2013 IL App (2d) 110830-U
No. 2-11-0830
Order filed September 5, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-3878
JERMAINE C. TIDWELL,	)	Honorable Ronald J. White,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) There was sufficient evidence to prove defendant guilty beyond a reasonable doubt of constructive possession of cocaine. (2) Defendant forfeited his argument that the trial court erred in admitting a witness's prior statement to police as substantive evidence, and even otherwise, the statement was admissible. (3) Even though a witness was impeached, a reasonable fact finder could accept her testimony as true beyond a reasonable doubt. (4) Defense counsel was not ineffective for failing to object to the admission of exhibits. (5) The trial court did not violate defendant's right to due process when it allowed the prosecutor to look at its criminal code.

¶ 2 Following a bench trial, defendant, Jermaine C. Tidwell, was found guilty of unlawful possession with the intent to deliver more than 100 grams but less than 400 grams of cocaine (720 ILCS 570/401(a)(2)(B) (West 2008)). He was sentenced to 25 years' imprisonment.

¶ 3 On December 14, 2012, this court granted the motion by the Office of the State Appellate Defender to withdraw as counsel. We also granted defendant's request to proceed *pro se*. On appeal, defendant argues that: (1) he was not proven guilty beyond a reasonable doubt, because the evidence was insufficient to establish his constructive possession of the drugs; (2) the trial court erred in admitting a witness's prior statement to the police as substantive evidence; (3) the trial court improperly relied on testimony from an impeached witness; (4) trial counsel was ineffective for failing to object to the admission of exhibits; and (5) the trial court violated his right to due process by allowing the prosecution to borrow its copy of the criminal code. We affirm.

¶ 4 I. BACKGROUND

¶ 5 On October 22, 2008, defendant was charged with unlawful possession with intent to deliver more than 100 grams but less than 400 grams of cocaine (720 ILCS 570/401(a)(2)(B) (West 2008)). Defendant filed a motion to suppress evidence, which the trial court denied after a hearing.

¶ 6 Defendant waived his right to a jury trial, and his bench trial took place on November 2, 2009. Latoya Gray testified as follows. She was employed as a "CNA" at Provena St. Joseph in Freeport. She had known defendant for a couple of years; he was her cousin's brother. On September 29, 2008, a little after midnight, she was riding in a car being driven by defendant. They were going from Rockford to Freeport. A police car activated its lights. Defendant said, " 'What the hell,' " and Gray asked him why they were being pulled over. Defendant said that he had recently purchased the car from someone, and the car's registration had not gotten "switched over

yet." When questioned at trial if defendant asked her something before the police approached the vehicle, Gray answered in the negative.

¶ 7 Gray acknowledged giving the police a signed, written statement on September 29, 2008. She told the truth to the police, and an officer wrote the statement out. When the police car first activated its lights and defendant said, " 'What the hell,' " Gray responded that everything should be ok because he had his license and insurance. While she was speaking, an officer came up to the driver's side window and asked for these documents. Defendant did not say anything in the interim.

¶ 8 Gray denied telling the police in her written statement, " 'He kept telling me to see if the bag was still there, so I reached down and felt the bag, then the police walked up to the car.' " Gray did not use those exact words when she was being questioned. Rather, the officer may have written what she said incorrectly. The officer never let her read the statement over, but instead just handed her the paper to sign. Gray agreed that when she first looked over the statement in court, she did not point out any errors. In fact, she said that she told the police the truth and indicated that the written statement was accurate. However, defendant did not question her about a bag in the car until they were both outside the car and officers were searching it. At that time, he asked, " 'Is the bag still over there? ' " Gray responded, " 'What bag? What are you talking about?' " Defendant did not reply. Gray never reached over and touched anything. The conversation about the bag occurred before she and defendant were handcuffed.

¶ 9 On re-cross examination, Gray first testified that she did not recall if the police had already pulled the bag out of the car when defendant asked about it, but then she immediately stated that the police took the bag out afterwards. On re-redirect examination, Gray testified that defendant asked about the bag before she saw police take the bag out of the car. On re-recross examination, Gray

testified that she was 100 percent sure defendant asked about the bag before the police took the bag out of the car. A couple of minutes after defendant asked, she saw an officer waiving a bag in the air to the other officers.

¶ 10 Gray had visited defendant a couple of times in jail since he had been arrested. She never discussed her testimony with defendant or defense counsel.

