

Circuit Court for Prince George's County
Case No. C-16-CR-22-000545

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1513

September Term, 2024

MARX CARLTON JACKSON

v.

STATE OF MARYLAND

Wells, C.J.,
Ripken,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Hotten, J.

Filed: January 26, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal arises from Marx Carlton Jackson’s (“Appellant’s”) convictions for first-degree felony murder, second-degree depraved heart murder, two counts of use of a firearm in the commission of a felony or crime of violence, and illegal possession of a firearm. At trial, one State witness testified regarding the extent of Appellant’s involvement in the crimes. After defense counsel on cross-examination accused the witness of fabrication, the State moved to introduce a recording of the witness’s police interrogation as a prior consistent statement. The court admitted the recording for rehabilitative purposes, clarifying the scope of its ruling after closing arguments. Appellant now contends that the court erred by admitting the recording for substantive rather than rehabilitative purposes.

QUESTIONS PRESENTED

Appellant presents one question for our review:

Did the trial court commit reversible error by admitting portions of State’s Exhibit 17, a video recording of Dominique Jones’s interrogation by homicide detectives, as a prior consistent statement?

For the reasons outlined below, we affirm the judgment of the circuit court.

BACKGROUND

On May 6, 2022, at approximately 8:00 p.m., Donnie McMillan was shot and killed while heading to the laundry room outside his apartment building. McMillan sustained a single gunshot wound to the torso and was pronounced dead at 9:59 p.m. A neighbor, Margeaux Duiguid, reported hearing a gunshot and observing a dark-skinned male with short hair flee the scene in a gray two-door Honda. Security footage showed the Honda entering the complex at 7:55 p.m. and exiting at 8:07 p.m. with its license plate hidden by a cover. The same vehicle was captured on surveillance video around the same time passing

through a McDonald’s drive-thru less than a mile from the shooting. Police found a 9-mm shell casing at the scene. Before his death, McMillan provided a dying declaration, indicating he was shot “over a f***king car.”

The focus of the investigation shifted to the gray Honda. The Honda displayed Virginia plate UAR 9680—the same plate associated with Appellant during a traffic stop in January 2022.¹ On May 17, 2022, the Honda was involved in a police pursuit that ended in a collision with a patrol car.² Following the collision, the damaged Honda was left in a nearby apartment complex parking lot, where surveillance footage captured two Black men exiting the car. Following a period of time where the vehicle remained stationary, it was towed to an evidence bay on June 1, 2022, for a forensic search.

A search of the Honda yielded a black iPhone registered to “Moneyroc01” (associated with the email Marxjackson16@gmail.com), which contained photographs of Appellant and identification cards for an individual named Dominique Jones.³ Historical

¹ On January 9, 2022, Officer Justin Loewke conducted a traffic stop on a gray two-door Honda Accord with the UAR 9680 license plate. Officer Loewke identified Appellant in court as the driver of that vehicle. Body-worn camera footage from the stop shows Appellant, a light-skinned Black man, providing the name “Mark Jackson” after being pulled over for a stop sign violation and illegal window tint.

² On May 17, 2022, patrol officers in Prince George’s County identified a Honda matching the description of the suspect vehicle and attempted a traffic stop; however, the driver fled, initiating a pursuit into Washington, D.C. During the encounter, the Honda disabled a police cruiser by reversing into it, allowing the Honda to escape.

³ The search of the Honda also revealed a photograph featuring Appellant alongside a woman identified by Detective Rashuan Randall as Samia Adgerson. According to Detective Randall’s testimony, both Samia and her sister, Sammarra Adgerson, contacted the police to assert ownership of the abandoned Honda following its removal from the parking lot.

cell site data placed Appellant’s device at the scene of the shooting and along the route of the May 17 police chase.⁴ Specific location data showed the device pinging at 7:52 p.m. on May 6, 2022, near the McDonald’s visited by McMillan, before moving to McMillan’s apartment complex at 8:01 p.m., where it remained stationary until 8:09 p.m. Additionally, during the May 17, 2022, pursuit of the suspect Honda between 4:36 p.m. and 4:44 p.m., the phone’s geographical movement was consistent with the path of the police chase.

