[Cite as *State v. Davis*, 2016-Ohio-1166.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

MADISON COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2015-05-015
	:	O P I N I O N
- vs -		3/21/2016
	:	
ASHLEY A. DAVIS,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM MADISON COUNTY COURT OF COMMON PLEAS
Case No. CRI2014-0098

Stephen J. Pronai, Madison County Prosecuting Attorney, Rachel M. Price, 59 North Main Street, London, Ohio 43140, for plaintiff-appellee

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HENDRICKSON, J.

{¶ 1} Defendant-appellant, Ashley A. Davis, appeals from her convictions in the Madison County Court of Common Pleas for complicity to trafficking in drugs. For the reasons stated below, we affirm her convictions.

{¶ 2} On April 9 and 10, 2014, Davis allegedly solicited another to sell heroin in controlled conducted by the Madison County Drug Task Force. Davis became involved in

the drug buys after being contacted by a confidential informant, who was working for the Drug Task Force, to assist the informant in purchasing heroin. Davis introduced the informant to her drug dealer, Sierra Knapp, negotiated the prices of the heroin, and instructed the informant how to resell the heroin. The informant purchased the drugs and then handed them over to the Drug Task Force.

{¶ 3} Davis was indicted by the Madison County Grand Jury on three counts of complicity to trafficking in drugs within the vicinity of a juvenile; two counts were third-degree felonies whereas one count was a second-degree felony. During discovery, the state disclosed the confidential informant's name and criminal history to Davis. However, the state refused to disclose the informant's current address due to concerns regarding her safety. The trial court held a hearing regarding the matter and upheld the state's decision to not disclose the informant's address.

{¶ 4} The case proceeded to a three-day jury trial. At trial, the state introduced photographs of text messages sent between the informant and Davis regarding the drug buys. Over defense counsel's objection, the court admitted these photographs. At the close of the evidence, the jury found Davis guilty of the two counts of complicity to trafficking in drugs that were third-degree felonies but found Davis not guilty on the second-degree felony count. The trial court sentenced Davis to 30 months on each count, to be served concurrently.

{¶ 5} Davis now appeals, asserting four assignments of error:

{¶ 6} Assignment of Error No. 1:

{¶ 7} THE COURT ABUSED ITS DISCRETION BY NOT REQUIRING THE PROSECUTION TO DISCLOSE THE CURRENT ADDRESS OF THE STATE'S CONFIDENTIAL INFORMANT WHEN NO PROTECTIVE ORDER WAS SOUGHT BY THE STATE.

{¶ 8} Davis argues the trial court abused its discretion when it did not require the state to disclose the address of the confidential informant. Davis argues the state did not follow the procedures outlined in Crim.R. 16 in concealing the confidential informant's information and the state did not provide enough evidence of a "threat" to justify not disclosing the informant's address.

{¶ 9} The granting or overruling of discovery motions in a criminal case rests within the sound discretion of the court. *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, ¶ 33; *State v. Blake*, 12th Dist. Butler No. CA2011-07-130, 2012-Ohio-3124, ¶ 14. Abuse of discretion is more than an error of law or judgment; it implies that the trial court's decision was unreasonable, arbitrary or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

{¶ 10} Crim.R. 16 governs discovery in criminal cases. Under the rule, each party must provide to the opposing counsel a written list that includes the names and addresses of any witnesses. Crim.R. 16(I). However, Crim.R. 16(D) permits the prosecuting attorney to decline to disclose to the defendant the names of witnesses as long as the prosecutor certifies that nondisclosure is for one of the five reasons enumerated in the rule. One of those enumerated reasons is if "[t]he prosecuting attorney has reasonable, articulable grounds to believe that disclosure will compromise the safety of a witness, victim, or third party, or subject them to intimidation or coercion." Crim.R. 16(D)(1). The state's reasonable, articulable grounds for nondisclosure "may include, but are not limited to, the nature of the case, the specific course of conduct of one or more parties, threats, or prior instances of witness tampering or intimidation, whether or not those instances resulted in criminal charges, whether the defendant is pro se, and any other relevant information." Crim.R. 16(D)(5).

