his right collarbone area. (Tr. 166)

Smith testified that he was in the hospital for five days after the accident. He was taken

to the ER where Dr. Durgin performed emergency surgery to insert a plate and screws to piece his collarbone back together. (Tr. 166) Smith testified that he packed the open cut-out puncture wound in his thigh with saline gauze every day so that it would heal from the inside out. (Tr. 166)

Smith testified that no further medical work was scheduled and that the total bill for medical services was \$29,807.04. (Tr. 167) After he got out of the hospital, Smith testified that he took pictures of McDonald's truck and of his bike. Smith testified that his motorcycle was totaled. (Tr. 168) Smith testified that he wakes up every morning with back pain and has numbness and tingling in his shoulder, his hip and his left leg. (Tr. 212) Smith testified that without the extensive medical care he received, his injuries would have been disabling or life threatening. (Tr. 215)

**Testimony of Frank Knight, Jr.**

Mr. Knight testified that on July 19, 2007, he saw Kerry Smith headed south on Highway 19 on his black and yellow motorcycle. He testified that he usually gets off work 4:00 and that he was running errands after work. He testified that he saw Kerry between 5:30 and 6:00 that afternoon. (Tr. 245) Knight testified that later that evening he received a call from Kerry's wife. He then went and saw Kerry in the hospital emergency room. (Tr. 245)

**Testimony of Sheriff Billy Sollie**

Sheriff Sollie testified that on July 19, 2007, he and his wife were traveling west on State Boulevard Extension. As they approached the bridge at Okatibbee Creek, he observed a congestion which indicated a motor vehicle crash at the intersection of Okatibbee Creek and State Boulevard Extension. Sheriff Sollie testified that he stopped and observed a white male with a

motorcycle helmet laying on the south side of the State Boulevard Extension. He was being cared for by medical personnel and volunteer firefighters. He observed a motorcycle in the ditch also on the south side of the road. There was a pickup truck parked a dirt driveway that leads down to Okatibbee Creek. No one was in the truck, but the driver's side door was open. (Tr. 247-8)

Sheriff Sollie testified that the debris trail from the motorcycle led from about where the pickup truck was parked further east on State Boulevard ending with the motorcycle begin in the ditch on the south side of State Boulevard some 30 yards away from the pickup truck. The motorcycle rider appeared to be in extreme pain. (Tr. 249) Sheriff Sollie contacted dispatch to make sure deputies were in route. He asked the crowd who the driver of the pickup truck was and McDonald identified himself. (Tr. 249) Sheriff Sollie asked to see McDonald's driver's license. McDonald retrieved a wallet and attempted to locate his driver's license in his wallet. McDonald had difficulty locating his license in his wallet and at several points in the conversation had to use his pickup truck as a support because he was very unstable on his feet. (Tr. 251) Based on McDonald's slurred speech and his instability standing erect, Sheriff Sollie determined that McDonald was impaired. (Tr. 251)

Sheriff Sollie testified that MacDonald's unstable ability to remain upright without using his truck for support, his slurred speech and his inability to quickly find his driver's license indicated that McDonald's senses were not all together. (Tr. 252) Sheriff Sollie testified that he could smell the odor of alcohol coming from McDonald while he talked with McDonald and while McDonald was trying to retrieve his license from his wallet. (Tr. 253)

Sheriff Sollie testified that Lieutenant Mike McCarra and Deputy Odell Hampton were



dispatched to the scene. Lieutenant Mike McCarra had extensive training in and experience in DUI enforcement. (Tr. 254) Sheriff Sollie testified that he did not observe any skid marks at the scene. (Tr. 254) The two officers arrived at the scene almost simultaneously and Lieutenant McCarra was left in charge. (Tr. 254) Sheriff Sollie testified that the accident occurred around 6:30 in the afternoon. (Tr. 257) Sheriff Sollie testified that he left the crime scene after the two officers arrived. (Tr. 258)

