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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAO LO,

Petitioner,

No. 2: 05-cv-1754 MCE KJN P

vs.

A. P. KANE, et al.,

Respondents.

ORDER

\_\_\_\_\_ /

Petitioner is a state prisoner proceeding through counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In claim seven, petitioner alleges that the prosecutor improperly excluded four Asian Americans during voir dire in violation of Batson v. Kentucky, 476 U.S. 79 (1986).

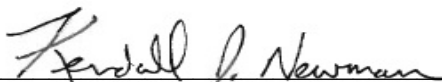
Petitioner sought the transcript from the voir dire in his state post-conviction proceedings. (Dkt. No. 1, p. 17.) His requests for the transcript were denied. (Id.) The California Supreme Court denied petitioner’s state habeas petition raising his Batson claim without comment or citation. (Respondent’s Lodged Document 7.) In the instant petition, petitioner requested that respondent produce the transcript. On January 20, 2010, Magistrate Judge Moulds ordered respondent to produce the transcript. On March 15, 2010, respondent lodged the transcript. (Respondent’s Lodged Document 10.) Because the transcript was lodged

1 after the filing of the petition, answer and reply to the answer, neither party has briefed this issue  
2 or sought leave to file supplemental briefing.

3           The parties are now directed to file supplemental briefing addressing petitioner’s  
4 Batson claim. The parties shall address whether the prosecutor offered race neutral reasons for  
5 dismissing jurors Foo, Engholm, Lee and Deruosi. The prosecutor stated that he dismissed juror  
6 Foo because he smiled at petitioner and was young and lacked life experience. (Respondent’s  
7 Lodged Document 10, pp. 194-95.) The prosecutor dismissed juror Lee because her personality  
8 was very strong. (Id. at 195.) The prosecutor dismissed juror Engholm because he did not know  
9 enough about her and he “never got her to respond to another question.” (Id. at 195.) Finally, the  
10 prosecutor dismissed juror Deruosi based on Ms. Derousi’s feelings regarding street racing and  
11 because she said she did not understand his questions. (Id. at 196.) The parties shall address  
12 whether the record supports these reasons and whether they were race-neutral.

13           Accordingly, IT IS HEREBY ORDERED that within twenty-eight days of the  
14 date of this order, the parties shall file further briefing addressing petitioner’s Batson claim.

15 DATED: August 23, 2010

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19 KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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