¶ 11 Deputy Fred Jones of the Winnebago County Sheriff's Department provided the following testimony. He was on patrol at about 12:18 a.m. on September 29, 2008. He noticed a blue Chevy Caprice driving in front of him, and he ran the registration. The registered owner, Glen Robertson, had a suspended driver's license. Jones performed a traffic stop. He approached the driver, defendant, and asked for a license. Defendant produced a photo ID instead. While speaking to defendant, Jones smelled an odor of cannabis. At this point, Deputies Kaiser and Kubkowski arrived on the scene. Jones asked defendant to step out of the vehicle, and they walked to the back of the car. Jones advised defendant of the odor and started to search him. Defendant said that there was a little bit of weed in his front right pocket and a blunt in the car's ashtray. Jones found the cannabis in defendant's pocket, and he also found a total of $174.89 in cash in defendant's front pockets. During this time, the car's passenger, Gray, was still seated inside.

¶ 12 The officers then had Gray step out of the car. Jones advised her of the smell and searched her as well. Deputies Kaiser and Kubkowski began searching the car. Deputy Kaiser came over and advised Jones that defendant needed to be handcuffed, which the police did. They separated defendant and Gray into two different squad cars. Deputy Kaiser brought a tan plastic bag over and set it on the car's trunk. Inside were four lunch-size clear plastic baggies, each with an off-white rock substance. The substance field-tested positive for cocaine.

¶ 13 The officers continued their search of the vehicle. Jones located the blunt in the ashtray that defendant had mentioned. He also found a little clear baggie with an off-white rock substance, weighing 0.4 grams, in the driver side door handle. The blunt field-tested positive for marijuana, and the other substance field-tested positive for cocaine.

¶ 14 At about 12:31 a.m., Jones spoke with Gray while she was seated in the back of the squad car. He read Gray her *Miranda* rights, and she agreed to speak with him. Gray appeared normal but advised that she had been smoking marijuana. She said that she and defendant had come to Rockford from Freeport to visit someone. They stayed for about 30 minutes and smoked marijuana. Defendant and another man went into another room. When defendant came back, he asked if Gray was ready to leave, and she replied in the affirmative. When they saw the police car's lights activated, defendant said, " 'Oh, shit.' " Gray asked what was the matter, and defendant said that she needed to reach down and check if the bag was still there. Gray asked, " 'What bag?' " because she did not know what he was talking about. Defendant kept telling her to check if the bag was there, and she did so. That is when Jones walked up to the vehicle.

¶ 15 Jones reduced his conversation with Gray to writing. Jones had Gray go over everything slowly, one step at a time. After he was done, she reviewed the statement and initialed the top and bottom. She also initialed a spot where he had crossed off a word. Gray then signed and dated the statement on the bottom.

¶ 16 At about 12:40, Jones spoke with defendant in the other squad car. After being read his *Miranda* rights, Jones asked if there was anything in the car that defendant knew about. Defendant said that the car did not belong to him, and he did not know about anything being in the car. They kept talking about the car, and defendant said that he was in the process of buying it from Everything

Automotives. A few minutes later, defendant said that he was borrowing the vehicle but did not know who owned it. Jones showed defendant the cocaine found in the driver's door and asked how defendant did not see it. Defendant then hung his head down and refused to talk further.

¶ 17 Deputy Tim Kubkowski testified that he searched the vehicle and found a tan plastic bag wedged on the side of the passenger's seat, between the seat and the floorboard. Inside was an off-white yellow substance wrapped in four individual packages. Kubkowski's field training officer, Deputy Brad Kaiser, was searching the driver's seat area of the car, and he took possession of the bag.

¶ 18 Bob Juanez of the Winnebago County Sheriff's Department testified that he had been assigned to the department's Metro Narcotics Unit since 2002 and had been involved in thousands of narcotics investigations. In 2008, cocaine was selling for about one hundred dollars per gram in Rockford. It was typically sold as one-tenth of a gram, called a "dime bag," or as one-twentieth of a gram. 124.6 grams of cocaine was a significant amount because it equated to about 1,200 dime bags, which were sold for $10 each. Therefore, the value of the cocaine was at least $12,000. Also, drug dealers often "cut" drugs, meaning that they added products to the drugs, which would increase the drug's weight. The amount of cocaine seized here was consistent with someone dealing cocaine, rather than someone possessing it for personal use.