#### **Testimony of Deputy Odell Hampton**

Deputy Hampton testified that at 6:22 p.m on July 19, 2007 he received a call, to respond to a wreck on State Boulevard Extension. (Tr. 265) Deputy Hampton testified that he arrived at the scene at 6:38 p.m. When he arrived at the scene Sheriff Solle and Lieutenant McCarra were there. (Tr. 269) He testified that Lieutenant McCarra handled DUI cases. (Tr. 270) Deputy Hampton testified that he was approximately two steps from McDonald and that McDonald slightly smelled like alcohol. (Tr. 281) Deputy Hampton testified that there were empty beer cans in the floorboard of the truck. (Tr. 281) Deputy Hampton testified that the motorcycle was about 50 feet from where the crash occurred. He testified that he did not see any skid marks. (Tr. 285)

#### **Testimony of Lieutenant David McCarra**

Lieutenant McCarra testified that McDonald was obviously intoxicated. McCarra testified that McDonald smelled of alcohol and that his speech was extremely slurred. Lieutenant McCarra stated that McDonald smelled of burned marijuana from his breath and his clothes. (Tr. 304) Lieutenant McCarra testified that McDonald was slow and clumsy and his eyes were extremely red and watery.

Lieutenant McCarra testified that he administered field sobriety tests to McDonald.

McDonald was unable to perform the one-leg stand test and gave 6 of 8 indicators of intoxication in the walk and turn test. McDonald was taken in and offered an intoxilizer test and refused the test. He was then charged with DUI refusal. (Tr. 311)

#### **Testimony of Corporal Jason Walton**

Corporal Walton testified that he is a Trooper with the Mississippi Highway Patrol and is an accident reconstruction specialist. (Tr. 329) He testified that he was provided with photographs of the motorcycle and the truck, the statements of the officers on the scene and an accident reconstruction report. Corporal Walton went to the scene and was shown where Kerry Smith landed after he was thrown from the bike, the location of the bike when it came to rest. (Tr. 355) He observed the dirt path leading down to Okatibbee Creek, the bridge, where the dirt path was in relation to the bridge, and the roadway and roadway characteristics such as slag asphalt. Walton was able to observe the line of sight and where everything was on the roadway. (Tr. 355)

Walton testified that the damage to the pick up truck was angular which was consistent with McDonald turning onto the dirt path. (Tr. 356) The damage to the motorcycle was down the left side of the bike showing that the left side of the bike hit the left front of the pickup. Walton testified that this was not a head-on collision but an angular impact to where the truck was indeed turning in front of the bike. (Tr. 356) He concluded that the impact occurred in the eastbound lane of State Boulevard Extension. Corporal Walton testified that the bike was going in an eastbound direction at the time of the accident. He testified that it therefore landed on the left side of the road. (Tr. 358)

Walton testified that if the accident had been a head-on collision, there would have been more damage to the front of the pickup truck. He testified that there would have been damage to the front bumper and it would not have been in its original factory position. (Tr. 359) The rider would have either wound up in the hood, in the windshield, in the bed or directed over the truck. (Tr. 359)

Corporal Walton testified that if the collision had occurred with the truck headed in an eastbound direction in the eastbound lane and the motorcycle headed in a westbound direction in the eastbound lane, the debris field would have been under the truck and the motorcycle would have ended up on the north side of the road. (Tr. 359)

### **SUMMARY OF THE ARGUMENT**

Taking the evidence in the light most favorable to the verdict, the verdict is supported by the overwhelming weight of the evidence. The trial court correctly denied McDonald's Motion for a New Trial. The trial court acted within its discretion in denying McDonald's motions for mistrial. However, if the trial court erred, the error was harmless in light of the overwhelming evidence of McDonald's guilt.

### **ARGUMENT**

**I. The trial court correctly denied McDonald's Motion for a New Trial as the verdict was supported by the overwhelming weight of the evidence.**

This Court will reverse a trial court's denial of a motion for new trial only when such denial amounts to an abuse of discretion. Neal v. State, 15 So.3d 388, 410 (Miss.2009). This Court will reverse when the verdict is "so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable result." Bush, 895 So.2d at 844. On

motion for a new trial, “ ‘the court sits as a thirteenth juror [and] the power to grant a new trial should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict.’ ” *Id.* quoting *Amiker v. Drugs For Less, Inc.*, 796 So.2d 942, 947 (Miss.2000).

