

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Appellee

v.

NICOLE STARGELL

AKA NICOLE Y STARGELL EL BEY

Appellant

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C.A. No. 30489

Trial Court Case No. CRB 2500044

(Criminal Appeal from Municipal Court)

**FINAL JUDGMENT ENTRY &
OPINION**

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Pursuant to the opinion of this court rendered on September 18, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



ROBERT G. HANSEMAN, JUDGE

TUCKER, J., and EPLEY, J., concur.

OPINION
MONTGOMERY C.A. No. 30489

JOHN A. FISCHER, Attorney for Appellant
MARK D. WEBB, Attorney for Appellee

HANSEMAN, J.

{¶ 1} Nicole Stargell El Bey appeals from her conviction following a bench trial in the Miamisburg Municipal Court on one count of interference with custody in violation R.C. 2919.23(A)(1). For the reasons that follow, the judgment is affirmed.

I. Facts and Course of Proceedings

{¶ 2} Nicole Stargell El Bey has known Mengestu Dejene for years. She was never married to Dejene, but she did have two children with him, one born in 2016 and the other born in 2019. On September 23, 2023, the Montgomery County Juvenile Court granted Dejene legal custody of the children and provided Stargell with its standard order of parenting time with the children. Relevant to this appeal, Stargell and Dejene were ordered to exchange the children at the West Carrollton Police Department. When Stargell had her parenting time with the children on the weekends, she was ordered to drop the children off on Sunday evenings at 6:00 p.m. In the event of unforeseen circumstances, there was a half-hour buffer, until 6:30 p.m., for Stargell to drop the children off.

{¶ 3} The facts that form the basis of Stargell's conviction for interference with custody were not disputed during the trial. The testimony of the State's witnesses and Stargell revealed the following facts.

{¶ 4} On Sunday, January 19, 2025, Stargell had the children in accordance with the standard order of visitation, and by 6:30 p.m., she had not appeared at the West Carrollton Police Department to return them to Dejene. At the time, the children were five and eight

years old, respectively. Dejene called Stargell but received no answer, so he reported the children missing. West Carrollton Police Sergeant Alex Flynn took the police report. He tried to contact Stargell but did not reach her.

{¶ 5} Over the next two days, Flynn attempted to locate Stargell and the children, but he was not successful. On Tuesday, January 21, 2025, at around 6:00 p.m., Stargell returned a phone call to Flynn and informed him that she was not going to return the children and that she had a federal paper that preempted the juvenile court's grant of legal custody to Dejene. Flynn requested that Stargell appear at the police station with the paperwork and the children. Stargell complied. Flynn reviewed Stargell's paperwork, but the documentation was not something that Flynn could follow. The paperwork did not address custody or parenting time.

{¶ 6} While at the police station, Stargell was placed under arrest for interference with custody. The children were upset about the situation and said they wanted to remain with Stargell instead of going with Dejene. According to Flynn's testimony on direct examination at trial, the children did not make any statements that indicated to him that they would not be safe if they went to Dejene. During this interaction, Flynn wore a body camera that recorded the events at the police station. A video recording was made, copied, and provided to Stargell prior to trial as part of her discovery. But the video was not introduced or admitted at the trial.

{¶ 7} Stargell defended herself pro se and declined an attorney on multiple occasions. Stargell requested to play Flynn's body cam footage at her trial. She did not ask the correct types of questions to lay a foundation for the video's authenticity, which ultimately led the trial court not to admit the video. Although Flynn could not remember exactly what

Stargell's children said to him, she failed to request to refresh his recollection by using the body cam footage to do so.

{¶ 8} The State introduced six exhibits to which Stargell objected to on grounds of hearsay—two unredacted copies of court documents, two medical records, and two police reports, which were not generated by the State's law enforcement witnesses that testified during its case. The trial court admitted State's exhibits one through six over Stargell's hearsay objection. The State used the exhibits to rebut Stargell's claim that she kept her children to protect them from harm by Dejene.

{¶ 9} Stargell's sole defense was her claim that she was protecting her children from harm, an affirmative defense for interference with custody if the charge is based on enticing or taking a child. Stargell claimed that Flynn's body cam video would have shown her children upset, crying, and stating that they wanted to remain with her and not go to their father. Stargell claimed that Dejene had ordered the children to hit one another and to lie. The State's exhibits showed, in part, that Stargell had made a previous claim to which the children admitted was a lie and that Stargell had been convicted of falsification.