{¶ 11} When a defendant files a motion to challenge the state's decision to not

disclose discoverable information about a witness under Crim.R. 16, a trial court reviews the matter to determine whether the prosecuting attorney abused his or her discretion in making such a decision. Crim.R. 16(F). The court must then hold an in camera hearing conducted seven days prior to trial with counsel participating. Crim.R. 16(F). This court has found that a prosecutor does not abuse her discretion when she orally certifies to the trial court during the hearing that the reason for nondisclosure was based upon one of the Crim.R. 16(D) factors. *State v. Hebdon*, 12th Dist. Butler Nos. CA2012-03-052 and CA2012-03-062, 2013-Ohio-1729 ¶ 49; *Blake* at ¶ 19.

{¶ 12} In the present case, the state disclosed the confidential informant's name, criminal history, and past address to Davis during discovery. However, the state refused to provide the confidential informant's new address due to concerns regarding the informant's safety. The trial court held a hearing regarding the matter where the state proffered that Davis has known the informant for several years and Davis threatened the informant's safety through text messages and Facebook. Due to these threats, the informant believed she was no longer safe living in Madison County and moved away from the area. The state also offered that Madison County is a small community and the informant is known in the community. The trial court agreed with the state and ordered the informant's address to be withheld.

{¶ 13} We find that the trial court did not abuse its discretion in refusing to disclose the confidential informant's address. The evidence at the hearing established the informant's safety was threatened, she was known to Davis and the Madison County community, and she believed the threats against her safety were serious enough that she moved away from Madison County. Further, it is undisputed that the state provided Davis with the informant's name, criminal history, and her past address in Madison County and offered to make the informant available to Davis for an interview prior to trial. In light of the information and

interview opportunity provided by the state, Davis has failed to demonstrate that she suffered any prejudice from the failure to obtain the informant's current address.

{¶ 14} Further, we are not persuaded by Davis' argument that the nondisclosure was an abuse of discretion because the state did not seek a protective order as required by Crim.R. 16(E)(1). Crim.R. 16 was amended, effective July 1, 2010, and the provision Davis' cites to regarding protective orders no longer exists. Instead, under the current version of Crim.R. 16, a prosecutor can refuse to disclose the identity of a witness if the prosecutor certifies to the court that he has reasonable, articulable grounds to believe the disclosure will compromise the witness's safety. Crim.R. 16(D)(1). In this case, the prosecutor satisfied this requirement when it certified at the hearing that the safety of the informant was in danger if her current address was disclosed.

{¶ 15} Davis' first assignment of error is overruled.

{¶ 16} Assignment of Error No. 2:

{¶ 17} THE COURT ERRED BY ADMITTING UNAUTHENTICATED TEXT MESSAGES BETWEEN THE WITNESS AND THE DEFENDANT.

{¶ 18} Davis argues the trial court erred when it admitted photographs of text messages sent between the confidential informant and Davis. Davis maintains the text messages were not properly authenticated and constituted inadmissible hearsay.

{¶ 19} We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *State v. Eacholes*, 12th Dist. Butler No. CA2013-11-195, 2014-Ohio-3993, ¶ 17. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by introducing "evidence sufficient to support a finding that the matter in question is what its proponent claims." Evid.R. 901(A). This threshold requirement for authentication of evidence is low and does not require conclusive proof of authenticity. *State v. Renfro*, 12th Dist. Butler No. CA2011-07-042, 2012-Ohio-2848, ¶ 30. Instead, the state only needs to

demonstrate a "reasonable likelihood" that the evidence is authentic. *Id.* Such evidence may be supplied by the testimony of a witness with knowledge. Evid.R. 901(B)(1); *State v. Bell*, 12th Dist. Clermont. No. CA2008-05-044, 2009-Ohio-2335, ¶ 30.

{¶ 20} Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). A statement is not hearsay if the statement is offered against a party and is "the party's own statement, in either an individual or a representative capacity * * *." Evid.R. 801(D)(2).