Furthermore, “the evidence should be weighed in the light most favorable to the verdict.” *Id.*

McDonald was convicted under Mississippi Code Annotated section [REDACTED] (Supp.2008), which states in part: “Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of another mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each such death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Correction for a period of time of not less than five (5) years and not to exceed twenty-five years (25) years for each such death, mutilation, disfigurement or other injury. . . .”

indictment  
says (4)  
but also  
says  
mimicking

McDonald argues that there is not enough evidence to support the finding that he was the proximate cause of the accident. (Appellant’s brief, p. 6) However, the victim, Kerry Smith, gave extensive testimony regarding how the accident occurred. This testimony clearly established that McDonald was the proximate cause of the accident. Kerry Smith testified that McDonald was driving unpredictably and was veering to the middle and crossing the center line. Smith testified that immediately prior to the accident he was in the center or right center portion of his lane traveling east and was not near the centerline. He testified that McDonald, who was in the westbound lane, turned directly in front of him with no warning thus causing the accident. (Tr. 152)(Tr. 152) Smith testified that he jammed on every bit of brake he had and tried to

maneuver to the right. (Tr. 153) Smith was unable to avoid the truck and collided with the left front end of the truck. (Tr. 153) At the time of the collision, the black GMC was at least two thirds of the way across the eastbound lane with the rear of the vehicle at the centerline of the road. (Tr. 154) Smith's testimony clearly establishes McDonald as the cause of the accident.

The testimony of accident reconstructionist, Corporal Walton, established that Kerry Smith was traveling east in the eastbound lane and that McDonald was traveling west in the west bound lane. He testified that the accident was not a head on collision but was at an angle, substantiating Kerry Smith's testimony that he was attempting to maneuver his vehicle onto the grass on the south side of the road and that McDonald's vehicle was turning left onto the dirt path. (Tr.

The victim, Kerry Smith, testified in great detail as to his injuries and their permanence. He testified that he has permanent scarring due to the abrasion of sliding along the pavement. He testified that he still had scars and nerve damage to his hip and pelvis area from the impact of hitting the ground. (Tr. 163) Smith testified that he had nerve damage from the incision made to repair his clavicle and from the impact due to the severe trauma to his shoulder. (Tr. 163) Smith testified that he has feeling loss in his should and feeling loss down the outside of his arm. Smith testified that he has permanent nerve damage down the outside of his hip and leg. (Tr. 164) Smith testified that he also had several broken ribs on the right side and that this injury was extremely painful. There was no treatment other than time. (Tr. 164) Smith also suffered a broken finger. (Tr. 166) Smith testified that he packed the open cut-out puncture wound in his thigh with saline gauze every day so that it would heal from the inside out. (Tr. 166) Smith testified that he wakes up every morning with back pain and has numbness and tingling in his

shoulder, his hip and his left leg. (Tr. 212) Smith testified that without the extensive medical care he received, his injuries would have been disabling or life threatening. (Tr. 215)

McDonald argues that Smith testified “based solely on his experience as a radiology technician.” However, Smith’s testimony as to his daily pain and difficulty was not based on his experience as a radiology technician, it was based on his personal experience. His testimony that he has permanent scarring is based on his own observation of his own flesh. He testified that there was a dip in his leg and that it was nowhere near like it was before. His testimony that he has numbness and tingling in his shoulder and hip are based solely on his personal experience. Smith was qualified to testify and did testify as a lay person as to the extent and nature of his injuries. The court allowed Smith to answer one question regarding the prognosis for his injuries if he had not had good medical care with reference to his education and experience as a radiology technician.

Any lay person is qualified to give testimony, so far as they are personally aware, their own medical condition. It does not require an expert opinion to establish that someone whose shoulder and clavicle were crushed and put back together with plates and screws, whose wound goes all the way through his thigh to his femur, who has suffered deep gouges along his body from sliding along slag asphalt, and who has scars and nerve damage to his hip from his impact on the pavement has permanent injuries. The trial court correctly ruled that Smith should be allowed to testified about his perception of his injuries and how extensive they were. (Tr. 162) Further, Smith gave ample testimony to establish that he was permanently disabled.

