

{¶3} Plaintiff testified that his alleged impairment was the result of certain prescription medication that he had ingested, although he admitted to having consumed one beer during the hours prior to the traffic stop. Plaintiff testified that when Trooper Bee arrested and handcuffed him, he pulled his left arm with such force that he screamed in pain. Plaintiff alleges that his left shoulder was injured as the result of Trooper Bee's actions. Plaintiff additionally asserts that Trooper Bee placed the handcuffs too tightly around his wrists. He testified that Trooper Bee stopped his patrol vehicle en route to the jail in order to loosen the handcuffs.

{¶4} By contrast, Trooper Bee testified that he had no recollection that plaintiff made any statements regarding pain. He further testified that he had no recollection of stopping to loosen the handcuffs. Trooper Bee transported plaintiff to the Delaware County Jail where he was "in-processed" and subsequently released several hours later. Plaintiff testified that he did not complain of pain while in custody at the jail. That testimony was corroborated by two Delaware County jail employees, who testified that plaintiff expressed no concern about any injury to his shoulder.

{¶5} At the time of the arrest, plaintiff was accompanied by his dog, a forty-pound Keeshond. There was conflicting testimony surrounding the discussions between plaintiff and Trooper Bee concerning the disposition of the dog. Plaintiff testified that Trooper Bee offered no suggestions concerning the dog. However, Trooper Bee testified that he offered plaintiff several options. Ultimately, the dog remained at the rest area in plaintiff's locked vehicle, where it was retrieved unharmed upon plaintiff's release from custody.

{¶6} In order for plaintiff to prevail upon his claim of negligence, he must prove by a preponderance of the evidence that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. The common-law duty owed to an arrestee or prisoner by a law enforcement officer is found in *Clemets v. Heston* (1985), 20 Ohio App.3d 132, 136.

{¶7} "The general 'custodial negligence' rule is that a jailer (or other custodial personnel, such as a sheriff or arresting officer) owes a duty to those in his custody to keep

them safe and protect them from harm. The requisite standard of care is held to be that which is reasonable and ordinary for the health, care and well-being of the prisoner.”

{¶8} Upon review of the totality of the evidence in this case, the court finds that defendant did not breach its duty of care to plaintiff. Based upon the testimony, the court finds that Trooper Bee acted in a reasonable manner during plaintiff’s arrest. Trooper Bee used only that force which was necessary to make the arrest, given plaintiff’s apparent intoxicated state and his refusal to cooperate in the administration of the field sobriety test.

{¶9} The court additionally finds that defendant did not breach a duty of care for plaintiff’s dog, since Trooper Bee offered plaintiff several options for its care and well-being. Even though plaintiff refused the offers, Trooper Bee took all reasonable measures to ensure the safety and well-being of the dog.

{¶10} For these reasons, the court finds that plaintiff has failed to prove his claims by a preponderance of the evidence. Accordingly, judgment shall be rendered for defendant.

J. WARREN BETTIS
Judge

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