{¶ 21} Courts have held that photographs of text messages sent from a defendant are not hearsay, instead they qualify as a party-opponent admission under Evid.R. 801(D)(2), as long as the statements are properly authenticated. *State v. Bickerstaff*, 11th Dist. Ashtabula No. 2014-A-0054, 2015-Ohio-4014, ¶ 15; *State v. Shaw*, 7th Dist. Mahoning No. 12 MA 95, 2013-Ohio-5292, ¶ 43. Generally, in cases involving electronic print media i.e., texts, instant messaging, and e-mails, the photographs taken of the print media or the printouts of those conversations are authenticated, introduced, and received into evidence through the testimony of the recipient of the messages. *State v. Roseberry*, 197 Ohio App.3d 256, 2011-Ohio-5921, ¶ 75 (8th Dist.). *See Bell* at ¶ 30-31; *State v. Craycraft*, 12th Dist. Clermont Nos. CA2009-02-013 and CA2009-02-014, 2010-Ohio-596, ¶ 39, *rev'd on other grounds.* Therefore, statements from text messages are properly authenticated and are admissible as a party-opponent admission when the recipient of the messages identifies the messages as coming from the defendant. *Bickerstaff* at ¶ 19.

{¶ 22} In the case at bar, the informant testified that she had known Davis for several years. In April 2014, the informant went to Davis' house and spoke to her, got Davis' new cell phone number, and stored the number in her cell phone. On April 8, 9, and 10, the informant used this number to call and text Davis regarding the details of the drug buys. The informant

explained that during her phone calls with Davis, she recognized Davis' voice, and during her communication with Davis via text messages, Davis always responded. Through these conversations, the pair arranged the details of the drug buys, including where and when the informant would meet Davis. The informant stated Davis always arrived at these locations as planned through their communications. Finally, the informant explained that she left her text messages conversations with Davis on her phone, took a "screen shot" of the messages, and showed them to law enforcement. A Drug Task Force officer then photographed the messages.

{¶ 23} We find that the trial court did not abuse its discretion in admitting into evidence the photographs of the text messages between the informant and Davis. The informant testified that she was familiar with Davis, communicated with Davis several times using the cell phone number, and recognized Davis' voice when speaking with her on the cell phone. We find this testimony was sufficient to support the finding that the text messages were from Davis. Moreover, because the informant's testimony authenticated the text messages as coming from Davis, we also find the messages were not hearsay as they constituted a party-opponent admission under Evid.R. 801(D)(2).

{¶ 24} Davis' second assignment of error is overruled.

{¶ 25} Assignment of Error No. 3:

{¶ 26} THE COURT ABUSED ITS DISCRETION AND BY INSTRUCTING UNDER AN ACCOMPLICE THEORY INSTEAD OF COMPLICITY THEORY AND BY FAILING TO INSTRUCT THE JURY UNDER AN ENTRAPMENT DEFENSE.

{¶ 27} Davis challenges the accomplice jury instruction and the failure to provide an entrapment instruction to the jury. Jury instructions "must be given when they are correct, pertinent, and timely presented." *State v. Joy*, 74 Ohio St.3d 178, 181 (1995). A trial court must fully and completely give jury instructions which are relevant and necessary for the jury

to weigh the evidence and discharge its duty as the fact-finder. *State v. Comen*, 50 Ohio St.3d 206 (1990), paragraph two of the syllabus.

{¶ 28} We review a trial court's jury instructions for an abuse of discretion. *State v. Jones*, 12th Dist. Butler No. CA2015-02-020, 2015-Ohio-5029, ¶ 13. An appellate court may not reverse a conviction in a criminal case based upon jury instructions unless "it is clear that the jury instructions constituted prejudicial error." *Id*. An appellate court's duty is to review the instructions as a whole, and, if taken in their entirety, the instructions fairly and correctly state the law applicable to the evidence presented at trial, reversible error will not be found merely on the possibility that the jury may have been misled. *Id.*

Accomplice

{¶ 29} Davis argues the trial court erred by instructing the jury as to an accomplice theory of liability. Davis maintains that instead, the jury should have been instructed under a complicity theory because she was charged as being complicit to drug trafficking and not as an accomplice.