Further the statute does not require that mutilation or disfigurement must be permanent, as the statute states, “every person who in a negligent manner causes the death of another,

mutilates, disfigures or permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another.” The word permanently is placed before the word disables and modifies it along and does not modify the conditions coming before it, including “mutilates” or “disfigures.” In addition to the permanent injuries he received, Kerry Smith’s injuries from this accident clearly disfigured him, leaving him with scars and a hole in his thigh.

The evidence at trial overwhelmingly proved that McDonald was driving under the influence of alcohol or drugs, that his actions caused the accident and that Kerry Smith was injured, disfigured by scars and permanently suffering from pain and numbness. This issue is without merit and the jury’s verdict and the rulings of the trial court should be affirmed.

**II. The trial court acted within its discretion to deny McDonald’s request for a mistrial based on a comment regarding the his exercise of his right to remain silent.**

McDonald also argues that Deputy Hampton and Lieutenant McCarra who testified in the case improperly commented on the Appellant’s exercise of his *Miranda* rights” and that therefore, the trial judge should have granted a mistrial. (Appellant’s Brief p. 7). “This Court has held that whether to grant a motion for mistrial is within the sound discretion of the trial court.” [REDACTED] (quoting *Carpenter v. State*, 910 So.2d 528, 533 (Miss.2005)). “Furthermore, the standard of review for denial of a motion for mistrial is abuse of discretion.” *Id.*

During the direct examination testimony of Deputy Odell Hampton, the following colloquy took place:

Angero: Okay. Now, when you saw him there, what did you do? What were your duties out there?

Hampton: At the time, I was told to gather information for the report. Lieutenant McCarra had his license in his and I took the information from that and asked Mr. McDonald what happened, but he had already been Mirandized, and he stated that he did not have anything to say.

Parrish: Objection. This calls for a mistrial, Judge.

(Tr. 271)

The trial court did not abuse its discretion in refusing to grant a mistrial based on the investigator's comments. After defense counsel moved for a mistrial, the trial court held as follows:

I understand the request for a mistrial. I understand the law about commenting on post-Miranda silence and that being an inappropriate thing. However, I don't think that any defendant is entitled to a perfect trial. The question is whether there is a fair trial. And I'm going to under the circumstances here and considering the very minimal comment here ask the jury to come back in, and I will direct that they disregard any statement unless you feel like, Mr. Parrish, it would be more advantageous just to skip over it and make no comment at all. If you want to do that, I'll do that.

(Tr. 278).

Defense counsel stated that he preferred that the court not instruct the jury to disregard so as not to draw further attention to McDonald's post-Miranda silence. He requested that the court merely tell the jury that the objection to the testimony was sustained and to instruct the



prosecutor to ask his next question. (Tr. 278)

The trial judge then called the jury back in and made the following statement:

Okay. The record will reflect that the jury is back in the courtroom. And . . . right before we took the break, there was a question by Mr. Angero to Deputy Hampton asking what his duties there were on the scene and he was summarizing what he was doing. At the conclusion of the response, there was an objection made by Mr. Parrish as to any further response in the area there, and that objection was sustained. And I'll direct Mr. Angero to ask another question and proceed with the direct examination.

During the testimony of Lieutenant David McCarra, another similar exchange took place.

Angero: And then you gave – you read him his Miranda warnings, and then what did you do?

McCarra: I – after I mirandized him and he said he – he indicated he didn't want to talk to me – . . . .

Parrish: Objection. Make a motion for mistrial.

Trial Court: Okay. That motion is overruled based on the same discussion we had previously.

(Tr. 303-4)

Furthermore, even if it were error for the trial court to deny the motion for mistrial, the error was ~~harmless in light of the overwhelming evidence of McDonald's guilt.~~ See *Gossett v. State*, 660 So.2d 1285, 1291 - 92 (Miss. 1995) and *Austin v. State*, 384 So.2d 600 (Miss. 1980).

In the case at hand the evidence that McDonald was guilty of aggravated DUI was overwhelming

and included, but was not limited to testimony from Sheriff that McDonald was unable to remain upright without supporting himself on his truck, his speech was slurred, he had difficulty finding his driver's license in his wallet and he smelled of alcohol. There was further testimony from Officer Odell Hampton that there were beer cans in the floor board of McDonald's truck and that he smelled like alcohol. There was still more testimony from Lieutenant McCarra that McDonald was obviously intoxicated. McCarra testified that McDonald smelled of alcohol and that his speech was extremely slurred. Lieutenant McCarra stated that McDonald smelled of burned marijuana from his breath and his clothes. (Tr. 304) Lieutenant McCarra testified that McDonald was slow and clumsy and his eyes were extremely red and watery.

