

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 2 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WILLIAM J. PASIECZNIK,

Plaintiff - Appellant,

v.

HOME DEPOT USA, INC.,

Defendant - Appellee.

No. 25-2235

D.C. No.

2:20-cv-02202-RFB-BNW

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Richard F. Boulware, II, District Judge, Presiding

Argued and Submitted August 11, 2026
San Francisco, California

Before: LEE, MENDOZA, JR., and DE ALBA, Circuit Judges.

Appellant William Pasiecznik appeals the district court's summary judgment in favor of Home Depot USA, Inc., in a diversity tort action. This case arises because Appellant alleges a Home Depot loss prevention associate unreasonably assaulted him during an apprehension, and he sustained serious injuries as a result, including injuries to his back and neck. Appellant also appeals the district court's

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

denials of his motion for spoliation of evidence and his objection to the magistrate order denying sanctions against Home Depot’s counsel. We have jurisdiction under 28 U.S.C. § 1291, and we REVERSE in part, AFFIRM in part, and REMAND.

1. The district court broadly found “there was no injury to [Appellant]” based on photographs taken of him immediately after the apprehension and recorded calls where, according to the district court, Appellant’s wife can be heard coaching him on faking injuries. While such evidence was sufficient to refute many of Appellant’s alleged injuries, it was not sufficient to disprove Appellant’s alleged *internal* back and neck injuries. *Hughes v. Rodriguez*, 31 F.4th 1211, 1218 (9th Cir. 2022) (holding that, at summary judgment, a district court may properly view the facts in the light depicted by objective evidence, to the extent the objective evidence blatantly contradicts the non-moving party’s testimonial evidence).

Critically, the district court failed to consider the parties’ competing expert opinions as to the cause of Appellant’s alleged back and neck pain. Because “[e]xpert opinion evidence is itself sufficient to create a genuine issue of disputed fact,” the district court was required to address the evidence in determining whether summary judgment was appropriate. *See Petrey v. Princess Cruise Lines*,

Ltd., 173 F.4th 1110, 1119 (9th Cir. 2026); *Provenz v. Miller*, 102 F.3d 1478, 1490–91 (9th Cir. 1996).

Moreover, we are concerned the district court may have improperly weighed credibility at summary judgment. *See Bernal v. Sacramento Cnty. Sheriff's Dep't*, 73 F.4th 678, 695 (9th Cir. 2023); *see also Gessele v. Jack in the Box Inc.*, 174 F.4th 1108, 1122 (9th Cir. 2026) (“[C]ourts cannot decide which witnesses are credible at summary judgment.”). The district court used the recorded jail calls between Appellant and his wife as evidence of Appellant’s potential untruthfulness. The district court then justified summary judgment as to *all* of Appellant’s alleged injuries because the objective evidence and recorded calls discount *some* of his alleged injuries. The question of whether Appellant was fabricating injuries goes to whether he is credible—“a determination that is exclusively within the province of the factfinder at trial, not the district court on summary judgment.” *See Dominguez-Curry v. Nev. Transp. Dep't*, 424 F.3d 1027, 1035–36 (9th Cir. 2005).

Thus, the district court erred in finding that the objective evidence and recorded jail calls, together, irrefutably indicated Appellant was not injured during the apprehension. Accordingly, we REVERSE the district court’s grant of summary judgment with instructions for the court to assess whether the experts’ opinions create a triable issue of material fact as to causation.

2. The district court did not abuse its discretion in denying Appellant's motion for spoliation. *See Ryan v. Editions Ltd. W., Inc.*, 786 F.3d 754, 759–60 (9th Cir. 2015). Regarding the CCTV footage of the outside of the store, Appellant failed to provide any evidence disproving Home Depot's deposition testimony that the apprehension occurred in an area outside of the camera's view. Regarding the CCTV footage of the inside of the store, Appellant fails to demonstrate how his rights were damaged by Home Depot deleting CCTV footage in its regular course of business. Appellant's failure to allege harm is fatal to his motion for spoliation of evidence. *Ingham v. United States*, 167 F.3d 1240, 1246 (9th Cir. 1999) ("To be actionable, the spoliation of evidence must damage the right of a party to bring an action."). Accordingly, we AFFIRM the district court's denial of Appellant's motion for spoliation.

3. The district court did not err in denying Appellant's objection to the magistrate order denying sanctions. *See Osband v. Woodford*, 290 F.3d 1036, 1041 (9th Cir. 2002); *see also United States v. Sanmina Corp.*, 968 F.3d 1107, 1116 (9th Cir. 2020) ("A finding is clearly erroneous if it is illogical, implausible, or without support in the record." (quoting *United States v. Graf*, 610 F.3d 1148, 1157 (9th Cir. 2010))). Appellant alleges that Home Depot's counsel engaged in unlawful ex parte communication with his physician experts. The magistrate judge denied the motion for sanctions, ordered the redaction of all alleged conduct in the

briefs, and admonished Appellant for bringing the motion without firsthand evidence of such communications. Appellant objected to the magistrate judge's order, and the district court denied that objection.

On appeal, Appellant has not meaningfully challenged the district court's denial. He has not presented any new allegations or unconsidered evidence. Nor does Appellant cite any case precedent in support of his argument. As such, Appellant falls far short of demonstrating that the district court's order was clearly erroneous or contrary to law. *See Osband*, 290 F.3d at 1041; *cf. Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996).

REVERSED IN PART, AFFIRMED IN PART, AND REMANDED.