

[Cite as *State v. Menendez*, 2003-Ohio-3474.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO,)	
)	
PLAINTIFF-APPELLEE,)	CASE NO. 02-CA-199
)	
VS.)	OPINION
)	and
MICHAEL MENENDEZ,)	JOURNAL ENTRY
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from Mahoning County
Court No. 4, Case No. 01TRC-12555

JUDGMENT: Affirmed

APPEARANCES:

For Appellant: Attorney Matthew L. DeVicchio
3580 Starr Centre Drive
Canfield, Ohio 44406
(no brief filed)

For Appellee: Paul J. Gains
Mahoning County Prosecuting Attorney
Janice T. O'Halloran
Assistant Prosecuting Attorney
120 Market Street
Youngstown, Ohio 44503
(no brief filed)

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Hon. Cheryl L. Waite

Dated: June 30, 2003

PER CURIAM.

{¶1} This cause comes on appeal from an October 3, 2002 judgment of Mahoning County Court No. 4 imposing a fine and sentencing appellant to 180 days in jail (170 days suspended) after his no contest plea to a second driving under the influence charge within six years. The trial court granted a stay of execution of sentence pending this appeal.

{¶2} On November 12, 2002, appellant filed a motion to consolidate this appeal with a separate appeal captioned *State v. Ronald Scurti* assigned Appeals Case No. 02CA140, as the issue in both cases involved the validity of breath tests using BAC Datamaster Machine Number 930022 after April 21, 2001. On December 3, 2002, the motion was sustained.

{¶3} On June 19, 2003, this Court issued a final judgment affirming the decision of the county court finding that the test results from that particular machine were valid. *State v. Ronald Scurti*, 7th Dist. No. 02CA140, 2003-Ohio-3286. Accordingly, as appellant previously acknowledged the singular issue in this appeal was the validity of the test result from the same machine, it is the final judgment and order of this Court that the judgment of Mahoning County Court No. 4 is affirmed. Costs taxed against appellant.

{¶4} Clerk to return the complete file to the county court (County Court No. 4 Case No. 01TRC12555).

Waite, P.J., Donofrio and Vukovich, JJ., concur.