¶ 19 The parties stipulated that the substances found in the car consisted of 124.6 grams of cocaine and 0.4 grams of cannabis.

¶ 20 The trial was thereafter continued. On April 14, 2010, the State informed the trial court that it had not formally rested, and the trial court agreed. The State then moved to rest subject to the admission of exhibits. The trial court asked the defense if it had any objection to the admission of

the exhibits, and defense counsel answered in the negative. In the course of closing arguments, the State asked the trial court to admit Gray's statement as substantive evidence under section 115-10.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.1 (West 2008)) based on Gray's impeachment. The State argued that even if the statement was not considered substantive evidence, Gray's trial testimony showed that defendant expressed an interest in the bag found to contain cocaine.

¶ 21 The trial court found as follows. Based on the stipulations, the evidence showed beyond a reasonable doubt that the substance in the bag was over 100 grams but less than 400 grams of cocaine. Juanez's testimony showed that the amount was consistent with possessing the drugs with the intent to deliver. The main issue was whether the evidence showed, beyond a reasonable doubt, that defendant constructively possessed the drugs. Grays's testimony that defendant said that he had bought the car but had not yet switched the registration over showed that defendant had care and control over the vehicle, having purchased it. Based on this testimony, it was clear that defendant was not borrowing the car. The officer approached the vehicle and smelled cannabis. Defendant said that he had marijuana in his pocket and a blunt in the ashtray. At this point, it was clear that defendant was under arrest. The officer found the marijuana in defendant's pocket as well as cash. While searching the vehicle, the police found a tan plastic bag with four clear plastic baggies containing the cocaine, as well as a blunt in the center dashboard area and a clear baggie in the door handle. After defendant had been read his *Miranda* rights, he told the officer that he had borrowed the vehicle and was in the process of buying it, which is consistent with what defendant told Gray. Gray gave the police a written statement that conflicted with some of her trial testimony, which was a requirement of section 115-10.1 to admit the statement as substantive evidence.

¶ 22 The trial court continued:

> "Regardless of whether or not this [Gray's prior written statement] is used as substantive evidence – which I think is proper for the Court to consider that. However, even if the Court doesn't consider it as substantive evidence, that's really not the main factor."

The trial court stated that Gray testified that defendant asked her about the bag outside the car and that she never touched it. The trial court stated that it was "not necessarily conceding her statement *** as substantive evidence." "The point [was that] there was a statement made by the defendant either inside the car or outside the car." Defendant asked about the bag before it was found. Therefore, the evidence showed beyond a reasonable doubt that defendant had constructive possession of the bag. It was clear that Gray, defendant's friend, was not involved with possession of the item.

¶ 23 Defendant filed a motion to reconsider/motion for a new trial on May 17, 2010. Defendant argued that: (1) the approximately five-month delay between when the trial ended and when closing arguments were heard prejudiced his right to a fair trial; (2) the trial court erred in allowing the State to introduce exhibits on April 14, 2010, when closing arguments were finally heard, because the State had previously rested on November 2, 2009; and (3) he was not proven guilty beyond a reasonable doubt because: the bag was found near where Gray was sitting; the bag did not contain his fingerprints; the State did not provide any evidence of ownership of the vehicle; and Gray was not a credible witness. Defendant filed a supplemental motion on December 9, 2010. He additionally argued that the State failed to prove that he had constructive possession of the drugs, and that even if the court believed he owned the car in question, his status as owner-driver did not put him in possession of everything in the passenger area when there was a passenger present.

¶ 24 A hearing on the motion took place on February 22, 2011. The trial court denied the motion, saying that the case came down to Gray's credibility. Gray had visited defendant in jail after he was taken into custody. The trial court considered Gray's demeanor, the reasonableness of her testimony in light of all of the other facts presented in the case, and her interest and bias. She testified consistently with the officers about the traffic stop. Gray was reluctant and testified inconsistently with her police statement about whether defendant asked about the bag inside or outside the car, but Gray admitted that defendant asked about the bag before it was found. The trial court stated:

> "I find no difficulty with her believability and credibility that when this car was stopped, whether it would be inside the car or outside of the car, defendant asked about the bag. And if the defendant didn't ask about the bag, he wouldn't have known about the bag and I would have found him not guilty, but that knowing about the bag question to her shows that he had knowledge of it and, therefore, he had constructive possession."

