

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 9th day of February, 2017.

Margarita Tejada, Appellant,

against Record No. 160291
Circuit Court No. CL15000245

Harris Teeter, LLC, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Arlington County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is no reversible error in the judgment of the Circuit Court of Arlington County.

“A ruling that evidence is inadmissible is reviewed for abuse of discretion.” *Lawlor v. Commonwealth*, 285 Va. 187, 229, 738 S.E.2d 847, 871 (2013). “[T]he exclusion by the trial court of relevant evidence does not constitute reversible error if that evidence is merely cumulative.” *May v. Caruso*, 264 Va. 358, 363, 568 S.E.2d 690, 693 (2002); *see also* Rule 2:403(b) (“Relevant evidence may be excluded if . . . the evidence is needlessly cumulative.”). Cumulative evidence is evidence that is merely repetitive and adds nothing to the evidence that has already been presented. *See Massey v. Commonwealth*, 230 Va. 436, 442, 337 S.E.2d 754, 758 (1985) (“Cumulative testimony is repetitive testimony that restates what has been said already and adds nothing to it.”).

In the present case, Malcolm Reynolds (“Reynolds”) testified that, although there was no liquid on the floor in the area where Margarita Tejada (“Tejada”) fell, he and a coworker “took paper towels and started to mop up the area where she fell.” When asked why he was cleaning the area up with paper towels if it was dry, Reynolds explained that he and the coworker “wanted to be safe to make sure nothing else happened.” He went on to state that he checked three times for any liquid on the floor, but found none.

After unsuccessfully attempting to play the post-fall portion of the surveillance video for the jury, Tejada made the following proffer:

[T]he spill in this case is indicated on the video as occurring at 50 minutes and 22 seconds; that [Reynolds] has testified that [there] was no spill in the area where [Tejada] fell; that [Reynolds] has testified there [was] no reason to clean up the area where [Tejada] fell because there was no liquid there, and the video . . . would show that . . . at 57 minutes and 47 seconds, [Reynolds] and a coworker had paper towels, were gesturing at the areas on the floor and were wiping it up with paper towels after [Tejada] fell.

Based on Tejada's proffer,¹ it appears that the post-fall portion of the surveillance video is repetitious of Reynolds's testimony and, therefore, cumulative. Notably, nothing in the proffer indicates that the video evidence contradicts or adds to Reynolds's testimony in any way. Indeed, it is telling that Tejada's proffer is silent with regard to the key issue in this case: whether the floor was wet or dry. Thus, assuming, without deciding, that the post-fall portion of the surveillance video was otherwise admissible, it cannot be said that the trial court abused its discretion in excluding the evidence. Accordingly, the judgment of the trial court is affirmed. The appellant shall pay to the appellee two hundred and fifty dollars damages.

This order shall be certified to the Circuit Court of Arlington County.

A Copy,

Teste:



Clerk

¹ The video itself was never offered or admitted into evidence, therefore, any consideration of this matter is necessarily limited to the content of the proffer.