

NO. 27556

IN THE INTERMEDIATE COURT OF APPEALS  
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I, Plaintiff-Appellee,

v.

A.M., Defendant-Appellant

ENRIMANDO  
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STATE OF HAWAII

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FILED

APPEAL FROM THE DISTRICT COURT OF THE SECOND CIRCUIT  
(CASE NO. JT 1P: 9/14/05, CITATION NO. 0953886MM)

SUMMARY DISPOSITION ORDER

(By: Burns, C.J., Lim and Nakamura, JJ.)

Defendant-Appellant A.M. who at the time of the alleged traffic violation/infraction was a minor,<sup>1</sup> appeals from the September 14, 2005 judgment entered by Judge Douglas Ige deciding that she violated Hawaii Revised Statutes (HRS) § 291C-102 (Supp. 2005)<sup>2</sup> by speeding and ordering her to pay a \$90 fine, a \$7

<sup>1</sup> The record indicates that Defendant-Appellant A.M. was born on April 27, 1988.

<sup>2</sup> Hawaii Revised Statutes § 291C-102 (Supp. 2005) states:

**Noncompliance with speed limit prohibited.** (a) No person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit established by county ordinance.

(b) The director of transportation with respect to highways under the director's jurisdiction may place signs establishing maximum speed limits or minimum speed limits. Such signs shall be official signs and no person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit stated on such signs.

(c) If the maximum speed limit is exceeded by more than ten miles per hour, a surcharge of \$10 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

(d) In addition to the penalties prescribed by section 291C-161 and the surcharge imposed pursuant to subsection (c), the driver's license and privilege to operate a vehicle of a person who violates this section by operating a vehicle at a speed exceeding ninety miles per hour may be ordered revoked by the court for a period not to exceed five years.

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driver education fee, a \$40 administrative fee, and \$10 to the neurotrauma special fund.

The Hawaii Rules of Evidence (HRE), Chapter 626, HRS (1993), state in part:

**Rule 612 Writing used to refresh memory.** If a witness uses a writing to refresh the witness' memory for the purpose of testifying, either:

- (1) While testifying, or
- (2) Before testifying, if the court in its discretion determines it is necessary in the interests of justice,

an adverse party is entitled to have the writing produced at the hearing, to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing is not produced or delivered pursuant to order under this rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

**Rule 802.1 Hearsay exception; prior statements by witnesses.** The following statements previously made by witnesses who testify at the trial or hearing are not excluded by the hearsay rule:

- . . . .
- (4) Past recollection recorded. A memorandum or record concerning a matter about which the witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

HRE Rule 612 pertains to testimony based on a present recollection that became a present recollection when it was refreshed by a writing. The testimony is the evidence, not the

content of the writing. State v. DiBenedetto, 80 Hawai'i 138, 906 P.2d 624 (App. 1995).

HRE Rule 802.1(4) pertains to a situation where the witness does not have a present recollection, not even a refreshed one, but there is a previously prepared writing that is read into evidence because it qualifies as a past recollection recorded. State v. Bloss, 3 Haw. App. 274, 649 P.2d 1176 (1982).

A.M. contends the trial court erred in denying her motion to strike the police officer's testimony regarding the speed of the vehicle operated by A.M. because the officer did not have a present recollection of it when he testified. We disagree. There is evidence that the officer had a present recollection when it was refreshed by a writing.

A.M. contends that there is no evidence of a past recollection recorded to support the court's finding that A.M. was driving 38 miles per hour (mph) in a 20 mph zone. We disagree.

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and applying the law relevant to the issues raised and arguments presented,

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IT IS HEREBY ORDERED that the September 14, 2005  
judgment is affirmed.

DATED: Honolulu, Hawai'i, October 16, 2006.

On the briefs:

Mimi DesJardins  
for Defendant-Appellant.

  
Chief Judge

Peter A. Hanano,  
Deputy Prosecuting Attorney,  
County of Maui  
for Plaintiff-Appellee

  
Associate Judge

  
Associate Judge