{¶ 10} After the bench trial concluded, the court orally announced that it found Stargell guilty of interference with custody. There is no indication in the record that the trial court relied on hearsay evidence to determine Stargell's guilt. A journalized entry followed. On May 16, 2025, after a pre-sentence investigation report was prepared, Stargell was sentenced to 180 days in jail, with 99 days suspended, and three years of reporting supervised probation. This appeal followed.

{¶ 11} Stargell raises two assignments of error.

1. The trial court erred by denying the introduction and admission of the arresting officer's body cam video.

2. The trial court erred by allowing the State to introduce hearsay evidence in an attempt to rebut Stargell El Bey's affirmative defense.

II. Standard of Review

{¶ 12} "The admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Sage*, 31 Ohio St.3d 173 (1987), paragraph two of the syllabus. In reviewing a trial court's decision on the admission or exclusion of evidence, a reviewing court applies an abuse of discretion standard of review. *State v. Withers*, 44 Ohio St.2d 53, 55 (1975), quoting *State v. Hymore*, 9 Ohio St.2d 122, 128 (1967); *State v. Morris*, 2012-Ohio-2407, ¶ 22, 23. An abuse of discretion is defined as an unreasonable, arbitrary, or unconscionable decision. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 13} In evaluating Stargell's assignments of error, we start with the law of interference with custody so that we can determine the relevance of the contested evidence to the issues at trial.

III. Analysis

{¶ 14} Stargell was convicted of interference with custody in violation of R.C. 2919.23(A)(1). The statute provides, in relevant part, that "[n]o person, knowing the person is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor [a child under the age of eighteen] from the parent, guardian, or custodian of [the child under the age of eighteen]." *Id.*

{¶ 15} We have previously held that a parent with visitation rights under court order can be charged with a violation of R.C. 2919.23 if he or she keeps the child without privilege to do so. *State v. Brickles*, 1999 WL 957643 (2d Dist. 1999) (father's conviction for interference of custody was not against the manifest weight of the evidence when father failed to return child after his weekend visitation time and kept the child longer than the

standard order of visitation allowed). *See also State v. Villamor-Goubeaux*, 2016-Ohio-7420 (2d Dist.) (same for custodial parent).

{¶ 16} R.C. 2919.23(C) provides two different affirmative defenses to a charge under R.C. 2929.23(A)(1), which depend on whether the defendant “enticed” or “took” the minor or “kept” or “harbored” the minor. The distinction between taking or enticing versus keeping or harboring is important. In full, R.C. 2919.23(C) provides:

It is an affirmative defense to a charge of enticing or taking under division (A)(1) of this section, that the actor reasonably believed that the actor’s conduct was necessary to preserve the child’s health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A) of this section, that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under the actor’s shelter, protection, or influence.

{¶ 17} Only if a defendant “entices” or “takes” the minor may that defendant raise the affirmative defense that the defendant had a reasonable belief that his or her conduct was necessary to preserve the child’s health or safety. R.C. 2919.23(C). In contrast, if the defendant “keeps” or “harbors” the minor, it is an affirmative defense if the defendant “in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child . . . came under the actor’s shelter, protection, or influence.” *Id.*

{¶ 18} Stargell’s complaint shows that she was charged in the alternative. The complaint tracks the language of R.C. 2919.23(A)(1) and contains all four options of “entice, take, keep, or harbor.” According to the State’s theory of the case and the undisputed facts presented at trial, Stargell failed to return the children to their custodial parent in violation of

the juvenile court's order and kept the children for an additional two days beyond her court-ordered standard parenting time.

{¶ 19} As a matter of law, Stargell's failure to return the children upon the conclusion of her court-ordered parenting time constituted keeping or harboring in violation of R.C. 2919.23, not enticing or taking. See, e.g., *State v. Moore*, 2007-Ohio-4984 (7th Dist.) (defendant kept and harbored children by failing to return children in accordance with his court-ordered parenting time schedule); *State v. Strayer*, 2003-Ohio-2941 (5th Dist.) (defendant kept and harbored child in violation of R.C. 2919.23 by helping the non-custodial parent, the defendant's partner, to keep the child from the custodial parent in violation of the divorce decree between the child's parents); *State v. Kinney*, 7 Ohio App.3d 243 (1st Dist. 1982) (harboring a minor child established by defendant's living with child out of state for six months).