Investigators received notification on May 23, 2022, that police in Washington, D.C., had intercepted a white Ford Escalade displaying the license plate UAR 9680. During the stop, the driver, Darae Vaughn, informed officers that the plate was not his and actually belonged to a Honda. Vaughn identified Appellant as the friend who provided him with the license plate. Vaughn corroborated this through a series of text messages with a phone number attributed to Appellant, including a message stating, “I’m gonna bring your tags.” Vaughn noted that they were part of a group of childhood friends who frequently shared vehicles, including rental cars and Appellant’s “multiple [personal] cars.”

On June 22, 2022, D.C. police seized several firearms, including a Glock 19, while executing a search warrant in an unrelated case. Occupant Dominique Jones was arrested, and subsequent testing linked the Glock 19 to the McMillan homicide. Detectives interviewed Jones about the murder on September 27, 2022, where he suggested Appellant’s involvement.

⁴ Investigators had also used cell phone data and interviews to rule out five or six other suspects.

On December 8, 2022, Appellant was indicted for murder in the first degree, two counts of use of a firearm in the commission of a felony or crime of violence, and illegal possession of a firearm. Trial proceeded on May 6-9, 13, and 15, 2024. Appellant asserted his Fifth Amendment constitutional right not to testify.

At trial, the State called Jones, who said he had known Appellant his entire life. Although Jones initially invoked his Fifth Amendment privilege, he was compelled to testify under grants of transactional immunity in Maryland and derivative use immunity in D.C. When Jones claimed he could not recall details of his arrest, the State attempted to introduce his recorded police interrogation. The court found no basis for admission:

THE COURT: I don't know how that's admissible. Unless it's—it's a *Nance* situation, but we're not there. . . . Or if it's an inconsistent statement, but at this point it's just not admissible just cause, so [objection] sustained.

The court later allowed the State to use the recording to refresh Jones's recollection. According to Jones, the Glock 19 in his possession at the time of his arrest had been given to him by Appellant to hold “for protection” because “sh** be going on.” Jones recalled that on the night of the shooting, Appellant arrived limping and claimed a carjacking had gone “wrong,” admitting he had “just hit somebody or shot somebody.” Jones testified that Appellant stated he had been “chased” by police, though he could not specify the date of that conversation. Jones further testified that Appellant sent him a news snippet regarding a shooting victim in Prince George’s County and asked if the article meant the person had died.

On cross-examination, defense counsel challenged Jones's credibility by highlighting inconsistencies in his police interrogation. Counsel established that Jones

initially misidentified the caliber of the handgun he claimed to own and denied knowing if Appellant had “done something.” The defense suggested that Jones only implicated Appellant after detectives informed him his ID was found in the Honda, rendering him a possible murder suspect. Jones contested this characterization of the interrogation, accusing defense counsel of mischaracterization by splicing together different portions of his statements:

DEFENSE COUNSEL: But didn’t you say that [Appellant] came and told you that he was involved in an—

JONES: That’s different sections of the interview, bro. You putting sh** together like it was right there, bro. That was different sections of the interview. Show the whole interview when they asking me questions and all that. What they said to me and all, bro. Stop picking parts of the interview for you to, like, put together. Stop doing it because you’re trying to—like I said before, you’re trying to put words in my mouth. That’s exactly what you’re doing.

On redirect, the State clarified the interrogation’s timeline, establishing that Jones had already discussed the handgun and the shooting before detectives mentioned finding his ID in the Honda nearly two hours into the interview. Jones confirmed that his statements regarding Appellant’s admission—that Appellant had accidentally shot someone—preceded the moment police identified him as a suspect. At this juncture, the State suggested the jury should watch the interrogation recording itself because there was a dispute to the timeline:

THE STATE: At this point, because there is, I guess, differences in terms of the order of the interview and whatnot, I do believe it would be probative for the jury, if they could, watch the interview and make the determination for themselves what the proper order is and whatnot since, you know, testimony was elicited on both direct and cross that seem to contradict one another. And I can clip the interview accordingly to get rid of the, you know,

waiting spaces. But—and I can clip it according to what we just discussed during direct and cross. But I do believe at this point, it is probative.

THE COURT: Basically allow it for a prior consistent statement?

THE STATE: Yes.

DEFENSE COUNSEL: I object, Your Honor. Every time he was—his memory was refreshed, he testified accurately to what was on the video. There's no reason to allow the video to come in.

