



A. THE SUBJECT ANIMATION IS DEMONSTRATIVE IN NATURE AND HELPFUL TO THE JURY

1. Demonstrative Evidence is admissible if substantially similar

It is well settled that demonstrative evidence is admissible for the purpose of illustrating and clarifying a witness's testimony. ([People v. Kynette, 15 Cal.2d 731, 755 \[104 P.2d 794\]](#); [St. George v. Superior Court, 93 Cal. App.2d 815, 816 \[209 P.2d 823\]](#); see Witkin, Cal. Evidence (2d ed. 1966) § 642, p. 604.)

California law does not require demonstrative evidence to be exact, but only substantially similar and helpful to the jury. (See [Andrews v. Barker Brothers Corp., 267 Cal. App.2d 530, 537](#); substantial similarity is shown by comparable lighting, identical intersection, same model car and other relevant factors to those existing at the time of the accident or event in dispute. [People v. Boyd \(1990\) 222 CA3d 541, 565-566.](#))

In [Culpepper v. Volkswagen of America, Inc. \(1973\) 33 Cal. App.3d 510, 521 \[109 Cal. Rptr. 110\]](#), the court examined the admissibility of an expert's reconstruction. The court found the evidence must meet the following requirements:

The [re-creation] must be relevant (Evid. Code, §§ 210, 351); (2) the [re-creation] must have been conducted under substantially similar conditions as those of the actual occurrence [citation]; and (3) the evidence of the [re-creation] will not consume undue time, confuse the issues or mislead the jury [citation].

The Supreme Court in [People v. Rodrigues \(1994\) 8 Cal.4th 1060](#) stated in regard to the admission of a videotaped re-creation of an incident:

In ruling upon the admissibility of a videotape, a trial court must determine whether: (1) the videotape is a reasonable representation of that which it is alleged to portray; and (2) the use of the videotape would assist the jurors in their determination of the facts of the case or serve to mislead them. ([DiRosario v. Havens \(1987\) 196 Cal. App.3d 1224, 1232 \[242 Cal. Rptr. 423\]](#).) Within these limits, "the physical conditions which existed at the time the event in question occurred need not be duplicated with precision nor is it required that no change has occurred between the happening of the event and the time the [videotape] is taken. [Citation.]" (*Id.*, at pp. 1232-1233.)



2. Animations are admissible as Demonstrative Evidence In California

The main California case on the use of animations in trial is [People v. Hood \(1997\) 53 CA4th 965](#) where both the prosecutor and defendant did a computer animation of the shooting, but the defendant withdrew their animation and tried to keep the prosecutor's out of evidence. The defense argued that the very strict burden of proof that applies to allowing scientific evidence into trial prohibited the showing of the prosecutor's animation. The defense relied on the California Supreme Court case of [People v. Kelly \(1976\) 17 Cal.3d 24](#), where a scientific technique utilized by an expert witness must "be sufficiently established to have gained general acceptance in the particular field in which it belongs." (*Id.* at p. 30, quoting [Frye v. United States, supra, 293 Fed. 1013, 1014.](#))¹

However, the Court of Appeal in [Hood](#) declined to apply the heightened standard of Kelly and wrote:

The scientific procedures and techniques envisioned in *Kelly* and the dangers addressed therein were not involved here. The prosecution and defense computer animations were tantamount to drawings by the experts from both sides to illustrate their testimony. We view them as a mechanized version of what a human animator does when he or she draws each frame of activity, based upon information supplied by experts, then fans through the frames, making the characters drawn appear to be moving.

[People v. Hood \(1997\) 53 CA4th 965, 969](#)

Just as in California, the Federal Courts have similar rules for animations intended to be used solely for the purpose of demonstrative evidence and used to illustrate witness testimony if it will help the jury understand the testimony. ([United States v. Mohney](#), 949 F.2d 1397, 1405 (6th Cir. 1991), see also [United States v. Beckford](#), 211 F.3d 1266 (4th Cir. 2000) where computer-generated animations were used to illustrate investigative opinions concerning observations of bullets, bullet holes, and bullet path angles.)

As in *Hood*, where computer animations are used to illustrate a witness's testimony, the jury can be instructed that the simulation is not a re-enactment of the event but to illustrate testimony. [Hinkle v. City of Clarksburg](#), WV, 81 F.3d 416, 427 (4th Cir. 1996); [Datskow v. Teledyne Continental Motors Aircraft Products, a Div. of Teledyne Indus., Inc.](#) 826 F.Supp. 677, 685--686 (WD NY 1993)



(Endnotes)

1 In Federal Court the rules regarding scientific evidence admission are contained within [*Daubert v. Merrell Dow Pharmaceuticals, Inc., \(1993\) 509 U.S. 579, 589*](#), where the Supreme Court interpreted Federal Rule of Evidence 702. The Court wrote that “under the Rules the trial judge must ensure that any and all scientific testimony or evidence is not only relevant, but reliable.” *Daubert* focuses on objective criteria that may provide a safeguard against the admission of evidence that has customarily been received, but may not have a scientific basis.

The factors laid out in *Daubert* that are used for determining whether a technique is scientific knowledge that will assist the trier of fact are: (1) whether it can be (and has been) tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error in the case of a particular scientific technique; and (4) general acceptance. The court further stated that “[t]he inquiry envisioned by Rule 702, we emphasize, is a flexible one. Its over arching subject is the scientific validity and thus the evidentiary relevance and reliability of the principles that underlie a proposed submission.”

