

12. Prohibit Use of Prosecution's Demonstrative Evidence

TO THE COURT AND THE PROSECUTION, PLEASE TAKE NOTICE that Defendant moves the Court for an order prohibiting the Prosecution from displaying any demonstrative evidence to the jury unless such evidence is first reviewed by the court and the defense outside the presence of the jury and the defense has had opportunity to object to the evidence.

Date:

Attorney for Defendant

POINTS, AUTHORITIES, AND ARGUMENT

Demonstrative evidence may be used to illustrate and clarify a witness's testimony. (see *St. George v. Superior Court* (1949) 93 Cal. App. 2nd 815, 816). “[D]emonstrative evidence [is] offered to help a jury understand expert testimony or other substantive evidence....” (*People v. Duenas* (2012) 55 Cal. 4th 1, 20) Demonstrative evidence is “not offered as substantive evidence, but as a tool to aid the jury in understanding the substantive evidence.” (id. at 25).

“Demonstrative evidence is evidence that is shown to the jury ‘as a tool to aid the jury in understanding the substantive evidence.’” (*People v. Diaz* (2014) 227 Cal. App. 4th 362, 384, fn. 19).

“Demonstrative evidence is admissible for the purpose of illustrating and clarifying a witness’ testimony’ so long as a proper foundation is laid.” (*People v. Roldan* (2005) 35 Cal.4th 646, 708)

“Demonstrative evidence, however, is not to be used as *substantive* evidence.” (*People v. Vasquez* (2017) 14 Cal. App.5th 1019, 1037). It is error to introduce as demonstrative evidence an exhibit that is “based on out-of-court statements made [the witness], not on [the witness’s] in-court testimony” (id. at 1039).