THE STATE: And I would also add, perhaps, allowing it in to corroborate his testimony the same way that body-worn camera is allowed to come in when officers testify to strengthen the credibility of the witness's testimony and in this case, there has been, you know, a challenge against Mr. Jones's credibility and I believe—

DEFENSE COUNSEL: Yeah, that's for the jury to determine, whether he's credible or not and they have him on the stand to make that determination. That's their number one job.

The court reserved its ruling, stating "I do believe that it's a prior consistent statement, but I don't know if it actually gets admitted or if it just gets played. I think there's a huge difference because if it's admitted it's for substantive purposes, so I'm going to reserve."

The following day, the parties revisited the admissibility of State's Exhibit 17. Clarifying its previous reservation, the court ruled that relevant portions of the interrogation were admissible as prior consistent statements:

THE COURT: I think I reserved on the entirety of it. So I do believe that portions of the statement can be played, not the entire thing.

THE STATE: Yes, Your Honor.

THE COURT: To show a consistent statement. So I do—so I am going to allow you to play the appropriate portions.

Defense counsel maintained a continuing objection but argued that, under the rule of completeness, the entire recording should be played, excluding prior bad acts. The State countered that playback should be limited to the subject matter of Jones's cross-examination because "it would be very prejudicial to allow certain portions of the testimony that haven't even been brought up in front of the jury."

The court eventually admitted the recording over the defense's continuing objection, stating it would be "admitted to be played only" at specific timestamps. Approximately 40 minutes of clips were played for the jury, covering Jones's initial denials, the detectives' claims that Jones was a suspect, and Jones's allegations against Appellant.

During a bench conference, the court declared its intent to instruct the jury that Jones's prior consistent statements were "permitted only to help [the jury] decide whether to believe the testimony the witness gave during this trial." The court later reiterated to the jury the same limiting instruction it had previously reviewed with counsel:

THE COURT: You heard testimony that that [sic] Ms. Margeaux Duiguid and/or Mr. Dominique Jones and/or Detective Khaled Rasuli made a statement before trial. Testimony concerning that statement was **permitted only to help you decide whether to believe the testimony that that witness gave during this trial.** It is for you to decide whether to believe the trial testimony of Margeaux Duiguid and/or Dominique Jones and/or Detective Khaled Rasuli in whole or in part, and you may not use the earlier statement for any purpose other than to assist you in making that decision. (Emphasis added).

During closing arguments, the State referred to Jones's statements in the recording as evidence of what occurred:

THE STATE: And we also have the statement of Mr. Dominique Jones. Let's go through that. Let's piece it all together, right.

* * *

We also have this statement of Dominique Jones. Now, Mr. Jones came in and testified about what happened and what he knows, right? We know for a fact Dominique Jones was found with the Glock 19, the murder weapon, as the defense even puts it, right, when they were questioning Detective Randall.

* * *

Mr. Jones testified truthfully and credibly. He told you exactly what it was. He told you exactly what happened. He told you that [Appellant] does, in fact, have a two-door gray Honda and that he's actually been in that car before. He was very upfront and very honest with you. During cross-examination, he even said he got locked up in that car. He's not denying or disagreeing that his identification card was found in that vehicle. He's saying it makes sense. I've been in that car before. I've been in that car multiple times before. We know that Mr. Jones testified that he had read on the computer about a Forest Heights Police chase and that he had asked [Appellant] about it because he recognized the car involved in the police chase. And what did [Appellant] tell him? [Appellant] told him that he had just gotten chased by the police. So why did Marx Jackson shoot and kill Donnie McMillan? At this point, from everything that we've heard, including Dominique Jones's statement, we kind of piece together what exactly happened.

* * *

We go back to Mr. Jones, right. We know this is a carjacking because Mr. Jones confirms it for us. Not just Mr. McMillan in his dying declaration, but so does Mr. Jones. When Detective Smith tells Mr. Jones about the shooting on May 6th at Donnell Place and be—and I want you to be mindful as the jury, he specified the location of where the murder happened and at that point, Mr. Jones tells him, oh, damn, I know what you're talking about because they told me about that. [Appellant] told him about that. [Appellant] told Mr. Jones that he accidentally did something to somebody up there and didn't know what happened to him. And the night of the murder, Mr. Jones even said, that two men were helping [Appellant] up the steps because he was hobbling. He had hurt his foot. Hence Mr. Jones's text message to [Appellant] two days later. What's wrong with your foot? [Appellant] told Mr. Jones that he just had to shoot somebody. Didn't know if he killed him or not. Didn't know if he killed him or not. [Appellant] told Mr. Jones that he was tussling with the dude and he had messed up his ankle during that.

