

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

JARED EDWARD BEEBE,	Case No. 3:16-cv-00595-MMD-CBC
Plaintiff,	ORDER
v.	
ELKO COUNTY JAIL; JIM PITTS; et al.,	
Defendants.	

**I. SUMMARY**

This is a prisoner's civil rights case about Elko County Jail's handling of legal mail. Before the Court is the Report & Recommendation ("R&R") of Magistrate Judge Carla Baldwin Carry (ECF No. 22). Plaintiff Jared Edward Beebe filed an objection (ECF No. 23), and Defendant Jim Pitts filed a response (ECF No. 24). For the following reasons, the Court overrules Plaintiff's objection and accepts and adopts Judge Carry's R&R in full.

**II. BACKGROUND**

Plaintiff alleges that an unnamed Doe individual at the Elko County Jail opened and reviewed Plaintiff's outgoing legal mail on January 12, 2016, even though the envelope was sealed and clearly marked as legal mail. (ECF No. 4 at 4.) Plaintiff discovered that his mail had been reviewed or read, rubber stamped, resealed, and delivered to Plaintiff's attorney on February 8, 2016, when Plaintiff received a copy of the January 12, 2016 attorney correspondence. (Id. at 4-5.) Plaintiff alleges that neither he nor his attorney were notified that Elko County Jail employees were reading Plaintiff's outgoing mail. (Id.)

///

1 The Court screened Plaintiff's Complaint and allowed Plaintiff to proceed with a  
2 claim for violation of his First and Sixth Amendment rights. (ECF No. 3 at 6.)

3 Defendant Jim Pitts filed a motion for summary judgment (ECF No. 15), and Judge  
4 Carry recommended granting Defendant's motion because (1) Elko County Jail's mail  
5 policies are constitutional and (2) Plaintiff has not adequately pleaded that Defendant Pitts  
6 was personally involved in the opening of Plaintiff's legal mail. (ECF No. 22 at 6-8.)

### 7 **III. LEGAL STANDARD**

8 This Court "may accept, reject, or modify, in whole or in part, the findings or  
9 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party  
10 timely objects to a magistrate judge's report and recommendation, then the court is  
11 required to "make a de novo determination of those portions of the [report and  
12 recommendation] to which objection is made." *Id.* In light of Plaintiff's objection to the  
13 Magistrate Judge's R&R, this Court finds it appropriate to engage in a de novo review to  
14 determine whether to adopt Judge Carry's R&R. Upon reviewing the R&R and records in  
15 this case, this Court finds good cause to adopt the Magistrate Judge's R&R in full.

### 16 **IV. DISCUSSION**

17 Plaintiff first objects to the R&R on the ground that he did not receive Elko County  
18 Jail's legal mail policies. (ECF No. 23 at 3.) Defendant responds that Plaintiff received the  
19 Elko County Sheriff's Office Jail Rules Handbook ("Handbook"), which prohibited  
20 submission of sealed outgoing mail. (ECF No. 24 at 3.) The Handbook also instructed  
21 inmates to ask Jail staff for clarification of anything they did not understand. (*Id.*)

22 The Court finds Plaintiff's first objection unpersuasive. Plaintiff does not dispute that  
23 the legal mail policy is constitutional and has not produced evidence that Defendant Pitts  
24 is the individual who opened his mail. Whether Plaintiff received a full and complete copy  
25 of Elko County Jail's legal mail policy is irrelevant to these determinations.

26 Plaintiff's second objection is that Defendant did not carry his burden of proving that  
27 it was not Pitts who opened Plaintiff's mail. (ECF No. 23 at 4.) However, Plaintiff misstates  
28 the parties' respective burdens. "A moving party who does not bear the burden of proof at

1 trial ‘must either produce evidence negating an essential element of the nonmoving party’s  
2 claim or defense or show that the nonmoving party does not have enough evidence of an  
3 essential element’ to support its case.” (ECF No. 22 at 3 (citing Nissan Fire & Marine Ins.  
4 Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000).) Here, Defendant took the latter  
5 approach. Defendant showed that Plaintiff does not have enough evidence of an essential  
6 element—namely, Defendant Pitts’s personal involvement in opening and reading  
7 Plaintiff’s sealed mail—to support his case. Supervisory officials may be liable under 42  
8 U.S.C. § 1983 only if (1) they are personally involved in the constitutional deprivation; or  
9 (2) there is a causal connection between the supervisor’s conduct and the constitutional  
10 violation. Rodriguez v. County of Los Angeles, 891 F.3d 776, 798 (9th Cir. 2018). Plaintiff  
11 has not produced evidence of either. While Plaintiff gestures at Defendant’s failure to  
12 adequately train, supervise, or control staff who handle legal mail (see ECF No. 23 at 5),  
13 Plaintiff has not produced any evidence in this regard.

14 Plaintiff’s third objection is based on the Nevada Department of Corrections’  
15 (“NDOC”) policy requiring NDOC employees who handle inmate legal mail to document  
16 their activities as legal mail is processed. (ECF No. 23 at 6.) Plaintiff asserts that he would  
17 be able to identify who opened his mail if Elko County Jail had such a policy. (Id.) Elko  
18 County Jail apparently does not have such a policy, and the existence of such a policy  
19 within the NDOC is immaterial. Plaintiff does not dispute that Elko County Jail’s legal mail  
20 policy is constitutional in its own right. And while Plaintiff may prefer Elko County Jail’s  
21 legal mail policy to mirror the NDOC’s legal mail policy, the Constitution does not require  
22 it.

23 Plaintiff’s fourth objection is based on his observation that his documents were  
24 stamped with the words “Elko County Jail.” (ECF No. 23 at 7.) Plaintiff essentially argues  
25 that Defendant Pitts should be held liable for anything bearing that stamp because he  
26 oversees the Elko County Jail. (See id.) Defendant responds that Plaintiff’s argument  
27 “ignores the applicable constitutional standards” and that “Plaintiff has no evidence, and  
28 ///

1 does not allege, that Sheriff Pitts personally read his legal mail.” (ECF No. 24 at 4.) The  
2 Court agrees with Defendant.

3 Accordingly, the Court will overrule Plaintiff’s objections.

4 **V. CONCLUSION**

5 The Court notes that the parties made several arguments and cited to several cases  
6 not discussed above. The Court has reviewed these arguments and cases and determines  
7 that they do not warrant discussion as they do not affect the outcome of the objection  
8 before the Court.

9 It is therefore ordered that Judge Carry’s R&R (ECF No. 22) is accepted and  
10 adopted in full.

11 It is further ordered that Defendant’s motion for summary judgment (ECF No. 15)  
12 is granted.

13 The Clerk of the Court is instructed to enter judgment accordingly and close this  
14 case.

15 DATED THIS 10<sup>th</sup> day of December 2018.

16  
17   
18 \_\_\_\_\_  
19 MIRANDA M. DU  
20 UNITED STATES DISTRICT JUDGE  
21  
22  
23  
24  
25  
26  
27  
28