{¶ 20} Our view is supported by the plain meaning of the statutory terms. The interpretation of a statute is a matter of law that we review de novo. *State v. Bertram*, 2023-Ohio-1456, ¶ 11. We apply a statute as written when the plain language of the statute is clear and definite. *Id.* We rely on statutorily defined terms to determine the plain meaning of a statute, and for any term not so defined in the Revised Code, we apply the term's plain and ordinary meaning. *Id.* The terms "entice," "take," "keep," and "harbor" are not defined in R.C. Chapter 2919. The common definition of "keep" is "to retain in one's possession or power" or "to refrain from granting, giving, or allowing." *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/keep> (accessed July 27, 2026). Similarly, "harbor" means "to give shelter or refuge to" or "to be the home or habitat of." *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/harbor> (accessed July 27, 2026).

{¶ 21} By contrast, the word “take” means “to get into one’s hands or into one’s possession, power, or control,” “to get possession of,” or “to acquire.” *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/take> (accessed July 27, 2026). Like “take,” the word “entice” is defined as “to attract artfully or adroitly or by arousing hope or desire,” such as to “tempt” or “lure.” *Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/entice> (accessed July 27, 2026).

{¶ 22} Here, Stargell kept and harbored her children. Therefore, as a matter of law she could not have raised the affirmative defense under R.C. 2919.23(C) that she had acted to preserve her children’s health and safety. *Moore*, 2007-Ohio-4984 (7th Dist.) (trial court properly excluded evidence relating to the affirmative defense of protecting children from harm when the defendant was charged with keeping and harboring the children and not enticing or taking the children). That defense would have been available to Stargell only if she had enticed or taken the children. *Id.* Sergeant Flynn’s body camera video and the arguable hearsay evidence contained in State’s exhibits one through six pertained to Stargell’s claimed defense. Stargell could not assert that defense, so the contested evidence was not relevant to the case. The trial court did not abuse its discretion by denying admission of the body camera video or by admitting the State’s six exhibits at trial.

{¶ 23} We agree with the Seventh District Court of Appeals in *Moore* when it explained that “[a]s the State points out, the policy behind the limitations on the affirmative defenses is to prevent parents who have legal custody from circumventing the domestic court system by absconding with children and then claiming that they were justified based upon suspected abuse.” *Id.* at ¶ 18. “The proper recourse for someone who already has custody of the child would be to report it to the court where the custody order originated.” *Id.* “Thus, the affirmative defense regarding the child’s health or safety is in place for those who

do not have the legal right to take the children, but who must ‘entice or take’ the children away from someone with custody who they suspect is abusing the children.” *Id.*

{¶ 24} Our resolution of the case concludes that the evidence that forms the basis of Stargell’s two assignments of error was not relevant. As a matter of law, Stargell was not entitled to assert the affirmative defense of protecting the health and safety of her children. Stargell’s assignments of error, which concerned the exclusion of the body camera video and the admission of the claimed hearsay evidence in the State’s exhibits, are predicated on the assumption that she could have presented an affirmative defense of preserving her children’s health and safety.

{¶ 25} Even if we were to consider the evidentiary rulings of the trial court, any error in the admission or exclusion of the evidence was harmless. Crim.R. 52(A) provides that “[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.” We also note that “when the trial court is the trier of fact, the judge is presumed capable of disregarding improper hearsay evidence, and unless it is demonstrated that the court relied on inadmissible hearsay, a conviction will not be reversed.” *State v. Osborne*, 2024-Ohio-2173, ¶ 15 (8th Dist.); *State v. White*, 15 Ohio St.2d 146, 151 (1968) (“We indulge in the usual presumption that in a bench trial in a criminal case the court considered only the relevant, material, and competent evidence in arriving at its judgment unless it affirmatively appears to the contrary.”). There is no indication in the record that suggests that the trial court relied on improper evidence or hearsay evidence when it found Stargell guilty of interference with custody. Instead, the record demonstrates that Stargell was found guilty of the undisputed fact that she had kept or harbored her children for two days longer than her standard order of parenting time allowed.

{¶ 26} Stargell’s assignments of error are overruled.

IV. Conclusion

{¶ 27} The judgment of the trial court is affirmed.

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TUCKER, J., and EPLEY, J., concur.