* * *

And we could see that from the interview. He said, I don't know. If—the article would have said if he had died or not. But right now it's just saying that he got shot in the stomach. I don't know what to tell you. I don't know if he died or not.

* * *

Mr. Jones told Detective Smith and Detective Randall that he got this gun from his cousin, [Appellant]. He specified that this is the murder weapon. This is the gun that he got from [Appellant]. And he also told Detective Randall and Detective Smith that [Appellant] had given him that gun about three weeks before the search warrant was executed at Savannah Terrace. So we have [Appellant] giving this Glock 19, the murder weapon, to his unsuspecting cousin, Mr. Jones, in late May of 2022. We know that the fired cartridge casing recovered from the scene of the murder, the nine-millimeter, this Glock 19, members of the jury, is also a nine-millimeter handgun. And this is a close-up photo of the cartridge casing found at the scene of the crime and a photo of the Glock 19 that Mr. Jones confirmed was the gun given to him by [Appellant].

Following closing remarks, the court discussed with counsel which exhibits would be sent to the jury room, specifically State's Exhibit 17. Despite both parties' apparent belief that the recording was admitted substantively as a prior consistent statement, the court clarified it was "for impeachment," not substantive evidence, asserting it should not be sent back to the jury:

THE COURT: The video of Mr. Jones was for impeachment; that was not substantive evidence.

DEFENSE COUNSEL: You said—

THE COURT: I don't think that goes back.

DEFENSE COUNSEL: I think you ruled.

THE COURT: I think I said that she can play it. I do not think it goes back.

DEFENSE COUNSEL: Okay.

THE STATE: I had a different understanding. I thought we said—we admitted it as the prior consistent statement.

THE COURT: Yes, and I think it did—you agree that it goes back?

DEFENSE COUNSEL: That was my understanding that the clip, based on your ruling, that was—

THE COURT: All right. So we're going to need a laptop.

DEFENSE COUNSEL: I mean, I'm objecting to it still, obviously. My objection still continues, but it's—my recollection is that you did admit it as a prior consistent statement.

THE COURT: Yes, but I think that you can play it not that it goes back to the jury—you can play it during the course of the testimony, but I don't think it goes back.

DEFENSE COUNSEL: I will defer to the Court.

THE COURT: I'll allow you guys to bring some evidence or some case law that says prior consistent statement goes back as substantive evidence. Impeachment, yes. But impeachment doesn't become substantive. But you can bring me a case. If it says so, I'll send it back.⁵

THE STATE: Yes, Your Honor.

During deliberations, the jury requested the use of a laptop to review the extensive video evidence. The court provided the laptop and a thumb drive containing all admitted audio and audiovisual exhibits. When the jury later reported technical difficulties viewing State's Exhibit 17, the court remarked that the error was fortuitous, as the exhibit "shouldn't have gone back in the first place." The court reiterated Exhibit 17 was admitted only for "impeachment and rehabilitation," rather than substantive use. With the consent of both parties, the court informed the jury that State's Exhibit 17 could only be viewed within the courtroom.

⁵ The parties did not provide any authority stating prior consistent statements can be used as substantive evidence.

Appellant was found guilty of first-degree felony murder, second-degree depraved heart murder, two counts of use of a firearm in the commission of a felony or crime of violence, and illegal possession of a firearm. He was sentenced to life for first-degree felony murder, with all but fifty years suspended; a consecutive twenty years for use of a firearm in commission of a felony;⁶ a consecutive five years for illegal possession of a firearm; and five years of supervised probation upon release. The remaining convictions merged for purposes of sentencing. This appeal timely followed.

