

**IN THE COURT OF APPEALS 5/7/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-00539 COA**

**JESSIE B. WILSON AND MISSISSIPPI DIVISION OF MEDICAID**

**APPELLANTS**

**v.**

**EDWARD F. WHITE, JR.**

**APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND  
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT W. BAILEY

COURT FROM WHICH APPEALED: LAUDERDALE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANTS:

LAUREL G. WEIR

ATTORNEY FOR APPELLEE:

WALTER EPPES, JR.

NATURE OF THE CASE: CIVIL: AUTOMOBILE NEGLIGENCE

TRIAL COURT DISPOSITION: JUDGMENT IN THE AMOUNT OF \$ 30,000 AWARDED TO  
DEFENDANT/COUNTER CLAIMANT

BEFORE FRAISER, C.J., KING, McMILLIN, AND PAYNE, JJ.

KING, J., FOR THE COURT:

On January 17, 1994, Jessie Wilson's and Edward White's vehicles collided on Zero Road in Lauderdale County, Mississippi. Both parties sustained injuries in the collision and sued each other for personal injuries and property damage. White prevailed on his counterclaim. A jury assessed his damages at \$30,000.00, and judgment was subsequently entered against Wilson. The court denied Wilson's post-trial motions for remittitur, new trial, and JNOV, and Wilson appealed.

Wilson contends that a new trial is warranted because the trial court erred as follows:

I. By allowing Buck Roberts to give expert opinion testimony on which side of the road the impact occurred;

II. By denying the motion for new trial because the verdict of the jury was excessive and contrary to the overwhelming weight of the law and evidence;

III. By denying jury instructions P-1, P-7, CD-1, CD-2, CD-3, CD-5, and CD-6.

Issue I is dispositive of this case; therefore, the merits of the remaining assignments of error will not be addressed.

#### ANALYSIS OF THE ISSUE AND LAW

Wilson and White were traveling in opposite directions when their vehicles collided. Liability for the accident depended upon which driver failed to yield one-half of the road to the other. There were no other eyewitnesses to the accident; therefore, in an effort to establish that Wilson failed to yield one-half of the road, White called Officer Buck Roberts, who arrived at the scene shortly after the accident's occurrence for the purpose of assisting with traffic control.

Officer Roberts had served as a police officer for the city of Meridian for fourteen years. He was also a constable and had assisted the Lauderdale County Sheriff's Department in law enforcement activities. During his tenure with the Meridian City Police Department, he had investigated at least one thousand accidents, and he had completed elementary and advanced level courses in accident investigation.

During the trial, the court overruled Wilson's objection to the following examination of Officer Buck Roberts:

White's counsel: We are next interested in what the opinion of a professional accident investigator is about who got over center. Who got over center?

Officer Roberts: It is my opinion, and based upon the evidence I seen [sic] at the scene of the accident, that the southbound vehicle was approximately a foot and a half to two foot over in the

northbound lane.

White's counsel: The southbound vehicle is the one driven by Ms. Wilson?

Officer Roberts: That's correct.

Because Robert's opinion was based upon his training and experience, he arguably qualifies as a Rule 702 expert. *Sample v. State*, 643 So. 2d 524, 530 (Miss. 1994) (citing *Wells v. State*, 604 So. 2d 271, 279 (Miss. 1992)). Before offering an opinion, Rule 702 experts should be tendered as such to have their qualifications tested through voir dire. *Sample*, 643 So. 2d at 530 (citing *Roberson v. State*, 569 So. 2d 691, 696 (Miss. 1990)). Although Officer Roberts testified to his qualifications, he was not tendered as an expert; therefore, it was error for the court to allow the opinion. *Id.* Because the jury may have given Officer Robert's testimony substantial credence, we cannot say with certainty that Wilson was not prejudiced by the error. Therefore, we reverse and remand for a new trial on the merits.

**THE JUDGMENT OF THE CIRCUIT COURT OF LAUDERDALE COUNTY IS  
REVERSED AND REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS**

**OPINION. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLEE.**

**BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, McMILLIN, PAYNE, AND  
SOUTHWICK, JJ., CONCUR.**

**FRAISER, C.J., CONCURS IN RESULT ONLY.**