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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**UNITED STATES OF
AMERICA,**

Plaintiff,

vs.

DANIEL ENGLISH,

Defendant.

CR 04-33 FMC

**ORDER AFFIRMING
APPELLANT'S CONVICTION**

FOR PUBLICATION

Defendant-appellant Daniel English ("English" or "Defendant") appeals from a judgment rendered by a United States Magistrate Judge on August 26, 2003, sentencing English to prison for 5 months for violating 36 C.F.R. § 261.3(a). The Court concludes that the United States Magistrate Judge was not required to inquire whether English knowingly and intelligently waived his right to counsel when he was represented by a certified law student, and that the procedural defects surrounding English's representation by an attorney-supervised law student do not warrant reversal. Accordingly, the Court affirms the conviction.

I. Procedural Background

On September 6, 2002, English was charged with threatening, resisting, intimidating or interfering with a forest officer, in violation of 36 C.F.R. § 261.3(a). Trial was set for June 5, 2003. However, on May 27, 2003, the Federal Public Defender applied for a continuance of the trial date so

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1 that a law student could conduct the trial under the supervision of the
2 Federal Public Defender. The parties thereafter stipulated to continue the
3 trial until July 3, 2003, so that the law student could receive her State Bar
4 certification. (Appellant's Opening Brief at p. 3).

5 English's defense was conducted by the law student, who introduced
6 herself to the court as a "certified law clerk at the Public Defender's Office
7 on behalf of defendant Danny English." The law student then introduced
8 English's appointed Deputy Public Defender, who sat at counsel table with
9 her throughout the proceedings, (ER at p. 12). The Magistrate Judge made
10 no inquiry of the defendant concerning his willingness to have his trial
11 conducted by a law student instead of his appointed attorney.

12 Although the law student was certified by the State Bar as qualified
13 under its rules to represent the defendant at trial under the direct
14 supervision of the Deputy Public Defender, not all of the necessary
15 paperwork required by Local Rule 83-4 had been filed by the Public
16 Defender's office to permit the law student to represent the defendant.
17 Specifically, English contends that the consent form he signed is invalid
18 because it was labeled "Draft Consent Form"¹ and was not listed on the
19 docket sheet or stamped "Filed" by the court clerk. Additionally, although
20 the letter from the dean of the student's law school was also found in the file,
21 it was not reflected on the docket sheet or stamped "Filed." (Appellant's
22 Reply Brief at p. 2).

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25 ¹The "Draft Consent Form" was included with the Notice of Student Certification sent by
26 the State Bar of California to the Deputy Public Defender supervising the certified student. The
27 State Bar provided the form to the supervising attorney to help the attorney prepare a consent
28 form to be signed by a client consenting to representation by the certified student.
(Government's Supplemental Excerpt of Record at 3).

1 English contends that his conviction should be reversed because: (1)
2 the trial court failed to ensure that the defendant knowingly and intelligently
3 waived his right to be represented by a licensed attorney; and (2) the
4 requisite procedures for law student representation were not followed.

5 II. Standard of Review

6 An appeal of a conviction by a magistrate judge is heard by a district
7 judge pursuant to Rule 58(g)(2) of the Federal Rules of Criminal Procedure.
8 The scope of appeal from a judgment of conviction by a magistrate judge is
9 the same as an appeal from the judgment of a district court to a court of
10 appeals. Fed. R. Crim. P. 58(g)(2)(D). Questions of law are reviewed de
11 novo. *United States v. Nunez-Rodelo*, 378 F.3d 877, 879 (9th Cir. 2004) (citing
12 *United States v. Cabaccang*, 332 F.3d 622, 624-25 (9th Cir. 2003)(en banc)).
13 Mixed questions of law and fact are also reviewed de novo. *Suzy's Zoo v.*
14 *Commissioner*, 273 F.3d 875, 878 (9th Cir. 2001).

15 III. Discussion

16 A. Representation of a Defendant by a Certified Law Student Does Not 17 Constitute a Waiver of the Right to Counsel

18 English argues that his conviction should be reversed because the
19 magistrate judge erred in failing to ensure that English knowingly and
20 intelligently waived his right to counsel. Appellee (“the Government”),
21 however, contends that the magistrate judge was not required to make such
22 an inquiry and that reversal is not required.

23 In support of the argument that representation by a law student
24 requires a knowing and intelligent waiver of the right to counsel, English
25 cites several cases pertaining to self-representation. However, reliance on
26 those cases is misplaced because the present circumstances do not involve
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1 self-representation. Although English was represented by a certified law
2 student under the supervision of the appointed Deputy Public Defender, he
3 was also represented by counsel at all times.

4 Our research has disclosed no federal cases addressing the issue of
5 whether participation of a certified law student abridges a defendant's right
6 to assistance of counsel. However, several state courts have addressed the
7 issue, and their reasoning is instructive. In *People v. Perez*, 24 Cal. 3d 133,
8 135 (1979), the defendant, who was on trial for burglary, consented to
9 representation by a certified law student acting under the supervision of a
10 deputy public defender. On appeal, Perez argued that the law student's
11 participation at trial abridged his constitutional right to counsel and that he
12 had not knowingly consented to representation by a law student. *Id.* at 135-
13 36. The Court affirmed the conviction, stating that when "a defendant
14 receives competent representation pursuant to a program carefully
15 formulated to assure such competency of representation, we can find no
16 abridgment of the defendant's constitutional right to the assistance of
17 counsel." *Id.* at 136.