¶ 25 Following a sentencing hearing, the trial court sentenced defendant to 25 years' imprisonment. Defense counsel made an oral motion to reduce the sentence, which the trial court denied. Defendant timely appealed. As stated, the Office of the State Appellate Defendant was allowed to withdraw as counsel on appeal, and defendant filed his briefs *pro se*.

¶ 26 II. ANALYSIS

¶ 27 A. Constructive Possession

¶ 28 Defendant first argues that he was not proven guilty beyond a reasonable doubt, in that the State failed to prove that he constructively possessed the cocaine. When faced with a challenge to the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements

of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact has the responsibility to assess witnesses' credibility, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 29 To establish that a defendant unlawfully possessed a controlled substance, the State must prove that the defendant had knowledge of the controlled substance's presence and had immediate and exclusive possession or control of it. *People v. Eghan*, 344 Ill. App. 3d 301, 306 (2003). The elements of knowledge and possession are factual questions to be determined by the trier of fact. *Id.* The defendant's possession of the controlled substance may be actual or constructive. *Id.* Actual possession occurs when the defendant exercises immediate and exclusive dominion or control over the illicit material. *People v. Dismuke*, 2013 IL App (2d) 120925, ¶ 16. It does not require that the defendant be touching the material, but he must have "present personal dominion over it" (*Eghan*, 344 Ill. App. 3d at 307), such as by concealing or trying to dispose of it (*Dismuke*, 2013 IL App (2d) 120925, ¶ 16). In contrast, constructive possession occurs when the defendant does not have present personal dominion over the narcotics but has the intent and capability to maintain control and dominion over them. *People v. Johnson*, 2013 IL App (4th) 120162, ¶ 24. Evidence establishing constructive possession is typically circumstantial. *Id.*

¶ 30 Defendant cites *People v. Day*, 51 Ill. App. 3d 916 (1977), and *People v. Gore*, 115 Ill. App. 3d 1054 (1983). In *Day*, the defendant was the owner and driver of a car. He was seated next to two

front seat passengers, and there were four back seat passengers. A grocery bag containing 450 grams of cannabis was found on the floor between the legs of the passenger next to the defendant. *Day*, 51 Ill. App. 3d at 917. There was also 10.4 grams of cannabis in the glove compartment; one unsmoked marijuana cigarette between a back seat and backrest, and some partially smoked marijuana cigarettes in the front ashtray. *Id.* Prior to trial, the indictments against the other six passengers were dismissed. *Id.* The trial court found the defendant guilty of possession of the marijuana in the bag on the floor and of the marijuana cigarettes. *Id.* at 918. On appeal, the appellate court agreed with the defendant that there was insufficient evidence that he actually exercised control over the cannabis found in the bag on the floor and the marijuana cigarette found in the back seat. The court stated that the defendant's status as the owner-driver of the vehicle did not put him in possession of everything within the passenger area when there were passengers present who could have been the ones possessing the contraband. *Id.* The trial court also found the evidence regarding the marijuana cigarettes in the front ash tray insufficient, as there was no evidence that the items were actually marijuana. *Id.*

¶ 31 In *Gore*, the defendant was the driver of a vehicle he borrowed. *Gore*, 115 Ill. App. 3d at 1056. A bag containing cannabis was found in a brown paper bag under the right front seat, which was occupied by two passengers. *Id.* at 1057. The bag was in a location where it was not visible to the driver. The appellate court held that the defendant's possession of the drugs was not established beyond a reasonable doubt, because there was no evidence that the defendant was in exclusive control of the area under the passenger seat, and all of the car's occupants denied knowledge of the bag. The court stated that, therefore, any one of them may have been responsible. *Id.* at 1058.

¶ 32 Defendant argues that here, the State failed to prove constructive possession because he did not own the car, and the drugs were found in close proximity to his passenger, Gray.

¶ 33 The State cites *People v. Kelly*, 361 Ill. App. 3d 515 (2005), in which the appellate court affirmed the defendant's conviction of unlawful possession of cannabis. The defendant had admitted to the police that just before they arrived, he had rolled a blunt using cannabis found in a backpack in the living room of a house where the defendant was present. *Id.* at 518-19. The appellate court stated that although the defendant's fingerprints were not found on the bag, there was sufficient evidence of his guilt because the "evidence indicated that defendant, at least temporarily, had physical and intentional control and dominion over the cannabis and had not attempted to abandon the bag to the exclusion of someone else's control." *Id.* at 521.