STANDARD OF REVIEW

This Court generally reviews the admissibility of evidence under an abuse of discretion standard, but reviews hearsay *de novo*. *See Bernadyn v. State*, 390 Md. 1, 7 (2005). Appellant asks this Court to review the matter *de novo* because he argues his issue hinges on whether the recording was properly admitted under a hearsay exception, assuming the circuit court admitted the recording under a hearsay exception. For the reasons stated below, we find the recording was admitted as nonhearsay. *See infra* Section I.C.; compare Md. Rule 5-802.1 (hearsay exception), with Md. Rule 5-616 (nonhearsay). As such, we shall review for abuse of discretion. *Bernadyn*, 390 Md. at 7.

⁶ The court imposed no additional jail time for Appellant’s second conviction for use of a firearm in the commission of a felony or crime of violence.

DISCUSSION

I. The Circuit Court Did Not Abuse Its Discretion in Admitting State's Exhibit 17 For Rehabilitative Purposes.

A. The Parties' Arguments

Appellant challenges the admission of State's Exhibit 17 under Md. Rule 5-802.1.

Appellant asserts that despite confusion, the recording was admitted as substantive evidence because the State repeatedly moved to admit it as such,⁷ and “explicitly asked the jury to rely on Mr. Jones’s ‘statement’ for the truth” during closing argument. In his reply brief, Appellant further asserts the jury instructions did not clarify that the recording was only to be used as rehabilitative evidence, supported by the fact that both parties approved of the instruction as read, but expressed confusion when the court clarified its intent later. In any regard, Appellant states “[t]he court’s subjective intent when admitting the evidence is [] irrelevant. It had no impact on the jury, who did not hear its ruling.”

⁷ In support, Appellant details:

“The State made three separate arguments in support of admission. First, the prosecutor unsuccessfully attempted to move the interrogation video into evidence during Mr. Jones’s direct examination as ‘corroboration’ of his anticipated testimony. Then, she tried again after her redirect of Mr. Jones was complete, arguing that the jury should ‘watch the interview and make the determination for themselves what the proper order [of statements] is and whatnot since, you know, testimony was elicited on both direct and cross that seem to contradict one another.’ However, defense counsel objected and pointed out that every time Jones’s memory was refreshed, ‘he testified accurately to what was on the video.’ Last, the prosecutor offered the video into evidence ‘to corroborate [Mr. Jones’s] testimony the same way that body-worn camera is allowed to come in when officers testify to strengthen the credibility of the witness’s testimony.’”

Appellant contends the statements contained within State's Exhibit 17 constitute inadmissible hearsay under Md. Rule 5-802.1(b), because they were not made before Jones had a motive to fabricate. Given his allegation that Jones was the shooter, Appellant believes Jones's motive to lie arose immediately after the shooting.

In the alternative, Appellant asserts that if State's Exhibit 17 was offered for rehabilitative purposes, it was inadmissible under Md. Rule 5-616 "because it did not rebut, or detract from, defense counsel's cross-examination of Mr. Jones." He explains, "the video did not rehabilitate Mr. Jones because his testimony accurately reflected the video, and he testified consistently across his direct, cross, and redirect examination."

The State argues that State's Exhibit 17 was admitted for the limited purpose of rehabilitation under Md. Rule 5-616, and that the jury was properly instructed on this distinction. The State's assertion rests on four main points: (1) the court initially denied the recording's admission during direct examination, but admitted it after defense counsel's cross-examination challenged the timeline of Jones's testimony; (2) the court maintained a distinction between playing the recording for the jury and admitting it as substantive evidence; (3) the court denied the jury's request to play the recording while they deliberated; and (4) the court delivered a limiting instruction that directed the jury to use the prior statement "only to help you decide whether to believe the testimony."

The State opposes Appellant's contention that the State "explicitly asked the jury to rely" on Jones's statement as substantive evidence during its summation by plainly stating it never happened. The State also emphasizes that defense counsel did not object to the

State's summation, suggesting that the defense did not perceive any error in the court's instructions at the time.

Lastly, the State contends that the recorded interrogation was properly admitted under Maryland Rule 5-616(c)(2) to rehabilitate Jones because the recording possessed "clear rebutting force beyond the mere fact that Mr. Jones had repeated on a prior occasion a statement consistent with his trial testimony."

B. Legal Framework

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." *See* Md. Rule 5-801(c). Hearsay is inadmissible unless an exception applies. *See* Md. Rule 5-802.

