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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LOUIS BRANCH,

 Plaintiff,

 v.

D. UMPHENOUR, et al.,

 Defendants.

Case No. 1:08-cv-01655-SAB (PC)

ORDER DENYING PLAINTIFF’S IN
FORMA PAUPERIS REQUEST FOR TRIAL
RECORD

(ECF No. 330)

This action proceeded to a jury trial on January 30, 2017. On January 31, 2017, the jury returned a verdict in favor of Defendants Umphenour, Szalai, and Alvarez. Plaintiff Louis Branch filed a notice of appeal on March 1, 2017. On March 30, 2017, Plaintiff filed an in forma pauperis request for trial records and attaches a transcript order requesting transcripts of the entire trial. (ECF No. 330.) Plaintiff states that the records are sought pursuant to 28 U.S.C. § 753(f). There are two statutes that the Court considers in determining whether to provide transcripts at government expense.

First, 28 U.S.C. § 1915(c), identifies limited circumstances under which the court can direct payment of such expenses at the government expense. Section 1915(c) provides for payment where “(1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court,

1 in the case of proceedings conducted under section 636(b) of this title or under section 3401(b)
2 of title 18, United States Code; and (3) printing the record on appeal if such printing is required
3 by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this
4 title.” None of these circumstances exist in this instance.

5 Second, Section 753(f) provides that fees for transcripts are furnished in criminal
6 proceedings, habeas corpus proceedings, or proceedings brought under section 2255 of Title 28.
7 In all other proceedings in which a person is permitted to appeal, transcripts shall be paid by the
8 United States “if the trial judge or a circuit judge certifies that the appeal is not frivolous (but
9 presents a substantial question).” 28 U.S.C. 753(f). The Court should not enter an order
10 granting such a request unless it finds that the appeal presents a substantial question. Henderson
11 v. United States, 734 F.2d 483, 484 (9th Cir. 1984).

12 Plaintiff seeks the trial transcripts to appeal his change of venue motion, requests for
13 appointment of counsel, a racial epithet proclaimed by defense counsel, the admission of hearsay
14 evidence, and defense counsel’s violations of Rule 404 of the Federal Rules of Evidence. (ECF
15 No. 330.) Plaintiff contends that defense counsel uttered a racial epithet. In his motion for the
16 parties to bear their own costs, Plaintiff stated that “counsel for defendants’ racial epithet that
17 plaintiff was a ‘black gorilla’ then amended to state plaintiff was a ‘member of the Black
18 Guerrilla Family’ was inexcusable.” (ECF No. 329 at 2:19-21.) However, even if defense
19 counsel made such a statement it could not reasonably be construed as a racial epithet, rather the
20 statement was related to Plaintiff’s membership in the Black Gorilla gang. To the extent that
21 Plaintiff raises the change of venue, appointment of counsel, admission of hearsay evidence, and
22 violations of Rule 404, the Court does not find a substantial question has been presented.

23 Plaintiff may renew his request for a transcript at government expense with the appellate
24 court by filing a motion there if he wishes. Additionally, Plaintiff is advised that the appellate
25 court has access to the court’s file in this case, and will request any necessary documents that are
26 in the record directly from this court.

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