18 In making its decision, the Court placed great weight on the fact that
19 the law student was supervised by a licensed attorney throughout the entire
20 process. The Court explained that in such situations, the defendant "is not
21 merely represented by a student who has not been admitted to the bar; he is
22 represented by an experienced member of the bar who serves as counsel of
23 record, undertakes personal and immediate supervision of the student's
24 performance, and assumes responsibility for the conduct of the defense." *Id.*
25 at 138. Several other states have similarly found that representation by a
26 student is not a waiver of the right to counsel. *See e.g., State v. Daniels*, 346

1 So.2d 672, 674 (La. 1977); *People v. Masonis*, 58 Mich. App. 615, 619 (1975);
2 *Seattle v. Ratliff*, 100 Wash. 2d 212, 217-18 (1983).²

3 English relies on Justice Mosk's dissent in *Perez* for support of his
4 argument that the magistrate judge erred by failing to ensure that English
5 knowingly and intelligently waived his right to counsel. The dissent in
6 *Perez* reasoned that a certified law student is not the equivalent of a
7 competent attorney; thus representation by a law student requires a knowing
8 and intelligent waiver of the right to counsel. 24 Cal. 3d at 146-53 (Mosk, J.,
9 dissenting). This Court finds the reasoning of the dissent unpersuasive.

10 Where a defendant is represented by a law student under the immediate and
11 active supervision of a licensed attorney, the defendant is not only
12 represented by the student, but also by the licensed attorney. The majority
13 in *Perez* recognized this, stating that when a defendant "has received
14 reasonably competent representation pursuant to a program replete with
15 safeguards designed to ensure the competency of representation, [the
16 defendant] has not been denied his constitutional right to assistance of
17 counsel merely because one of the two persons who appeared on his behalf
18 was not yet a member of the bar." *Id.* at 142. Accordingly, the Court finds
19 that because English was represented by a certified law student as well as the
20 Deputy Public Defender throughout the proceeding, he was represented by
21 counsel and no waiver of the right to counsel was called for.

22 In an attempt to offer additional support for his argument, English
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25 ²In *Ratliff*, the court stated that representation by a certified law student was not a waiver
26 of the right to counsel where all requirements for representation were satisfied and the student
27 was supervised. However, as previously discussed, the court reversed the conviction on the basis
28 that the defendant was denied the right to counsel because the certified law student had been
prevented from contacting the supervising attorney.

1 cites *United States v. Turnbull*, 888 F.2d 636, 638 (9th Cir. 1989), *cert. denied*,
2 498 U.S. 825 (1990), for the proposition that the term “counsel” means a
3 licensed attorney. Thus, English argues, representation by an unlicensed law
4 student does not constitute representation by counsel. This argument also
5 fails. English was, at all times, represented by both a certified law student
6 and the deputy public defender, a licensed attorney. Accordingly, the
7 magistrate judge was not required to inquire whether English made a
8 knowing and intelligent waiver of the right to counsel.

9 **B. Procedural Defects Surrounding Filing of Paperwork Required for Law**
10 **Student Representation Do Not Warrant Reversal**

11 English next contends his conviction should be reversed because the
12 procedures required under Local Rule 83-4 for law student representation
13 were not followed. The Government argues that there was substantial
14 compliance, and that any procedural errors were harmless and do not require
15 reversal.

16 Local Rule 83-4 details the requirements for law student practice.
17 Pursuant to the rule, several documents must be filed with the court
18 indicating compliance with the various requirements for the student to
19 practice. Among the documents to be filed are: (1) a written consent by the
20 client; (2) a letter from the dean of the law school stating that the student is
21 adequately trained to fulfill all responsibilities as a legal intern; and (3) a
22 request to undertake supervision of an eligible law student by the
23 supervising attorney. Additionally, the supervising attorney must sign all
24 documents filed with the court.

25 English cites several cases for the proposition that failure to comply
26 with the requirements for law student practice requires reversal. However,
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1 in each of those cases, the defendant failed to consent to representation by
2 the student. For example, in *People v. Schlaiss*, the Court reversed the
3 defendant's conviction where the defendant had not consented to
4 representation by a law student, and there was insufficient evidence in the
5 record to show that the defendant even knew he was being represented by a
6 law student. 174 Ill. App. 3d 78, 81 (Ct. App. 1988).