Hearsay and prior consistent statements overlap in a sense. Since prior consistent statements are, by definition, made outside of the presence of the trial or hearing, they are considered hearsay when introduced to prove its truth. *See* Md. Rule 5-801(c). There are two ways to circumvent its inadmissibility.

First, Md. Rule 5-802.1(b) carves out an exception to the hearsay rule to allow admissibility of prior consistent statements as substantive evidence when the statements are offered to rebut an express or implied charge of recent fabrication, improper influence, or motive. *See* Md. Rule 5-802.1(b). The exception applies when the prior consistent statement was made "before the alleged fabrication or improper influence or motive existed." *Holmes v. State*, 350 Md. 412, 417 (1998) (emphasis added). Therefore, "when the witness is obviously under investigation or has been arrested when the statements were

made, [the witness's prior statements] are generally inadmissible because the motive to fabricate has already arisen.” *Thomas v. State*, 429 Md. 85, 103 (2012).

Second, prior consistent statements that are used merely to rehabilitate a witness’s credibility, and not for its truth, are admissible under Md. Rule 5-616(c)(2). *See* Md. Rule 5-616(c)(2). This is because statements that are not offered to prove the truth of the matter asserted do not meet the hearsay criteria. *See Stoddard v. State*, 389 Md. 681, 688–89 (2005) (finding a statement that is not offered for its truth is not hearsay). Still, there are limitations to this rule. For one, the rule only becomes applicable when “the defendant’s opening statement and/or cross examination of a [s]tate’s witness has ‘opened the door’ to evidence that is relevant (and now admissible) for the purpose of rehabilitation.” *Thomas*, 429 Md. at 97 (cleaned up) (citation omitted); *see e.g.*, *U.S. Fid. & Guar. Co. v. Cont'l Baking Co.*, 172 Md. 24 (1937) (holding the plaintiff could not have introduced their witness’s prior consistent statement “had it not been brought into the case by the defendant’s demand”). Furthermore, the prior consistent statement must offer more rehabilitative value than just demonstrating the witness repeated their story on a prior occasion; the statement must either “detract from” or “logically rebut” the impeachment. *Thomas*, 429 Md. at 107 (citations omitted).

C. Analysis

We affirm the circuit court’s decision to admit the recording for two reasons: (1) as a preliminary matter, Appellant waived his right to appeal by failing to request a curative instruction after discovering the recording was admitted for rehabilitative purposes; and

(2) on the merits, we find no error in admitting the recording for rehabilitative purposes because it logically rebutted the defense’s theory of recent fabrication.

While a jury is generally presumed to follow instructions, *Whittington v. State*, 147 Md. App. 496, 534 (2002), Appellant cannot now complain of misleading jury instructions when he failed to seek clarification at trial. Although the State’s proffer was arguably ambiguous,⁸ the burden rested squarely on Appellant “to inquire about the basis upon which the State intend[ed] to introduce the prior consistent statement.” *McCray v. State*, 122 Md. App. 598, 609 (1998). Appellant’s own subjective opinion about what the court admitted the recording for is irrelevant.

Appellant’s general objection to the recording’s admission was insufficient to preserve a specific challenge to the substantive versus rehabilitative use of the recording. *Cf. Addison v. State*, 188 Md. App. 165, 176–77 (2009) (finding under the facts and circumstances, the general objections were insufficient to preserve the appellant’s issue). After the court clarified post-closing arguments that the recording was admitted only for

⁸ The State did not explicitly proffer whether the recording was being introduced for substantive or rehabilitative purposes. Instead, the State proffered the recording “would be probative for the jury, if they could, watch the interview and make the determination for themselves what the proper order is and whatnot since, you know, testimony was elicited on both direct and cross that seem to contradict one another.” Such an ambiguous proffer supports two equally plausible interpretations: that the recording was offered substantively to settle a question of fact, or as rehabilitation to establish the witness’s consistency. Indeed, despite the court’s later clarification, the parties expressed their belief that the recording was admitted for substantive purposes. However, it was ultimately Appellant’s burden to clarify this. *See McCray*, 122 Md. App. at 609 (placing the burden on the defendant “to inquire about the basis upon which the State intends to introduce the prior consistent statement”). Therefore, Appellant cannot use the State’s basis for the recording’s admission to bolster his argument that it was admitted substantively.

rehabilitation under Md. Rule 5-616, Appellant remained silent and requested no curative instruction. By acquiescing to the instructions and failing to alert the court to any perceived prejudice at a time when it could be cured, Appellant waived the issue for appeal. *See Claybourne v. State*, 209 Md. App. 706, 748 (2013). A defendant cannot ignore a perceived procedural error and later “obtain a benefit—a mistrial or reversal—from that error.” *Hammersla v. State*, 184 Md. App. 295, 311 (2009).

