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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Bryan Dryden,
Plaintiff

v.

State of Nevada, et al.,
Defendants

Case No.: 2:16-cv-01227-JAD-EJY

**Order Affirming Magistrate Judge's Order
Denying Sanctions**

[ECF Nos. 236, 240]

This case involves allegations that Nevada Department of Corrections (NDOC) officer Ted Nielson attacked Bryan Dryden while he was incarcerated at High Desert State Prison.¹ After the attack, nurse Cindy Castillo treated Dryden and completed an “Unusual Occurrence Report” to record details about the incident.² Two versions of that report were produced in discovery: one stated that Nielson “assaulted” Dryden, but the other did not.³ In light of that discrepancy, the parties pointed the finger at each other and moved for spoliation sanctions, with Dryden theorizing that an NDOC employee whited-out the reference to Nielson and Nielson postulating that Dryden added the phrase when he had access to the medical records.⁴ After hearing testimony from nine witnesses, the magistrate judge denied both motions, reasoning that neither party proved its theory by a preponderance of the evidence.⁵ Nielson now appeals the magistrate judge’s order.⁶

¹ ECF No. 236 at 2.

² *Id.*

³ *Id.* at 2–3.

⁴ *Id.* at 7.

⁵ *Id.* at 1, 8.

⁶ ECF No. 240 at 1.

1 A district judge may reconsider any non-dispositive matter that has been finally
2 determined by a magistrate judge “when it has been shown that the magistrate judge’s order is
3 clearly erroneous or contrary to law.”⁷ This standard of review “is significantly deferential” to a
4 magistrate judge’s determination.⁸ A district court may overturn a magistrate judge’s ruling
5 under this standard only if it has “a definite and firm conviction that a mistake [of fact] has been
6 committed”⁹ or a relevant statute, law, or rule has been omitted or misapplied.¹⁰ “A finding of
7 fact is clearly erroneous ‘if it is (1) illogical, (2) implausible, or (3) without support in inferences
8 that may be drawn from the facts in the record.’”¹¹ The standard recognizes that “the factfinder
9 is in a better position to make judgments about the reliability of some forms of evidence than a
10 reviewing body acting solely on the basis of a written record of that evidence.”¹² This is
11 especially true for live testimony, “for only the [factfinder] can be aware of the variations in
12 demeanor and tone of voice that bear so heavily on the listener’s understanding of and belief in
13 what is said.”¹³

14 Applying these principles, I find that the magistrate judge did not clearly err in
15 determining that the evidence “does not sufficiently support the conclusion that [Dryden] altered
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18 ⁷ L.R. IB 3-1(a).

19 ⁸ *Concrete Pipe and Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.*, 508 U.S.
602, 623 (1993).

20 ⁹ *Id.* (internal quotation marks omitted).

21 ¹⁰ *See Grimes v. City and Cnty. of S.F.*, 951 F.2d 236, 240–41 (9th Cir. 1991).

22 ¹¹ *Red Lion Hotels Franchising, Inc. v. MAK, LLC*, 663 F.3d 1080, 1087 (9th Cir. 2011) (citing
Seller Agency Council, Inc. v. Kennedy Ctr. for Real Estate Educ., Inc., 621 F.3d 981, 986 (9th
Cir. 2010)).

23 ¹² *Concrete Pipe & Prod. of California, Inc.*, 508 U.S. at 623.

¹³ *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 575 (1985).

1 the document.”¹⁴ Nielson chiefly argues that the magistrate judge “erred when she dismissed”
2 handwriting expert Kathy Carlson’s “unrebutted” testimony that Dryden, and not Castillo,
3 altered the document and corroborating evidence that the phrase at issue was added, not
4 removed, from the document.¹⁵ But the magistrate judge found that Carlson’s testimony, while
5 “credible,” was “not persuasive.”¹⁶ She was persuaded instead by the fact that Dryden was
6 supervised when he had access to the report and that Castillo “could not and would not” testify
7 as to “whether she wrote the words” at issue at the hearing and had twice before confirmed under
8 oath that she wrote the phrase.¹⁷ So the notion that Castillo (or someone else at NDOC) wrote
9 the phrase is not implausible. And I find that Carlson’s “unpersuasive” testimony that the
10 handwriting was “closer” to Dryden’s¹⁸ is not enough to render the magistrate judge’s finding
11 clear error. So I affirm the magistrate judge’s order.

12 **Conclusion**

13 IT IS THEREFORE ORDERED that the defendant’s objections [ECF No. 240] are
14 OVERRULED, and the order [ECF No. 236] is **AFFIRMED**.

15 And based on the order at ECF No. 244, dispositive motions must be filed by May 13,
16 2023.

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19 U.S. District Judge Jennifer A. Dorsey
20 April 14, 2023

21 ¹⁴ ECF No. 236 at 8.

22 ¹⁵ ECF No. 240 at 3, 9.

23 ¹⁶ ECF No. 236 at 3 n.6.

¹⁷ *Id.* at 4.

¹⁸ ECF No. 240 at 5.