

1 On August 19, 2009, the magistrate judge filed findings and
2 recommendations herein which were served on all parties and
3 which contained notice to all parties that any objections to the
4 findings and recommendations were to be filed within twenty
5 days. Respondent has filed objections to the findings and
6 recommendations.

7 In accordance with the provisions of 28 U.S.C. §
8 636(b)(1)(C) and Local Rule 72-304, this Court has conducted a
9 de novo review of this case. Having carefully reviewed the
10 entire file, the Court finds the findings and recommendations to
11 be supported by the record and by proper analysis with the
12 exception of the findings and recommendations concerning
13 Petitioners' Batson claim with respect to prospective juror Mr.
14 Jones. In particular, this Court finds that Petitioners failed
15 to satisfy the third step in the Batson analysis for prospective
16 juror Mr. Jones, i.e. the Petitioners did not show that the
17 totality of circumstances raises an inference that the strike
18 was motivated by race. The record in this case shows the
19 prosecutor put forward evidence of legitimate, race-neutral
20 reasons for exercising a peremptory challenge against Mr. Jones,
21 and Petitioners did not prove purposeful racial discrimination
22 by the prosecutor. Accordingly, Respondents' objections to the
23 Magistrate Judge's findings and recommendations on this issue
24 are sustained.

25 In preparing for the January 30, 2008, hearing before
26 Magistrate Judge Moulds, the prosecutor had the benefit of his
27 notes from voir dire, the jury questionnaires, and the
28 transcript from trial. At the hearing, the prosecutor provided

1 several reasons, taken together, for exercising a peremptory
2 challenge against Mr. Jones. The prosecutor testified Mr. Jones
3 was late to the first day of jury selection; he erroneously got
4 into the hardship line; he made a flippant and disrespectful
5 comment to the court; his jury questionnaire indicated he was
6 youthful and lacked maturity and experiences outside the home;
7 he was from Stockton; he worked alone, as opposed to with
8 others, in his occupation; he was the only prospective juror who
9 misspelled his own occupation; he believed defense attorneys
10 "defin the guilty" and witnesses are "the same until there are
11 proven guilty, they are inocent;" he believed that anyone should
12 be allowed to carry a firearm at any time; he was willing to use
13 deadly force to protect people in his home; and he had never
14 heard of any Stockton gangs. The prosecutor drew negative
15 inferences about Mr. Jones' ability to understand the complex
16 case before the court, follow the court's instructions, and be
17 honest with the court.

18 Each reason above was not cited by the prosecutor as an
19 independent basis for excusing Mr. Jones from the venire;
20 rather, it was the combination of these problematic traits that
21 gave rise to the strike. A comparative juror analysis reveals
22 that no other juror shared more than one of the above cited
23 problematic traits in common with Mr. Jones.

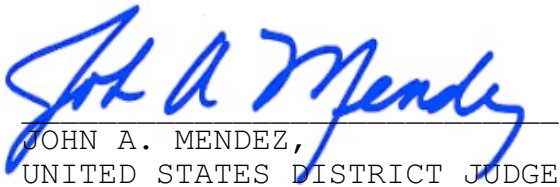
24 Two other important reasons were cited for excusing Mr.
25 Jones from the jury. Before trial, the prosecutor read and
26 scored all jury questionnaires on a scale of one to five, five
27 being the most desirable juror. Mr. Jones received a two on his
28 jury questionnaire, a very low number according to the

1 prosecutor, and the lowest score of a seated juror was three.
2 Moreover, Mr. Jones' jury questionnaire contained an answer that
3 was "fatal," providing what the prosecution deemed an
4 independent basis for the strike. Mr. Jones stated in his
5 questionnaire that he would not follow the court's instructions
6 if they were different from his own personal views.

7 The above reasons provide a sufficient, race-neutral basis
8 for exercising a peremptory strike against potential juror Mr.
9 Jones, and Petitioners failed to provide evidence that the
10 prosecutor removed Mr. Jones from the jury based on purposeful
11 racial discrimination.

12 Accordingly, IT IS HEREBY ORDERED that Petitioners Johnson
13 and Thompson's applications for a writ of habeas corpus be
14 denied.

15
16 Dated: March 22, 2010


JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE