IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-170075 C-170091
Plaintiff-Appellee,	:	C-170092 TRIAL NO. C-16TRD-45020
vs.	:	
MORGAN MCINROY,	:	*JUDGMENT ENTRY.*
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Morgan McInroy appeals convictions for street racing under former R.C. 4511.251(A) and driving under suspension under R.C. 4510.111. She presents two assignments of error for review. We find no merit in these assignments of error, and we affirm her convictions.

In her first assignment of error, McInroy contends that the trial court erred when it issued a judgment entry that differed from the sentence pronounced in open court. She argues that on the driving-under-suspension charge, the court imposed a greater fine in the judgment entry than what was pronounced at the sentencing hearing, violating her right to be present at sentencing. This assignment of error is not well taken.

Because the defendant's presence is required when the court imposes sentence, the trial court errs when the judgment entry of sentence differs from the sentence that it announced at the sentencing hearing in the defendant's presence. *State v. Kase*, 187 Ohio App.3d 590, 2010-Ohio-2688, 932 N.E.2d 990, ¶ 30 (7th Dist.); *State v. Hodges*, 1st Dist. Hamilton No. C-990516, 2001 WL 698135, *1 (June 22, 2001). At first, that appeared to be what had occurred in this case. In the judgment entry, the court imposed a fine of $100

on the driving-under-suspension charge. But the original copy of the transcript of the sentencing hearing showed that the court had orally pronounced that it would impose a fine of $1.

The state subsequently submitted a corrected transcript of the sentencing hearing, which shows that the court had stated that it would impose a fine of $100. McInroy stipulated to that corrected transcript. Consequently, the record shows that the sentence was not modified and McInroy's right to be present at sentencing was not violated. We overrule her first assignment of error.

In her second assignment of error, McInroy contends that her conviction for street racing was against the manifest weight of the evidence. Under former R.C. 4511.251(A), "street racing" means "the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to out-distance each other * * * ." The statute further provides that "[t]he operation of two or more vehicles side by side either at speeds in excess of prima-facie lawful speeds * * * or rapidly accelerating from a common starting point to a speed in excess of such prima-facie lawful speeds shall be prima-facie evidence of street racing."

McInroy doesn't dispute that the state established a prima-facie case. Instead, she argues that she rebutted the presumption of intent to compete with undisputed evidence through her own testimony. But the jury was free to disbelieve her testimony and rely upon the evidence that established the prima-facie case. *See State v. Mattix*, 3d Dist. Wyandot No. 16-03-02, 2003-Ohio-2383, ¶ 9. "A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence is presented at trial. * * * The trier of fact is free to believe or disbelieve all or any of the testimony." *In re Woods*, 10th Dist. Franklin No. 06AP-1032, 2007-Ohio-3224, ¶ 16.

After reviewing the record, we cannot say that the trier of fact lost its way and created such a manifest miscarriage of justice that we must reverse the street-racing conviction and order a new trial. Therefore, the conviction was not against the manifest

weight of the evidence. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Glenn*, 1st Dist. Hamilton No. C-030356, 2004-Ohio-1489, ¶ 32. We overrule McInroy's second assignment of error and affirm her convictions.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MILLER and **DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on December 27, 2017

per order of the court _____.

Presiding Judge