Lieutenant McCarra testified that he administered field sobriety tests to McDonald. McDonald was unable to perform the one-leg stand test and gave 6 of 8 indicators of intoxication in the walk and turn test. McDonald was taken in and offered an intoxilizer test and refused the test. He was then charged with DUI refusal. (Tr. 311)

The victim, Kerry Smith, testified in great detail as to his injuries and their permanence. He testified that he has permanent scarring due to the abrasion of sliding along the pavement. He testified that he still had scars and nerve damage to his hip and pelvis area from the impact of hitting the ground. (Tr. 163) Smith testified that he had nerve damage from the incision made to repair his clavicle and from the impact due to the severe trauma to his shoulder. (Tr. 163) Smith testified that he has feeling loss in his should and feeling loss down the outside of his arm. Smith testified that he has permanent nerve damage down the outside of his hip and leg. (Tr. 164) Smith testified that he also had several broken ribs on the right side and that this injury was extremely painful. There was no treatment other than time. (Tr. 164) Smith also suffered a

broken finger. (Tr. 166) Smith testified that he packed the open cut-out puncture wound in his thigh with saline gauze every day so that it would heal from the inside out. (Tr. 166) Smith testified that he wakes up every morning with back pain and has numbness and tingling in his shoulder, his hip and his left leg. (Tr. 212) Smith testified that without the extensive medical care he received, his injuries would have been disabling or life threatening. (Tr. 215)

Further, there was testimony from Kerry Smith that McDonald was driving unpredictably and was veering to the middle and crossing the center line. Kerry testified that McDonald turned directly in front of him with no warning thus causing the accident. Smith testified that immediately prior to the accident he was in the center or right center portion of his lane and was not near the centerline. (Tr. 152) He testified that the driver of the black GMC then hit the gas and turned left completely across in front of Smith. (Tr. 152) Smith testified that he jammed on every bit of brake he had and tried to maneuver to the right. (Tr. 153) Smith was unable to avoid the truck and collided with the left front end of the truck. (Tr. 153) At the time of the collision, the black GMC was at least two thirds of the way across the eastbound lane with the rear of the vehicle at the centerline of the road. (Tr. 154) Smith's testimony clearly establishes McDonald as the cause of the accident.

[REDACTED] that McDonald was driving under the influence of drugs or alcohol, that his negligent actions were the cause of the accident and that Kerry Smith was injured, disfigured by scars and permanently suffering from pain and numbness.



[REDACTED]

**CONCLUSION**

The State of Mississippi respectfully requests that this Honorable Court affirm the conviction and sentence of Greg McDonald as the trial court committed no reversible errors.

Respectfully submitted,

**JIM HOOD, ATTORNEY GENERAL  
STATE OF MISSISSIPPI**

BY:   
LAURA H. TEDDER  
SPECIAL ASSISTANT ATTORNEY GENERAL  
MISSISSIPPI BAR NO. 

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MS 39205-0220  
TELEPHONE: (601) 359-3680

**CERTIFICATE OF SERVICE**

I, Laura H. Tedder, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing **BRIEF FOR THE APPELLEE** to the following:

Honorable Lester F. Williamson, Jr.  
Circuit Court Judge  
P. O. Box 86  
Meridian, MS 39302

Honorable E. J. (Bilbo) Mitchell  
District Attorney  
P. O. Box 5172  
Meridian, MS 39302-5127

Erin E. Pridgen, Esquire  
Attorney At Law  
Mississippi Office of Indigent Appeals  
301 North Lamar Street, Suite 210  
Jackson, Mississippi 39201

This the 21st day of January, 2010.

  
\_\_\_\_\_  
LAURA H. TEDDER  
SPECIAL ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 220  
JACKSON, MISSISSIPPI 39205-0220  
TELEPHONE: (601) 359-3680