A request for a curative instruction would not have necessarily cured any potential prejudice. *See e.g., Carter v. State*, 366 Md. 574, 584 (2001) (emphasizing it is within the court’s discretion to grant a curative instruction); *Simmons v. State*, 436 Md. 202, 218–19 (2013) (finding curative instructions may sometimes be inadequate to cure prejudice). However, the absence of such request creates a procedural hurdle Appellant cannot overcome on appeal.

Having established that the recording was admitted for the limited purpose of rehabilitation under Md. Rule 5-616, the analysis now shifts to whether the court erred in admitting it for this purpose. We hold that no such error occurred. Jones’s credibility was challenged and the recording was used to bolster the witness’s credibility. Critically, the recording offered more than just rehabilitative value, because it “logically rebutted” the defense’s theory that Jones only implicated Appellant after he became aware he was a suspect. *See Thomas*, 429 Md. at 107 (limiting the use of Md. Rule 5-616). For these reasons, we affirm.

II. Even If the Circuit Court Erred, It Was Harmless.

A. The Parties’ Arguments

Appellant argues the erroneous admission of the video—which impermissibly bolstered Jones’s testimony—cannot be deemed harmless, as his testimony is the sole evidence directly linking Appellant to the shooting. Appellant supports his argument by arguing the bolstering “is why the State’s closing argument was replete with references to Jones’s statements to police detectives[.]” He cites *Thomas*, 429 Md. at 111, for the proposition that cumulative evidence is not harmless when it bolsters the credibility of a critical witness.

The State counters by arguing, “with all the foregoing independent, testimonial, documentary, and physical evidentiary inputs to a guilty verdict, the chance that the jury used State’s Exhibit 17 to convict Mr. Jackson when it otherwise would not have done so is so remote that the evidentiary error was harmless beyond a reasonable doubt.” It distinguishes this matter from *Thomas*, where the prosecution depended “virtually exclusively on the credibility of a witness[.]” *Id.*

B. Analysis

Having determined the circuit court did not err in admitting the recording for rehabilitative purposes, this Court is not required to determine whether there was harmless error. Assuming, *arguendo*, there was an error in admitting the recording, it was harmless. An appellate court will not grant an automatic new trial solely because evidence was later ruled inadmissible. *See Bruno v. State*, 332 Md. 673, 692 (1993). Rather, the error must have “affected the rights of the parties” for there to be a reversal. *See id.* at 691 (citation

omitted). Here, the recording did not create any prejudice because there was a plethora of evidence suggesting Appellant’s guilt: Appellant’s link to the shooting through his vehicle and license plate; cell records that placed him at the scene and along the flight path; surveillance footage capturing the vehicle at the scene before it was abandoned with Appellant’s phone and ID inside; witness Darae Vaughn testifying to using Appellant’s license plate on his own car; and witness Jones testifying to circumstantial evidence of Appellant’s involvement in the shooting. Accordingly, we conclude that the recording resulted in no prejudice and alternately, that any associated error was harmless.

CONCLUSION

Appellant attempts to transform a supposed misunderstanding by the jury—who he believes used the recording for substantive purposes—into a reversible error by the court. However, his challenge fails because procedurally he did not request a curative jury instruction regarding the recording’s use. By remaining silent, Appellant waived the right to claim prejudice from any potential jury confusion. Although the State’s initial proffer was ambiguous, the circuit court ultimately clarified after closing arguments that the recording was admitted for the limited purpose of rehabilitation under Md. Rule 5-616. The admission was proper under Md. Rule 5-616 because the recording logically rebutted the defense’s theory of recent fabrication by showing the witness’s consistency before he became a suspect. In any event, the court’s decision to admit the recording was non-prejudicial and remains free of reversible error. As such, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE’S COUNTY IS

— Unreported Opinion —

**AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**