{¶ 30} In a criminal case, proposed jury instructions that are correct, pertinent, and timely presented must be included, at least in substance, in the general charge. *State v. Guste*r, 66 Ohio St.2d 266, 269 (1981). However, a court's instructions should be addressed to the actual issues in the case as posited by the evidence and the pleadings. *Id.* at 271. Therefore, the trial court is not required to give a proposed jury instruction verbatim. The court may use its own language to communicate the same legal principles in language it deems proper. *State v. Sneed*, 63 Ohio St.3d 3, 9 (1992); *Jones*, 2015-Ohio-5029 at ¶ 13.

{¶ 31} Prior to the close of evidence, Davis objected to the trial court's jury instruction regarding accomplice liability and instead proposed a complicity jury instruction. Davis' instructions defined the elements of complicity, specifically aiding and abetting, and also discussed that Davis' physical presence at the scene was insufficient for criminal liability.

The trial court denied Davis' proposed instructions and instead instructed the jury:

> An accomplice is a person who has the same criminal intent as the principal and who knowingly aided and abetted or solicited or procured another person or persons in committing an offense charged. Aid means to help, assist or strengthen, abet means to encourage, counsel, incite, or assist. Solicit means to seek, to ask, to influence, invite, tempt, to lead on or to bring pressure to bear. Procure means to get, obtain, induce, bring about or motivate.
>
> [Davis] is charged as an accomplice.
>
> An accomplice is regarded as if she were a principal offender as if she personally performed every act constituting the offense. This is true even if such person was not physically present at the time the particular offense was committed. However, mere physical presence is not sufficient. There must be common design to commit an offense and some act in furtherance of the design before a person becomes an accomplice.
>
> It is not defense to a charge of complicity that no person with whom the defendant was an accomplice has been convicted as a principal offender. The defendant cannot, however, be found guilty of complicity unless the offense was actually committed.

{¶ 32} We find that the trial court did not abuse its discretion in its jury instructions regarding accomplice liability. The trial court's jury instructions addressed all relevant issues in regards to Davis' charge. The trial court instructions largely tracked Davis' proposed instructions. Both instructions specified the elements of complicity and defined "aided or abetted," "solicit," and "procure." Additionally, both instructions clarified that Davis' knowledge and physical presence at the scene of the crime is not enough to convict her of the offense.

{¶ 33} Davis essentially argues that the instructions were in error because the instructions used the term "accomplice" instead of "complicity." However, we find there is no meaningful difference between the terms "complicity" and "accomplice" for purposes of liability under R.C. 2923.03. Courts have recognized the interchangeability of the terms. *See*

State v. Wickline, 50 Ohio St.3d 114, 117 (1990) (accomplice commonly means one "who is guilty of complicity in crime of complicity;" at the very least, "an 'accomplice' must be a person indicted for the crime of complicity"); *State v. Brewster*, 157 Ohio App.3d 342, 2004-Ohio-2722, ¶ 44 (1st Dist.) ("[a]n accomplice is an individual who can be indicted and punished for complicity"). Additionally, the complicity statute, R.C. 2923.03, treats the two terms as interchangeable and shows that the accomplice refers to the person committing the crime while complicity refers to the way that person will be held liable. *See* R.C. 2923.13(D) (referring to testimony of "accomplice" against defendant when both were complicit in crime); R.C. 2923.03, Ohio Legislative Serv. Comm.1973 ("accomplice" is liable in specified circumstances; "[i]n charging complicity, the accused may be charged specifically as an accomplice"). As stated above, a trial court is not required to give a proposed instruction verbatim and may use its own language in communicating the same legal principles as requested by the defendant.

{¶ 34} Consequently, the trial court's jury instructions were not an abuse of discretion as they completely and fully provided the law necessary for the jury to weigh the evidence and discharge its duty as the finder of fact.