7 Similarly, in *In the Interest of C.B.*, the Court reversed the adjudication
8 because there was insufficient evidence to demonstrate that the defendant
9 had consented to representation by a legal intern. 546 So. 2d 447, 448 (Fla.
10 Ct. App. 1989). Although the intern testified that the defendant had been
11 informed of her status as a legal intern, the defendant had not signed a
12 written consent to representation. In reversing the adjudication, the Court
13 stated that "the fact that the defendant, a juvenile, was advised of the intern's
14 status is no substitute for proof in the record..." *Id.*

15 Another case cited by English is *In the Interest of L.S.*, 560 So. 2d 425
16 (Fla. Ct. App. 1990). In this case, the Court reversed a delinquency
17 adjudication because the defendant was represented in the proceeding by a
18 legal intern without the defendant's written consent. In explanation the
19 Court stated that "the record is devoid of any written documentation
20 whereby appellant gave his consent to be so represented." *Id.*

21 The last case cited by English in support of his position is *L.R. v. State*,
22 698 So. 2d 915 (Fla. Ct. App. 1997) In *L.R.*, the defendant was represented
23 by a legal intern during a trial for aggravated assault. The conviction was
24 reversed on appeal because the written consent signed by the defendant
25 listed a different intern from the one who represented the defendant at trial.
26 The Court explained that "the failure of the written consent to list the name
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1 of the certified legal intern who handled Appellant's trial violates the[]
2 [Rules Regulating the Florida Bar], and failure to follow these rules provides
3 another reason for reversal." *Id.* at 916.

4 Although not cited by English, another example of the type of case
5 supporting his argument is *Seattle v. Ratliff*, 100 Wash. 2d 630 (1983). In
6 *Ratliff*, the defendant appeared in court without an attorney even though
7 counsel had been assigned to the case. The trial court then summoned a
8 legal intern to represent Ratliff after discovering the intern was representing
9 the defendant in another matter. The intern requested a continuance to
10 prepare for the trial; the request was denied. Ratliff was convicted and he
11 subsequently appealed. *Id.* at 213-15. On appeal, the Court reversed the
12 conviction on the basis that the defendant was denied the right to counsel
13 because the certified legal intern had been prevented from contacting his
14 supervising attorney. *Id.* at 221.

15 Each of these cases involve situations where the defendant had not
16 consented to representation by a law student, or in the case of *Ratliff*, where
17 the law student was denied access to a supervising attorney. By contrast, at
18 issue here is not the defendant's consent to the student's representation or
19 lack of supervision by a licensed attorney. Rather, the appeal centers on
20 minor procedural errors unrelated to the defendant's actual consent. Unlike
21 *Schlaiss* and the other decisions cited by the defendant, English signed a
22 form consenting to representation by the certified law student. For these
23 reasons, the cases cited by English do not directly support his position that
24 failure to comply with the requirements for law student representation
25 requires reversal.

26 English also makes several arguments that the signed consent form
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1 permitting the law student to represent him at trial was invalid. English
2 acknowledges that the consent form was found in the clerk's file. However,
3 he argues that because it was not stamped "Filed" by the court and was not
4 reflected on the court's docket, the consent form does not meet the
5 requirements of Local Rule 83-4. Additionally, English argues that because
6 the form itself was titled "Draft Consent Form," it is ineffective to constitute
7 consent.

8 The Court finds these arguments unpersuasive. The fact that the form
9 was labeled "Draft" or that it was not stamped "Filed" does not alter the fact
10 that English gave written consent to representation by a certified law
11 student. Additionally, English was present when the Deputy Public
12 Defender requested a continuance to allow the law student to obtain
13 certification from the state bar, so that she could represent English at trial.
14 English was also present when the law student introduced herself to the
15 court at the start of trial as a "certified law clerk at the Public Defender's
16 Office" and introduced the Deputy Public Defender supervising her. The
17 record amply demonstrates that English had knowledge that he was
18 represented by a certified law student and that he did in fact consent to such
19 representation.

20 Although not every requirement of Local Rule 83-4 was followed, there
21 was substantial compliance with the rule. *See State v. Daniels*, 346 So.2d 672,
22 674 (La. 1977) (holding that reversal was not required where there was
23 substantial compliance with the rules governing student representation). It
24 is undisputed that the law student was supervised throughout the
25 proceedings by the Deputy Public Defender. Additionally, a letter was
26 submitted by the dean of the student's school stating that the student was
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1 qualified to represent the defendant under the supervision of a licensed
2 attorney. The student had also received certification from the state bar,
3 which had determined that she was qualified to practice pursuant to the
4 applicable rules and guidelines. Moreover, the signed consent form
5 demonstrates that English did in fact consent in writing to representation by
6 the law student, as required by the rule. Finally, English does not contend
7 that he received inadequate representation; instead, he bases his argument
8 on the fact that certain forms were not filed as required to allow the law
9 student to practice. It is evident to the Court that there was substantial
10 compliance with Local Rule 83-4. Accordingly, the Court rejects this ground
11 for reversal.

12 IV. Conclusion

13 For the reasons set forth above, the magistrate's judgment convicting
14 English of threatening, resisting, intimidating or interfering with a forest
15 officer in violation of 36 C.F.R. § 261.3(a) is **AFFIRMED**.

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17 Dated: October 6, 2004

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22 FLORENCE-MARIE COOPER, Judge
23 UNITED STATES DISTRICT COURT
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