¶ 34 Viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence that defendant possessed the cocaine. The trial court found that the evidence showed that defendant had purchased or was in the process of purchasing the car. This finding is not against the manifest weight of the evidence (see *People v. Wheat*, 383 Ill. App. 3d 234, 238 (2008) (factual findings generally reviewed under the manifest-weight-of-the-evidence standard)), as Gray testified that defendant told her that he had recently purchased the car, and Officer Jones testified that at one point, defendant said that he was in the process of purchasing it. Of course, as *Day* and *Gore* show, defendant's status as the owner or driver alone is insufficient to constitute constructive possession. See also *People v. Gumila*, 2012 IL App (2d) 110761, ¶ 41 (simple presence in the contraband's vicinity does not establish constructive possession). Still, "[m]ere access by other individuals is insufficient to defeat a charge of constructive possession." *People v. Denton*, 264 Ill. App. 3d 793, 798 (1994). Moreover, unlike *Day* and *Gore*, defendant was found

with marijuana and $174.89 in cash on his person, and there was a small amount of cocaine located in the driver's side door. All of these factors indicated some connection to drugs. *Cf. People v. Ellison*, 2013 IL App (1st) 101261, ¶ 27 (lack of any cash on the defendant was one indication that he did not intend to deliver drugs). Much more significantly, Gray testified that defendant asked whether "the bag" was "still there" before the police pulled it out of the car, which shows both knowledge and concern regarding the bag and its contents.[1] In other words, Gray's testimony provided sufficient evidence of defendant's constructive possession of the bag, in that it showed defendant's intent and capability to maintain control and dominion over the bag and the drugs inside. See *People v. Harden*, 2011 IL App (1st) 092309, ¶ 27 (evidence that the defendant was aware of and exercised control over drugs can establish constructive possession).

¶ 35 B. Gray's Police Statement

¶ 36 Defendant next argues that the trial court erred in admitting Gray's statement as substantive evidence under section 115-10.1 of the Code.

¶ 37 "The trier of fact may consider a prior inconsistent statement introduced as substantive evidence under section 115-10.1 the same as direct testimony by that witness." *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 23. To be admissible under section 115-10.1, the statement must be inconsistent with testimony at trial; the witness must be subject to cross-examination regarding the statement; and, as relevant here, the statement must describe an event of which the witness has personal knowledge and (1) the statement must have been written or signed by the witness, or (2)

[1]In separate arguments, defendant contests Gray's credibility and the trial court's alleged admission of her police statement as substantive evidence. We address those issues later in the disposition.

the witness acknowledges under oath making the statement, or (3) the statement was electronically recorded. 725 ILCS 5/115-10.1 (West 2008).

¶ 38 Defendant did not contest the admission of Gray's statement in his posttrial motion, thereby forfeiting the issue for review.[2] See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (to preserve an issue for review, the defendant must object at trial and raise the issue in a written posttrial motion). Further, although the trial court stated that Gray's statement to the police could be properly considered as substantive evidence under section 115-10.1, it also stated that it was "not necessarily conceding her statement" as substantive evidence. The trial court stated that Gray's written statement to the police was consistent with her trial testimony that defendant asked about the bag before the police found it, leading the trial court to the conclusion that constructive possession was proven beyond a reasonable doubt. Accordingly, defendant's argument about the statement's consideration as substantive evidence is misplaced.

¶ 39 Even if the trial court considered the statement as substantive evidence, we find no error. Defendant argues that his conviction is not within the enumerated offenses listed in section 115-10.1, but section 115-10.1 applies to "all criminal cases." 725 ILCS 5/115-10.1 (West 2008). Defendant's confusion probably arises from the fact that he attaches section 115-10 (725 ILCS 5/115-10 (West 2008)) to his brief, which is an unrelated section. Defendant also points out that Gray repeatedly denied telling the police that defendant asked about the bag while they were still in the car. However, while a statement may be admitted if a witness acknowledges making it, section 115-10.1

[2]Defense counsel argued in the posttrial motion that the trial court improperly admitted the exhibits after the State rested, but he did not argue in the motion that Gray's statement was improperly admitted as substantive evidence under section 115-10.1.

is written in the disjunctive such that a statement may be admitted if it is proven that the witness signed the statement. 725 ILCS 5/115-10.1(c)(2)(A) (West 2008). Here, Gray admitted signing the statement, and Deputy Jones also testified that Gray signed the statement. As such, defendant's argument is without merit.