Entrapment

{¶ 35} Davis also argued the court erred when it refused to provide an entrapment instruction to the jury. A trial court does not err in failing to instruct the jury on an affirmative defense where the evidence is insufficient to support the instruction. *State v. Palmer*, 80 Ohio St.3d 543, 564 (1997); *State v. Strunk*, 12th Dist. Warren No. CA2006-04-046, 2007-Ohio-683, ¶ 16. In reviewing the record to ascertain the presence of sufficient evidence to support the giving of a proposed jury instruction, an appellate court should determine whether the record contains evidence from which reasonable minds might reach the conclusion sought by the instruction. *State v. Risner*, 120 Ohio App.3d 571, 574 (3d Dist.1997).

{¶ 36} Entrapment is an affirmative defense that a defendant has the burden of proving by a preponderance of the evidence. R.C. 2901.05(A); *State v. Doran*, 5 Ohio St.3d 187 (1983), paragraph two of the syllabus. Entrapment exists "where the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order to prosecute." *Doran* at paragraph one of the syllabus. However, there is no entrapment when government officials "merely afford opportunities or facilities for the commission of the offense" to a criminal defendant who was predisposed to commit the offense. *Id.* at 192. Where a person is ready and willing to break the law, the fact that government officials provide a means to do so is not entrapment. *Id.* The defendant asserting the entrapment defense must adduce evidence supporting his lack of predisposition to commit the offense. *Id.*

{¶ 37} Davis failed to request the trial court instruct the jury regarding an entrapment defense in compliance with Crim.R. 30(A). Crim.R. 30(A) provides in pertinent part that "[a]t the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file *written* requests that the court instruct the jury on the law as set forth in the requests." (Emphasis added.) In this case, Davis first moved the trial court to instruct the jury regarding entrapment in an oral request prior to closing arguments. This court has stated that when a defendant fails to request a jury instruction in writing as required by Crim.R. 30(A), a trial court does not err in denying his oral request for such an instruction. *State v. Campbell*, 12th Dist. Butler No. CA2009-01-002, 2009-Ohio-6044, ¶ 60. *See State v. Fanning*, 1 Ohio St.3d 19 (1982), paragraph two of the syllabus.

{¶ 38} Moreover, even if Davis made her jury instruction request regarding entrapment in compliance with Crim.R. 30(A), we would still not find the trial court abused its discretion as the evidence did not support an entrapment instruction. The evidence established that

Davis had a predisposition to commit the crimes and the Drug Task Force, through the confidential informant, was merely affording opportunities. At trial, the informant testified that Davis arranged the meetings between herself and Davis' drug dealer, Knapp, to purchase the heroin, she had never met Knapp before, and did not know Knapp's name and instead referred to her only as "CC." During the drug buys, Davis told Knapp to give the informant a "good deal" and inspected the heroin before it was given to the informant. Davis also instructed the informant on how to resell the heroin for maximum profit. In light of the facts presented, Davis was not entitled to a jury instruction on the affirmative defense of entrapment.

{¶ 39} The trial court did not abuse its discretion in its jury instruction concerning the complicity charge and failing to instruct the jury regarding an entrapment defense.

{¶ 40} Davis' third assignment of error is overruled.

{¶ 41} Assignment of Error No. 4:

{¶ 42} THE DEFENDANT'S CONVICTIONS ARE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 43} Davis maintains her convictions for complicity to trafficking in drugs are against the manifest weight of the evidence and are not supported by sufficient evidence.

{¶ 44} The concepts of sufficiency of the evidence and weight of the evidence are legally distinct. *State v. Santiago*, 12th Dist. Butler No. CA2015-03-046, 2016-Ohio-547, ¶ 8. Nonetheless, as this court has repeatedly observed, a finding that a conviction is supported by the manifest weight of the evidence is also dispositive of the issue of sufficiency. *Id.* "Because sufficiency is required to take a case to the jury, a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency." *Id.*

{¶ 45} A manifest weight challenge examines the "inclination of the greater amount of

credible evidence, offered at a trial, to support one side of the issue rather than the other." *Santiago* at ¶ 9. In assessing whether a conviction is against the manifest weight of the evidence, a reviewing court scrutinizes the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the witnesses, and determines whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Id.*

