

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC  
CASE NO: 2014AP900004  
L.T. NO: 2013MM12362

KELLY MONIQUE MAYS,  
Appellant,

v.

STATE OF FLORIDA,  
Appellee.

Opinion filed: **JAN 13 2015**

Appeal from the County Court in and for Palm Beach County,  
Judge Leonard Hanser.

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PER CURIAM.

Following a jury trial, Defendant Kelly Monique Mays was convicted of Battery. Defendant raises three issues on appeal, two of which we affirm without discussion. As to the third issue, we agree with the Defendant's argument that the trial court erred by permitting a police detective to testify that he was told the Defendant was the initial aggressor in the altercation that led to her Battery charge. Such error, however, was harmless beyond a reasonable doubt due to other evidence adduced at trial and thus we affirm.

At trial, Defendant asserted that she was not the initial aggressor in the events leading to her Battery charge. As part of its case in chief, the State called Detective Timothy Pike of the West Palm Beach Police Department to testify. During direct examination, the following question was asked:

Q: Uhm, through your knowledge of this case, do -- were you informed of who attacked who?

A: I was informed by Officer Barquin as well as the victim.

(Tr. 309). Defense counsel objected to this statement on hearsay grounds and a bench conference was held. The following exchange occurred between the trial court and the prosecution during this conference:

MR. BAUM: The question was "based on your knowledge of this case do you know who attacked who."

THE COURT: He would not know that other than from what Officer Barquin told him.

MR. BAUM: Well, he may know it by the Defendant or by the victim.

THE COURT: Did he participate in the interview with the victim at all --

MR. BAUM: Yeah --

THE COURT: Or the --

MR. BAUM: Yeah.

THE COURT: -- Defendant?

MR. BAUM: Both.

THE COURT: He did. Okay. I'll deny your objection. Thank you.

(Tr. 310). There was no evidence that the source of Detective Pike's "knowledge" that the Defendant was the initial aggressor came from anyone other than the victim or Officer Barquin.

“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.” § 90.801(1)(c), Fla. Stat. (2014). “Where the implication from in-court testimony is that a non-testifying witness has made an out-of-court statement offered to prove the defendant’s guilt, the testimony is not admissible.” *Schaffer v. State*, 769 So. 2d 496, 498 (Fla. 4th DCA 2000). While admitting the implication testimony described above is thus erroneous, any error from admittance is harmless where the witness is testifying as to information provided by a separate witness who has already testified in the same trial. *See, e.g., Ragin v. State*, 939 So. 2d 330, 330 (Fla. 4th DCA 2006) (finding harmless error where police officer testified to BOLO description after victim had already testified to that same description); *Miles v. State*, 839 So. 2d 814, 819 (Fla. 4th DCA 2003) (finding harmless error where witness testified as to a given description whose declarant “himself testified as to the same account and description”). Such testimony is harmless due to its “cumulative” nature. *Ragin*, 939 So. 2d at 330.

Defendant contends that the trial court’s denial of this objection was reversible error. It is clear that the question at issue called for inadmissible hearsay, as Detective Pike was asked about an out of court statement and this question was provided for the truth of the matter asserted, namely the identity of the Defendant as the initial aggressor. While overruling the objection was thus error, any error caused was harmless beyond a reasonable doubt. Prior to Detective Pike’s testimony, Officer Jason Barquin had already testified consistently with Detective Pike. Subsequently, the alleged victim also testified that the Defendant was the initial aggressor. As such, Detective Pike’s testimony, while hearsay, was cumulative in nature. Thus, no reversible error occurred. Accordingly, the decision of the trial court is AFFIRMED.

KASTRENAKES, KELLEY, RAPP, JJ. concur.