

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
November 14, 2013

v

HEATHER MAREE JARDONEK,  
Defendant-Appellant.

No. 311505  
Oakland Circuit Court  
LC No. 2011-239354-FH

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Before: OWENS, P.J., and JANSEN and HOEKSTRA, JJ.

MEMORANDUM.

Defendant appeals as of right from her jury trial conviction of parental kidnapping and custodial interference, MCL 750.350a(1), for which she was sentenced to two years' probation. We affirm.

At trial, defendant sought to testify regarding statements made to her by the child and the father's girlfriend about the father's treatment of the child, but the trial court excluded the testimony as hearsay. Defendant's sole argument on appeal is that the statements were not hearsay because they were offered to show their effect on her and not to prove their veracity. We review for an abuse of discretion a trial court's decision whether to admit evidence, but whether a rule of evidence precludes admissibility is a question of law that we review de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

“Hearsay” is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” MRE 801(c). Defendant argues that the statements were offered to show their effect on her, i.e., what gave rise to her concerns to not return the child to her father. She invoked the affirmative defense of MCL 750.350a(7), which requires her to prove that “her actions were taken for the purpose of protecting the child from an immediate and actual threat of physical or mental harm, abuse, or neglect.” The statements, which concerned the treatment of the child, were offered to prove defendant's concerns that the child was facing an immediate threat of abuse. This places the out-of-court statements firmly within the definition of hearsay, MRE 801(c), as they were offered to prove the truth of the matter asserted, i.e., that there was an immediate threat of abuse. Accordingly, the trial court did not abuse its discretion in excluding those statements.

Affirmed.

/s/ Donald S. Owens  
/s/ Kathleen Jansen  
/s/ Joel P. Hoekstra