



What Attorneys Need to Know About the Cal. Supreme Court's Important Ruling on Animation Admissibility

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(Originally published in August 2012 on [Cogent Legal's blog](#).)



On Monday, the California Supreme Court issued a thoughtful opinion that finally provides strong guidance on the use of animations in trial, affirming their proper place in supporting expert testimony.

The decision *People v. Duenas* ([click here to view opinion](#)) arose out of a criminal murder trial where the defendant objected to the use of a re-creation of the scene done by a biomechanical expert that purported to show the locations and direction of the defendant shooting a police officer. This post summarizes the opinion and gives three questions that attorneys should ask themselves when considering developing and using demonstrative evidence.

Are Animations So Good They're Prejudicial?

What is most interesting to me about *Duenas* is it's the only case to have dealt with the subject of animation admissibility in California within the last 15 years. In 1997, the Court of Appeal in *People v. Hood* (1997) 53 CA4th 965 addressed the issue, but over this 15-year time period the technology used in making animations has gone from cartoons at best to full-scale, photo-realistic re-creations. Given the improvements and increased use of animation in litigation, technology potentially was outstripping the legal underpinnings. In 1997, *Hood* held that "[the] computer animations were tantamount to drawings by the experts from both sides to illustrate their testimony."

However, in *Duenas*, the defendant raised the claim that animations have become far more advanced than in years past, and can create "an unjustified 'air of technical and scientific certainty.'" (Opinion p. 27-28) Defendant argued that the animation "was likely to beguile the jurors into uncritically accepting the version of events depicted in the animation," and as such should have been excluded under Evidence Code 352 as being prejudicial. (Opinion p. 27-28) The Supreme Court had to deal directly with the issue of the advancing state of technology that now allows much more realistic animations than in the past.

The Supreme Court rejected the argument that animations are inherently prejudicial just because they can have a powerful effect upon the jury, based on the fact that the



court sufficiently instructed the jury that the animation was not a film of what actually occurred or an exact re-creation. Rather, the Court found that the animation was allowed as demonstrative evidence for the limited purpose of illustrating the opinion of the experts' testimony.

The Court summed up its holding as follows:

"A computer animation is not substantive evidence used to prove the facts of a case; rather it is demonstrative evidence used to help a jury to understand substantive evidence. In a case like this one, where the animation illustrates expert testimony, the relevant question is not whether the animation represents the underlying events of the crime with indisputable accuracy, but whether the animation accurately represents the *expert's opinion* as to those events."

(Opinion p. 24-25 emphasis in original)

Simulation vs. Animation

The Supreme Court was very careful to first note that the subject animation was not a "simulation" that has a much higher admissibility standard. As discussed in my prior [blog post](#) in detail, a simulation is created when data is inputted into a computer, and through calculation the computer makes determinations as to how events occurred.

The Court in *Duena* explained that "a computer animation is demonstrative evidence offered to help a jury understand expert testimony or other substantive evidence (*People v. Hood* (1997) 53 Cal.App.4th 965, 969); a computer simulation, by contrast, is itself substantive evidence." The Supreme Court explained that, "only after a preliminary showing that any 'new scientific technique' used to develop the simulation has gained 'general acceptance . . . in the relevant scientific community'" is it admissible. (Opinion p. 23-24 citing *People v. Kelly* (1976) 17 Cal.3d 24, 30; see also *Hood, supra*, 53 Cal.App.4th at pp. 969-970.)

Since the subject animation was only used to illustrate the expert testimony, it need only be a "fair and accurate representation of the evidence." (Opinion p. 25)

Conclusion

I was quite happy to read the *Duenas* opinion because it clearly states that with the proper foundation, animations are admissible and not prejudicial. This is good news for attorneys who seek to use animations to more powerfully present their cases at trial, because they can do so now with more guidance and confidence.



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Based on *People v. Duenas*, you should ask yourself the following questions regarding any visual created that you seek to show the jury.

1. Is it intended to be for demonstrative purposes only (i.e. showing real evidence but not evidence itself)?
2. Is the animation used simply to illustrate the already-established opinion of an expert or witness?
3. Will showing it enhance the jury's understanding of a complex substantive evidence?

If the answer is "yes" to all questions, you have a good chance of showing it to the jury as demonstrative evidence.

If you have any questions about animations vs. simulations or admissibility issues, please feel free to [contact me](#). To see samples of animations for litigation, please visit Cogent Legal's [animation section](#) of our portfolio.

Morgan Smith is the owner of [Cogent Legal](#), a litigation graphics and trial strategy firm based in the San Francisco Bay Area that develops clear and compelling visual presentations for attorneys to use in mediation or trial. Services include animations, 2D and 3D graphics, medical illustrations, PowerPoint or Keynote presentations, interactive timelines, videos, strategic consulting and trial support. Cogent Legal integrates the legal expertise of a successful trial attorney with the creative and technical talent of a design firm.