{¶ 46} Although appellate review contemplates the credibility of witnesses and weight afforded to the evidence, resolution of issues arising therefrom typically falls within the purview of the trier of fact. *Santiago* at ¶ 10. Thus, an appellate court will overturn a conviction on manifest weight grounds only in extraordinary circumstances where the evidence presented at trial weighs heavily in favor of acquittal. *Id.*, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

{¶ 47} Davis was convicted of two counts of complicity to trafficking in drugs within the vicinity of a juvenile. R.C. 2925.03(A)(1) defines trafficking in drugs and provides that "[n]o person shall knowingly * * * [s]ell or offer to sell a controlled substance or a controlled substance analog." The offense is a third-degree felony if the drug involved is heroin, the amount equaled or exceeded one gram but is less than five grams, and the offense was committed in the vicinity of a juvenile. R.C. 2925.03(C)(6)(c).

{¶ 48} According to the complicity statute, "[n]o person, acting with the kind of culpability required for the commission of an offense, shall * * * [s]olicit or procure another to commit the offense [or] [a]id or abet another in committing the offense * * *." R.C. 2923.03(A)(1) and (2). A person must act "knowingly" to traffic in drugs. R.C. 2925.03(A)(1). "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B).

{¶ 49} In order to be complicit to a crime by aiding and abetting, "the evidence must show that the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal." *State v. Johnson*, 93 Ohio St.3d 240 (2001), syllabus. Further, "the mere presence of an accused at the scene of a crime is not sufficient to prove, in and of itself, that the accused was an aider and abettor." *State v. Widner*, 69 Ohio St.2d 267, 269 (1982). Instead, an accused must actively participate in some way and contribute to the unlawful act to aid or abet. *State v. Salyer*, 12th Dist. Warren No. CA2006-03-039, 2007-Ohio-1659, ¶ 27. Nevertheless, aiding and abetting may be shown through either direct or circumstantial evidence, "'and participation in criminal intent may be inferred from presence, companionship, and conduct before and after the offense is committed.'" *In re B.T.B.*, 12th Dist. Butler No. CA2014-10-199, 2015-Ohio-2729, ¶ 19, quoting *State v. Lett*, 160 Ohio App.3d 46, 2005-Ohio-1308, ¶ 29 (8th Dist.).

{¶ 50} At trial, the confidential informant testified regarding her involvement with the Madison County Drug Task Force and the two drug buys that occurred on April 9 and 10, 2014. The informant explained that she contacted London Police Department regarding being a confidential informant and was compensated for her services. The informant acknowledged that she was addicted to opiates in the past but testified that she is currently sober. The informant also explained she picked Davis as her target because she had known her for years and she used to obtain drugs from her. On April 9, the informant, through a series of phone calls and text messages, arranged to pick up Davis, drive to another location, meet another person, and purchase heroin. At trial, the informant testified that she did not know the location they were traveling too nor did she know the individual they were meeting. Before arriving at Davis' home in London, the informant met with the Drug Task Force at an undisclosed location, where she was searched, given a wire to record the drug buy and

money to purchase the heroin. The audio recording of the drug buys was introduced during the informant's testimony.

{¶ 51} The informant picked up Davis who instructed the informant to drive to Springfield. During the drive, Davis stated she was going to introduce the informant to her drug dealer, "CC." The informant had never met CC before and did not know her real name, Sierra Knapp. Davis also discussed how the two could make money together, instructed the informant about how to make the resale of heroin profitable, and told her to make the heroin look "fat" and sell it by the 20s. Davis also told Knapp to give the informant a good deal because she is her "bitch." The informant explained that she was supposed to purchase the heroin from Knapp at her home in Springfield. However, when the pair arrived at Knapp's home, Knapp's source for the heroin was not available. The informant stated that she, Davis, and Knapp discussed buying the heroin outside in the driveway and children were playing nearby. Eventually, the three women drove to another house where Knapp purchased three grams of heroin. Knapp took the informant's money, obtained the heroin inside the home, and then came back to the informant's vehicle where she first gave the heroin to Davis to inspect. After Davis approved of the heroin, she gave the drugs to the informant.

{¶ 52} The informant also testified regarding the drug buy that occurred on April 10, 2014. The informant again contacted Davis to purchase more drugs, met with the Drug Task Force to be searched and given a wire and money, and then drove over to Davis' home. At Davis' home, the informant picked up both Davis and Knapp and all three women went to Springfield to purchase drugs. During the drive, Davis negotiated the price of the heroin with Knapp. The informant was instructed to drive to a different location than the previous day and parked her vehicle on the side of a street behind a black truck. Davis reiterated to Knapp that the informant was to receive a discount on the heroin because she was her friend. Knapp then took the informant's money, exited the vehicle, received the heroin, and

gave the heroin to the informant. The informant testified that while the drug deal was occurring, she observed children nearby.

{¶ 53} Other witnesses also testified at trial regarding the drug sales. Drug Task Force Sergeant Eric Semler testified that multiple police officers surveilled the drug buys on April 9 and 10. He stated that the informant was paid approximately $300 for her participation in the buys. He also explained that prior to each drug buy, the informant and the informant's vehicle were searched and she was provided money to purchase the drugs and fitted with a wire to record the transactions. Further, West Jefferson Police Officer Brandon Smith explained he observed both drug buys and took multiple photographs. He observed children at play at both of the homes of Davis and Knapp on April 9 and also children at play nearby on April 10 when Knapp purchased drugs from individuals inside the truck.

{¶ 54} Lastly, two scientists from the Bureau of Criminal Investigation and Identification testified that the substance from the April 9 buy was heroin in an amount greater than one gram but less than five grams. The substance from the April 10 buy was determined to be a mixture of methamphetamine and heroin of undetermined concentration, in a total amount of approximately 3.5 grams.

{¶ 55} Upon a thorough review of the record, we find that that Davis' convictions for two counts of complicity to trafficking in drugs within the vicinity of a juvenile are not against the manifest weight of the evidence. The state introduced the testimony of several witnesses, photographs of text messages between the informant and Davis, surveillance photographs, and an audio recording from the wire worn by the informant. This evidence establishes that Davis knowingly aided, abetted, and solicited Knapp to sell or offer to sell heroin to the informant on April 9 and 10. Additionally, the evidence establishes that on both the April 9 and 10 drug buys, the amount of heroin exceeded one gram but was less than five grams and the offenses were committed in the vicinity of a juvenile.

{¶ 56} In her brief, Davis argues her convictions were against the manifest weight of the evidence because she was charged under the complicity statute but the jury was instructed as to the law regarding accomplice, the trial court did not instruct the jury as to an entrapment defense, and there was no testimony from the principal offender as to the underlying charge of drug trafficking. As discussed in the third assignment of error, the trial court's jury instructions regarding accomplice liability was not in error as the instructions addressed all relevant issues in regards to Davis' charges and there is no meaningful difference between the terms "accomplice" and "complicity" under R.C. 2923.03. Additionally, the court did not err in refusing to instruct the jury regarding an entrapment defense because the evidence did not support the instruction. Finally, this court has found many complicity convictions were not against the manifest weight of the evidence even if the principal offender did not testify at the accomplice's trial. *See B.T.B.*, 2015-Ohio-2729 at ¶ 5, 20; *Salyer*, 2007-Ohio-1659 at ¶ 9, 31.

{¶ 57} There was ample evidence to support the jury's finding that Davis was complicit to trafficking in drugs on April 9 and April 10. The jury heard all of the testimony, considered the evidence, and found the state's theory of the case, and its witnesses credible. As the jury was in the best position to weigh the evidence and assess the credibility of the witnesses, we will not disturb its finding on appeal. *See State v. Shindeldecker*, 12th Dist. Preble No. CA2015-06-014, 2016-Ohio-264, ¶ 20. Davis' convictions were supported by sufficient evidence and were not against the manifest weight of the evidence. Accordingly, Davis' fourth assignment of error is overruled.

{¶ 58} Judgment affirmed.

M. POWELL, P.J., and S. POWELL, J., concur.