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**STATE OF MICHIGAN**

**IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

PEOPLE OF THE STATE OF MICHIGAN

CASE NO. 98-2067  
HON. M. DRAKE

V.

ANTONIO HAMMONS  
ANDRE EASLEY

\_\_\_\_\_  
Patricia M. Leonard  
Assistant Prosecuting Atty.  
1441 St. Antoine  
Detroit, MI 48226

Mr. Curtis Williams  
Attorney for Defendant Hammons  
561 E. Jefferson  
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**MOTION IN LIMINE TO ADMIT INTO EVIDENCE COMPUTER-ENHANCED  
VIDEO AND PEOPLE'S MEMORANDUM OF LAW IN SUPPORT**

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Patricia M. Leonard  
Assistant Prosecuting Attorney  
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Now Comes Wayne County Prosecutor JOHN D. O'HAIR, by and  
through Assistant Prosecutor Patricia Leonard and states as

follows:

1. That Defendants Hammons and Easley are charged with Carjacking/larceny, two counts of First Degree Felony Murder and two counts of Assault with the intent to Murder.

2. The People of the State of Michigan seek the admission of a computer-enhanced video, as demonstrative evidence, to assist the accident reconstruction expert, Sgt. Robin Beach, with his testimony. Alternatively, the People seek the admission of this video as an exhibit , in order to allow the video to be taken into the jury room during deliberations.

3. The video should be introduced as illustrative evidence, much like a graph or chart, and therefore is subject only to the standards of MRE 401 and MRE 403, not the Frye-Davis test for substantive evidence.

4. There are no reported appellate decisions in Michigan regarding this use of this type of video during trial, thus it is necessary to consult other jurisdictions.

5. In the most recent case, People v. Hood, 61 Cr1 1033 (1997), the prosecution introduced a computer animation of a shooting based upon information supplied by a witness, as well as the detective who did measurements at the scene, the reports and opinions of the pathologist, and information supplied by prosecution ballistics and gunshot residue experts. Defense counsel argued that computer animation had not gained the

scientific acceptance necessary for admissibility. On appeal, the California Court of Appeals held that computer animation is not subject to the foundation requirement for scientific evidence. The court stated, " The prosecution and defense computer animations were tantamount to drawings by the experts on 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 on information supplied by experts, then fans through the frames, making the characters drawn appear to be moving." Id at 139.

6. In People v. McHugh, 476 NYS 2d 721 (1984), the court held that a computer animation video was properly admitted into evidence because it was akin to a chart or diagram." The trial court , therefore, need only to establish the "proper groundwork and qualify the expert." Id., at 722.

7. There are also three unpublished decisions that are relevant: State of Florida v. Kenneth Pierce, unpublished opinion of the Court of Appeals, decided March 13, 1996 (Docket No. 93-1302), (appellate court relied on McHugh in holding that a computer -generated accident reconstruction video was properly admitted as demonstrative evidence); People of California v. Mitchell, unpublished opinion of Cal. Marin County Trial Court, decided Feb., 1992 (Docket No. 12462), (computer animation video utilized to show elements of manslaughter case); Arizona v. Phillips, unpublished opinion of Arizona Gila County Trial Court, decided 1988 (Docket No. 87-365 (computer animation used to show that gun was held against the victim's head when fired).

8. As the above case law makes clear, the use of computer enhanced videos should not be subject to the Frye-Davis test. This test is not applicable when the video will be used merely to aid in understanding Sgt. Beach's testimony. The McHugh court set forth a standard that the video need only be relevant and probative under MRE 401, non-prejudicial under MRE 403, and that the expert be qualified.

9. In this case, Sgt. Robin Beach is qualified as an expert in accident reconstruction. His testimony regarding the events of this accident will be based upon the physical evidence found at the scene. **This evidence forms the factual basis for his opinion regarding the speed and location of the cars prior to impact, upon impact and just after impact.** The computer animation merely allows the jury to visualize the explanation of Sgt. Beach.

Pursuant to MRE 401, relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the actions more or less probable than it would be without the evidence." MRE 401. In order for evidence to be material, it must be related to any fact that is of consequence to the action. People v. Mills, 450 Mich61 (1995).

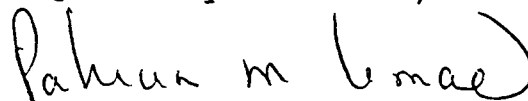
Here the computer-enhanced video is material because it creates a visual image of the accident scene based upon expert

opinion as to what occurred.

10. In the alternative, People request that this court admit the video as a photographic exhibit in order to allow the jury to view the tape during deliberations. The definition of photograph includes "still photographs, X-ray films, video tapes and motion pictures. MRE 1001 (2) According to the comment this must be broadly construed to included technological developments in picture processing.

Computer technology continues to advance and a niche will have to be carved out of the rules of evidence to address these advances. In the meantime however, this court should allow the admission of this video as an exhibit pursuant to MRE 1001. Just as x-rays, video tapes and computer print-outs have gained acceptance as exhibits in criminal trials, computer-enhanced animations should as well.

Respectfully submitted,



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