¶ 40 C. Gray's Credibility

¶ 41 In defendant's third argument, he restates his position that Gray's prior inconsistent statement should not have been considered as substantive evidence. Defendant argues that it could only have been used as impeaching evidence to discredit Gray. We have already discussed the statement's admission under section 115-10.1 and do not address that issue further.

¶ 42 Defendant also seems to challenge Gray's credibility as a witness. As stated, it is the trier of fact's responsibility to assess witnesses' credibility, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *Sutherland*, 223 Ill. 2d at 242. While Gray's testimony at trial that defendant asked her about the bag after they had exited the car conflicted with her signed statement that he asked her about the bag while they were still in the car, Gray offered an explanation for the difference by testifying that the officer must have written her narrative incorrectly. More importantly, Gray was almost entirely consistent in her assertion that defendant asked the question before the police found the bag. It is this finding that led the trial court to conclude that defendant constructively possessed the drugs. If "the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). Here, given Gray's consistent position that defendant asked about the bag before the police located it, a position that remained in spite of her continued

friendship with defendant as shown through her visits to him in jail, a fact finder could reasonably accept her testimony as true beyond a reasonable doubt.

¶ 43 D. Ineffective Assistance of Counsel

¶ 44 Defendant next argues that defense counsel was ineffective in not objecting to the admissibility of exhibits before they were admitted into evidence on April 14, 2010.

¶ 45 To prevail on a claim of ineffective assistance of counsel, a defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Albanese*, 104 Ill. 2d 504, 526 (1984). The defendant must first establish that, despite the strong presumption that counsel acted competently and that the challenged action was the product of sound trial strategy, counsel's representation fell below an objective standard of competence under prevailing professional norms, to the extent that he or she was not functioning as the counsel guaranteed by the sixth amendment. *People v. Manning*, 227 Ill. 2d 403, 416 (2008). Second, the defendant must establish prejudice by showing a reasonable probability that the proceeding would have resulted differently had counsel's representation not been deficient. *People v. Houston*, 229 Ill. 2d 1, 11 (2008).

¶ 46 Here, defendant cannot satisfy either prong of the *Strickland* test. Regarding the first prong, defendant does not explain why he believes the exhibits were improperly admitted into evidence, so we have no basis to conclude that counsel was ineffective for not objecting to their admission. As for the second prong of the *Strickland* test, there is no reasonable probability that the result of the trial would have differed if the exhibits were excluded, because the exhibits were essentially cumulative of the in-court testimony and stipulation. Accordingly, defendant's argument fails.

¶ 47 E. Use of Criminal Code Book

¶ 48 Last, defendant argues that the trial court violated his right to due process by allowing the prosecutor to look at its copy of the criminal code.

¶ 49 In the course of discussing whether Gray's prior statement was admissible as substantive evidence under section 115-10.1, the trial court asked the prosecutor to look at that statute. The prosecutor did not have a copy of the statute in front of him, and the trial court offered him its copy of the criminal code. The prosecutor read the statute out loud and argued that the statement fell within its requirements. The prosecutor then asked defense counsel if he wanted to see the statute. Defense counsel said that he had already seen it, and defense counsel proceeded to argue that the statement was not admissible.

¶ 50 Defendant cites *People v. McDaniels*, 144 Ill. App. 3d 459 (1986), and *People v. Sprinkle*, 27 Ill. 2d 398 (1963). In *McDaniels*, the appellate court held that the trial court committed reversible error in stating, while the first witness was being cross-examined, that the defense seemed to be making a " 'pretty ridiculous claim of self-defense.' " *McDaniels*, 144 Ill. App. 3d at 462. The appellate court stated that the trial court had wrongly prejudged the validity of the defense theory before hearing the totality of the evidence. *Id.* In *Sprinkle*, our supreme court held that the trial court abused its discretion in its questioning of the witnesses, which may have improperly influenced the jury. *Id.* at 401-02.

¶ 51 Unlike the actions taken by the trial courts in *McDaniels* and *Sprinkle*, which prejudiced the defense, here the trial court simply allowed the prosecutor to look at a statute in a book to facilitate discussion among the parties about whether Gray's prior statement to the police could be admitted as substantive evidence. This was an entirely neutral action. Indeed, the prosecutor also asked defense counsel if he wanted to look at the statute. The trial court committed no error here.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm the judgment of the Winnebago County circuit court.

¶ 54 Affirmed.