

**XAVIER BECERRA**  
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**DEPARTMENT OF JUSTICE**



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December 14, 2017

The Honorable Jorge E. Navarrete  
Court Administrator and Clerk  
Supreme Court of the State of California  
350 McAllister Street  
San Francisco, CA 94102

RE: *People v. James Anthony Daveggio and Michelle Lyn Michaud*, Case No. S110294  
Respondent's Oral Argument Focus Letter

Dear Mr. Navarrete:

We write to advise the Court that we expect our argument in this case will focus on the issues raised by opposing counsel in their respective focus letters, specifically:

Argument I in Appellant Michaud's Opening Brief: "The trial court committed structural error and violated appellant's federal constitutional rights to due process, and a jury trial as guaranteed under the Fifth, Sixth, and Fourteenth Amendments by incorrectly instructing the jury on the beyond a reasonable doubt burden of proof."

Argument II in Appellant Michaud's Opening Brief: "The trial court violated appellant's federal constitutional right to a jury trial when it erroneously instructed that a person who aids and abets is equally guilty of the crime committed by a perpetrator. The law clearly recognizes that an aider and abettor's mens rea is personal to the aider and abettor and a fortiori, that an aider and abettor may therefore be guilty of a lesser-included crime than that committed by the actual killer."

Argument X in Appellant Daveggio's Opening Brief: "The trial court erred in denying appellant's request for additional time to rebut arguments made on behalf of Michaud, thereby denying appellant the right to due process of law, the right to an attorney, the right to a jury trial, and the right to a reliable determination of

the facts in a capital case as guaranteed by the Constitution of the United States.”

Argument V in Appellant Daveggio’s Opening Brief: “The trial court violated appellant’s constitutional right to a jury trial when it erroneously instructed the jury that a person who aids and abets is equally guilty of the crime committed by a perpetrator, because the law clearly recognizes that an aider and abettor may be guilty of a lesser-included crime.”

Respondent will also be prepared to address any other issues on which the Court has questions.

Respectfully submitted,

/s/ Huy T. Luong

HUY T. LUONG  
Deputy Attorney General  
State Bar No. 251507

For XAVIER BECERRA  
Attorney General

HTL:

**DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL**

Case Name: *People v. James Anthony Daveggio and Michele Lyn Michaud*  
No.: **S110294**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On December 14, 2017, I electronically served the attached **RESPONDENT'S ORAL ARGUMENT FOCUS LETTER** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on December 14, 2017, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

David H. Goodwin  
Attorney at Law  
[Served via TrueFiling]

Janyce K. Blair  
Attorney at Law  
[Served via TrueFiling]

County of Alameda  
Criminal Division - Rene C. Davidson  
Superior Court of California  
1225 Fallon Street, Room 107  
Oakland, CA 94612-4293

The Honorable Nancy O'Malley  
District Attorney  
Alameda County District Attorney's Office  
[Served via email:  
ACDAdocket@acgov.org]

Kathy Moreno  
Attorney at Law  
[Served via TrueFiling]

California Appellate Project (SF)  
[Served via TrueFiling]

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 14, 2017, at San Francisco, California.

\_\_\_\_\_  
Tan Nguyen  
Declarant

\_\_\_\_\_  
/s/ Tan Nguyen  
Signature

**STATE OF CALIFORNIA**  
 Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
 Supreme Court of California

Case Name: **PEOPLE v. DAVEGGIO &  
 MICHAUD**

Case Number: **S110294**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **Huy.Luong@doj.ca.gov**
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12-14-2017

Date

/s/Huy Luong

Signature

Luong, Huy (251507)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm