

unlawful possession of anhydrous ammonia with the intent to manufacture methamphetamine, unlawful possession of firearm ammunition by a felon, and unlawful possession of methamphetamine. The methamphetamine-manufacturing operation took place in a shed on Jeffrey Jostes's property. The defendant filed a motion to sever the illegal possession of firearm ammunition by a felon charge from the other charges. The motion was granted.

¶ 5 Mr. Jostes testified that on September 8, 2009, on his way to work, he was pulled over by Deputy Eller. Because his license had been revoked, his car was searched. The police found methamphetamine and drug paraphernalia.

¶ 6 Curt Eller, a deputy sheriff with Montgomery County, testified that on September 8, 2009, he stopped Mr. Jostes and searched his vehicle. He found some foilies, a small bag of methamphetamine, and a cooler containing a white ink pen tube with suspected methamphetamine residue in it. He testified that pen tubes are commonly used to ingest methamphetamine. Mr. Jostes was arrested and brought to the sheriff's office, charged, and lodged in the jail.

¶ 7 Deputy Eller testified that later that morning he went to Mr. Jostes's residence because the sheriff's office had received information that methamphetamine was being manufactured on the property. After obtaining a search warrant, Deputy Eller, Investigator Furlong, and Special Agent Patterson searched a shed on the property. Upon entering the shed they observed materials used to manufacture methamphetamine.

¶ 8 Special Agent Robert Patterson testified that he is part of the Methamphetamine Response Team with the Illinois State Police and that on September 8, 2009, he helped the Montgomery County sheriff's office with a methamphetamine laboratory found in a large shed at the rural Nokomis residence of Jeffrey Jostes. Agent Patterson testified that inside the shed was a makeshift tent containing Coleman fuels, funnels, and other items that

indicated there was a possible methamphetamine laboratory there. He also found pitchers, funnels, coffee filters, Coleman fuel cans, rubber gloves, and paper towels. Inside the shed Agent Patterson found a refrigerator containing a 100-pound propane tank with a modified valve on top. He stated that methamphetamine cookers modify the tanks to get anhydrous ammonia in and out of it more easily. He used the Dregger test to determine that the tank contained anhydrous ammonia.

¶ 9 Agent Patterson testified that they found a large wooden box with a Masterlock padlock on it in the shed. Another agent pried the hinges off the box and opened it. Several propane tanks with modified valves, muriatic acid, and hoses were found inside the box. Agent Patterson performed Dregger tests on the tanks inside the box and they tested positive for anhydrous ammonia. Agent Patterson found a propane torch in the shed, and he said that a torch is usually used to dry out methamphetamine.

¶ 10 Agent Patterson described how methamphetamine is made. He stated that to make their product, methamphetamine cookers use anhydrous ammonia, lithium metals, acid, salts, lyes, pitchers, coffee filters, propane tanks with modified valves, rubber tubing, soda bottles, scales, baggies, and organic solvents such as ether, Coleman fuels, or acetones. Agent Patterson testified that based on all the items found in the shed, it was his opinion that at least one methamphetamine cook had taken place there.

¶ 11 Mr. Jostes testified that when his shed was searched he thought the police would find methamphetamine-manufacturing materials in a wooden box with a padlock because he had given the defendant permission to make methamphetamine in his shed in return for a portion of the product. He said he did not have a key to the padlock. He stated that the arrangement with the defendant had been in place for nine months to one year prior to September 2009. According to Mr. Jostes, the defendant generally cooked methamphetamine late at night and would leave Mr. Jostes's cut of the finished product for him in the shed. Mr. Jostes stated

that the methamphetamine found in his car came from the defendant. Mr. Jostes testified that he does not know how to manufacture methamphetamine and denied ever helping the defendant make it.

¶ 12 Agent Patterson testified that, in a burn pile near the shed, he found burnt battery casings consistent with dismantling a lithium battery to gain the lithium. Investigator Furlong testified that the burn pile also contained an orange plastic cap with a hose through it indicative of a hydro generator that is used in the manufacture of methamphetamine.

¶ 13 Agent Patterson testified that he searched Mr. Jostes's house and found scales, some finished methamphetamine, and plastic baggies.

¶ 14 Kimberly Black testified that she resided with her boyfriend, Jeffrey Jostes, at his residence in Nokomis and that she was living there on September 8, 2009. She testified that in September 2009, she used methamphetamine every other day or every day and that she got the methamphetamine from the defendant, who cooked it in the shed at the residence where she lived. She stated that the defendant had cooked methamphetamine in the shed for about one year prior to September 2009, and that he made it approximately every other day or every couple of days. Ms. Black testified that he generally cooked the methamphetamine at night. She denied knowing how to manufacture methamphetamine.

¶ 15 Ms. Black was not at the residence at the time of the search, and Deputy Eller stated that he contacted her two to three days later. He said, at that time, she came to the sheriff's office and he spoke to her in reference to the items found. She denied any involvement and indicated that she wished to speak to an attorney. She was arrested for possession of methamphetamine.

¶ 16 On September 16, 2009, Deputy Eller spoke with Mr. Jostes and he gave a written statement. Based on Mr. Jostes's statement, Deputy Eller applied for a search warrant of the defendant's person, his vehicle, and his residence including the garage and premises.

¶ 17 On September 18, 2009, Deputy Eller contacted the defendant at his place of employment, advised him of the search warrant, and searched his person. His vehicle was also searched and a key was located that fit the padlock to the wooden box found in the shed. The defendant was placed under arrest and taken to jail.

¶ 18 Deputy Eller went to the defendant's residence. He stated that to his knowledge, the defendant was the sole resident of the property. During the search of the defendant's residence, he found a foily with some burnt residue on it in a small cabinet in the dining room. Deputy Eller testified that based on his observations, he believed that the foily contained burnt methamphetamine residue. He found some orange caps in a baggie lying on the floor. Deputy Eller and Investigator Furlong testified that the caps were the same type of cap found in a burn pile containing battery casings at Mr. Jostes's residence. Deputy Eller also found a brochure about the Williamson County Pilot Program on the defendant's stairway. Investigator Furlong described the Williamson County Pilot Program as an Illinois methamphetamine precursor tracking program. The pilot program mandated pharmacists within Williamson and five other counties electronically submit the purchase of pseudoephedrine for the purpose of tracking methamphetamine precursor purchases to a central database. Pseudoephedrine is the main ingredient in methamphetamine and is the precursor for its production. The brochure sets out the legal limit of ephedrine a person can purchase in a 30-day period.

¶ 19 Rick Furlong testified that he is an investigator with the Montgomery County sheriff's office and the evidence custodian. He identified a piece of foil with residue on it. He stated that he was present at the defendant's residence when it was found. He stated that it is what is commonly referred to as a "foily." Methamphetamine users put powder in the foily, heat it with a lighter, and inhale it. He testified that, based on his training, when he saw the burnt substance on the foil, he believed it was burnt methamphetamine.

¶ 20 Hope Erwin testified that she is a forensic drug chemist with the Illinois State Police Division of Forensic Services in Springfield. She stated that she received aluminum foil with residue on it. She washed the foil with methanol and divided the solvent with the substance that was washed off the foil into two batches. She sealed one batch for possible further testing and she performed tests on the other batch. Ms. Erwin performed two color tests on the substance, which came back positive for the presence of methamphetamine. She also performed the gas chromatograph mass spectrometer analytical test on the substance, and it identified the chemical structure of the substance as methamphetamine. There was not enough of the substance to perform the infrared spectrophotometer test. Ms. Erwin testified that to identify a substance the Illinois State Police Forensic Services Division requires two positive tests, and the substance on the foil tested positive for methamphetamine in two different tests.

¶ 21 Mr. Jostes told the jury that he was in the Department of Corrections serving a prison sentence for participation in manufacturing methamphetamine related to the events that transpired in September 2009 involving the defendant. He testified that he pled guilty to the charge on January 13, 2010.

¶ 22 Mr. Jostes said that he did not originally tell the police what was going on in an effort to protect himself. Mr. Jostes testified that he was interviewed by Investigator Furlong and was told that if he wanted things to go better for him, he needed to provide the police with information. Mr. Jostes stated that those statements made him feel like he "better start telling the truth." Deputy Eller testified that he and Investigator Furlong told Mr. Jostes that if he gave them information "it wasn't going to hurt him anymore because he was already up to his eyebrows in it basically." He stated that they did not tell Mr. Jostes that things would go better for him if he talked, but said that it could not hurt him at that point because he was already involved. Mr. Jostes stated that he pled guilty to participation in manufacturing

methamphetamine because he provided the place to make it.

¶ 23 Ms. Black testified that she pled guilty to possession of methamphetamine. She also said that she was interviewed by the police twice, but that she did not tell them everything she knew because she was scared.

¶ 24 On cross-examination, Ms. Black was asked if she gave a taped interview to the police. She stated that she gave them one statement and that she talked to them on the day she was arrested. The following questioning took place:

"MR. McGRADY [Defense Attorney]: But then on the 17th you gave a taped interview and then you basically in that interview to sum up your testimony through the entire interview you said I don't know anything about anything. Isn't that an accurate assessment of what you told the police?

MS. BLACK: Not on the taped one I don't think, but on the taped one I told them basically what I knew.

MR. McGRADY: Which was nothing, that you didn't basically say I knew nothing?

MS. BLACK: No. No, I told them it was [the defendant] in the shed.

MR. McGRADY: Are you telling me more now than you told then?

MS. BLACK: No. Other than I—I had bought pills but no.

MR. McGRADY: All right. I think you told the police, didn't you, that you never saw anybody doing anything out there in the shed?

MS. BLACK: That's been a year ago. I mean I told them what I knew.

MR. McGRADY: Did—who interviewed you with the police? Who was present during that?

MS. BLACK: Eller and is it Furlong?

MR. McGRADY: Furlong? Did Furlong tell you that things would go well for

you if you gave them a lot of information?

MS. BLACK: No.

MR. McGRADY: But your testimony here is different from what you did on your interview, your taped interview; is that correct?

MS. BLACK: I don't remember what—I mean, no, I don't think so."

¶ 25 Deputy Eller was asked if he offered Mr. Jostes or Ms. Black any deal in exchange for them providing him with information. He testified as follows:

"MR. MATOUSH: And let me rephrase that with Miss Black and Mr. Jostes, did you ask the State to dismiss any charges on their behalf?

DEPUTY ELLER: No.

MR. MATOUSH: And did you offer anything in exchange for their speaking with you on the dates that they chose to speak with you?

DEPUTY ELLER: No."

¶ 26 The jury found the defendant guilty in the participation of the manufacture of a substance containing methamphetamine, of unlawful possession of anhydrous ammonia with the intent to manufacture methamphetamine, and of unlawful possession of methamphetamine.

¶ 27 The defendant filed a posttrial motion on October 27, 2010, alleging that the State failed to prove his guilt beyond a reasonable doubt. He also filed a motion requesting that he be granted probation. On November 1, 2010, he filed an amended posttrial motion alleging that the jury verdict was contrary to the law and evidence and that the State failed to prove he was guilty beyond a reasonable doubt. Following a hearing, the posttrial motions were denied. The defendant was sentenced to two 10-year terms and one 3-year term of incarceration in the Department of Corrections, the sentences to run concurrently.

¶ 28 The defendant filed a motion for reduction of sentence, which was denied. The

defendant filed a timely notice of appeal.

¶ 29

ANALYSIS

¶ 30 The defendant argues that the State failed to prove him guilty beyond a reasonable doubt of possession of methamphetamine because the amount was so small and in such a hidden place that he was not proved to have known about it. The due process clause of the fourteenth amendment to the United States Constitution requires that for a defendant to be convicted in a state court, there must be proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004). In addressing a defendant's challenge to the sufficiency of the evidence, a reviewing court determines " '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.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies in all criminal cases regardless of the nature of the evidence. *Id.* at 279. Accordingly, to reverse a conviction, the evidence must be so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007). The trier of fact is in a superior position to determine and weigh the credibility of witnesses, observe their demeanor, and resolve conflicts in their testimony. *People v. Jordan*, 218 Ill. 2d 255, 269 (2006).

¶ 31 The defendant was charged with knowingly possessing methamphetamine or a substance containing methamphetamine in violation of section 60(a) of the Methamphetamine Control and Community Protection Act (720 ILCS 646/60(a) (West 2008)). A person acts knowingly when he is consciously aware that circumstances exist or is consciously aware of the substantial probability that the fact exists. 720 ILCS 5/4-5 (West 2008). Possession may be actual or constructive. *People v. Scott*, 2012 IL App (4th) 100304,

¶ 19. "If the controlled substance is found on the premises rather than on the defendant, the State can establish constructive possession if it can prove the defendant had knowledge and control over the premises by virtue of his connection to the premises." *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 14. "Constructive possession of contraband is often found where it is located on premises over which the defendant has control, such as the defendant's home." *Id.* While constructive possession may be inferred from the facts, it is often established entirely by circumstantial evidence. *Id.* ¶ 15. "Where possession has been shown, an inference of guilty knowledge can be drawn from the surrounding facts and circumstances." *People v. Schmalz*, 194 Ill. 2d 75, 82 (2000).

¶ 32 In the instant case, Deputy Eller testified that he found a piece of foil with burnt residue on it in a small cabinet in the defendant's dining room. Investigator Furlong testified that he was present when the piece of foil was found and stated that it was a "foily." Both Investigator Furlong and Deputy Eller stated that, based on their training, when they saw the foily they believed the substance on the foil was burnt methamphetamine. Ms. Erwin testified that she tested the substance on the foily and concluded it was methamphetamine. Deputy Eller gave unrebutted testimony that the defendant was the sole occupant of the residence. "Habitation in or rental of the premises where narcotics are discovered is sufficient evidence of control to constitute constructive possession." *People v. Cunningham*, 309 Ill. App. 3d 824, 828 (1999). Because the foily containing methamphetamine residue was found in a cabinet inside the defendant's home, he exercised constructive possession of the methamphetamine and there is an inference of guilty knowledge. *Schmalz*, 194 Ill. 2d at 82. After viewing the evidence in the light most favorable to the State, there was sufficient evidence for a rational jury to conclude that the defendant was guilty beyond a reasonable doubt of knowingly possessing methamphetamine or a substance containing methamphetamine.

¶ 33 The defendant next argues that he received ineffective assistance of counsel. Ineffective assistance of counsel claims are governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by the Illinois Supreme Court in *People v. Albanese*, 104 Ill. 2d 504 (1984). *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. "More specifically, the defendant must demonstrate that counsel's performance was objectively unreasonable under prevailing professional norms and that there is a 'reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Petrenko*, 237 Ill. 2d at 496-97 (quoting *Strickland*, 466 U.S. at 694). To establish deficiency, the defendant must overcome a strong presumption that the challenged action or inaction was the product of sound trial strategy. *People v. Evans*, 186 Ill. 2d 83, 93 (1999). To establish prejudice, the defendant must show that counsel's deficient performance rendered the result of the trial unreliable or the proceedings fundamentally unfair. *Id.* A defendant must satisfy both prongs of the *Strickland* test. *Id.* at 94. However, if the ineffective-assistance claim can be disposed of on the ground of lack of sufficient prejudice, a court need not decide whether counsel's performance was deficient. *Id.*

¶ 34 The defendant asserts that his attorney failed to use easily accessible, public information to impeach Mr. Jostes about a possible plea deal in exchange for his testimony regarding the defendant's involvement in the case. Seven charges were filed against Mr. Jostes in connection with the September 2009 events. Mr. Jostes pled guilty to two charges, participation in methamphetamine manufacturing and unlawful possession of a weapon by a felon. He was sentenced to 5½ years' imprisonment in the Department of Corrections. The defendant asserts that Mr. Jostes provided key evidence that tied him to the

methamphetamine-manufacturing operation in Mr. Jostes's shed. He argues that his attorney's failure to impeach Mr. Jostes with the fact that he only pled guilty to two of the seven counts filed against him amounted to ineffective assistance of counsel. The defendant argues that defense counsel's failure to notify the jurors of the favorable guilty plea deal denied them the ability to determine Mr. Jostes's credibility.

¶ 35 The federal and state constitutions protect the right to cross-examine a witness concerning his biases, prejudices, or ulterior motives. *People v. Boand*, 362 Ill. App. 3d 106, 127 (2005). The exposure of a witness's motivation in testifying is a proper and important function of the constitutional right to cross-examine a witness. *Id.* "Generally, the decision whether or not to cross-examine or impeach a witness is a matter of trial strategy which will not support a claim of ineffective assistance of counsel." *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997). The cross-examination of a particular witness involves the exercise of professional judgment which is entitled to substantial deference from the reviewing court, and a defendant can only prevail on an ineffective assistance of counsel claim by showing that counsel's approach to cross-examination was objectively unreasonable. *Id.* at 326-27.

¶ 36 In the instant case, Mr. Jostes was arrested and charged with the commission of seven crimes. At first he denied involvement. On September 16, 2009, he gave Deputy Eller a statement in which he implicated the defendant. On January 13, 2010, Mr. Jostes pled guilty to two of the seven charges against him. The other charges were dropped. The defendant's trial was on September 29, 2010, eight months after Mr. Jostes pled guilty.

¶ 37 There is nothing in the record to indicate that Mr. Jostes's plea deal was made in consideration of, or exchange for, his testimony against the defendant. He pled guilty long before the defendant's trial, so it is unclear what benefit he would receive for testifying against the defendant eight months after he entered a negotiated plea. Mr. Jostes's only possible motive could have been a promise or a belief that he would get a favorable plea deal

if he agreed in advance to cooperate against the defendant. There is nothing in the record to indicate that such a promise had been made or that Mr. Jostes had such a belief. Deputy Eller testified that he did not ask the State to dismiss any charges against Mr. Jostes and he did not offer Mr. Jostes any deals in exchange for providing information. Defense counsel cross-examined Mr. Jostes about possible ulterior motives for providing information to police about the defendant's involvement in the methamphetamine-manufacturing operation in his shed. On cross-examination the following colloquy took place:

"MR. McGRADY [Defense Counsel]: Do you recall Detective Furlong saying to you on more than one occasion during that thing, if you want things to go well or for better for you you better start giving us some disclosure? Do you remember that?

MR. JOSTES: Yes, sir.

MR. McGRADY: Now how does that sound to you when they're saying, hey, tell us everything, tell us something, we want to know something?

MR. JOSTES: It sounds like I better start telling the truth.

MR. McGRADY: Well it sounds like you still wanted to protect yourself. You then start pointing the finger at [defendant] here; isn't that correct? That's when you start doing it?

MR. JOSTES: I was telling the truth

MR. McGRADY: Were you protecting yourself?

MR. JOSTES: I'm spending five and a half years in prison."

¶ 38 Defense counsel questioned Deputy Eller about whether he was present when Investigator Furlong told Mr. Jostes that things would go better for him if he provided the police with information. Deputy Eller stated that the only thing they told Mr. Jostes was that "it wasn't going to hurt him anymore because he was already up to his eyebrows in it basically." He denied offering Mr. Jostes anything in exchange for information. Defense

counsel asked why Mr. Jostes would admit anything and Deputy Eller said he did not know and that he and Investigator Furlong told him "it couldn't hurt him at that point because he was already involved in it." Nothing in the record indicates that Mr. Jostes expected to negotiate a plea during his interview with Investigator Furlong and Deputy Eller. Every guilty person who voluntarily speaks to the police probably hopes to benefit from the conversation, either by convincing the police that he did not commit the crime or by obtaining leniency for his cooperation. *People v. Beler*, 327 Ill. App. 3d 829, 834 (2002).

¶ 39 Defense counsel's approach to cross-examination was not objectively unreasonable. There was no evidence in the record that Mr. Jostes received a plea deal in exchange for his testimony regarding the defendant's involvement in the case. Defense counsel questioned Mr. Jostes and Deputy Eller about any possible deal and about any ulterior motives Mr. Jostes had for providing information. His failure to alert the jury that Mr. Jostes had charges dropped in exchange for his negotiated plea was not objectively unreasonable under prevailing professional norms.

¶ 40 The defendant argues that his defense counsel provided ineffective assistance of counsel by failing to object to the use of investigative reports that were prior consistent statements. Statements made prior to trial are inadmissible for the purpose of corroborating trial testimony. *People v. McWhite*, 399 Ill. App. 3d 637, 641 (2010). The statements are generally inadmissible because the trier of fact is likely to unfairly enhance a witness's credibility simply because the statement has been repeated. *Id.* Ms. Erwin submitted a lab report indicating that the sample she tested from the foily contained methamphetamine. She testified that the residue on the foily tested positive for methamphetamine. The defendant argues that the admission of the report was an inadmissible prior consistent statement of Ms. Erwin, was cumulative of her trial testimony, and, as an unnecessary repetition of the facts, highlighted the evidence.

¶ 41 Assuming that the lab report was inadmissible, its introduction did not change the outcome of the case. Under *Strickland*, the defendant must show that there is a reasonable probability that defense counsel's errors changed the outcome of the case. *Strickland*, 466 U.S. at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Id.* In weighing the impact of counsel's error, the reviewing court must not view the improper evidence in isolation, but should consider the totality of the evidence before the fact finder and must look to the ramifications the improper evidence might have had on the fact finder's overall picture of events. *People v. McCarter*, 385 Ill. App. 3d 919, 936 (2008).

¶ 42 In this case, taking into account the totality of the evidence the State presented to the jury, we cannot find that the admission of the lab report was sufficient to undermine our confidence in the jury's verdict. Mr. Jostes and Ms. Black testified that the defendant manufactured methamphetamine in the shed on their property. They testified that they, at times, consumed methamphetamine with him. Deputy Eller testified that he found a foily with burnt residue on it in a cabinet in the defendant's dining room. He stated that, based on his experience, he believed the foily contained burnt methamphetamine residue. Investigator Furlong testified that he was at the defendant's house when the foily was found. He stated that, based on his training, he believed the substance on the foily was burnt methamphetamine residue. Ms. Erwin testified that she performed two tests on the residue and both were positive for methamphetamine. Even if admission of the report was erroneous as a prior consistent statement, it is not reasonably likely that the jury would have acquitted the defendant of the possession charge absent the report's admission.

¶ 43 The defendant argues that his counsel was ineffective for failing to confront Agent Patterson when he incorrectly characterized methamphetamine as a narcotic. He asserts that because methamphetamine is not a narcotic, when Agent Patterson referred to it as such, it

made methamphetamine sound more dangerous and therefore more highly regulated than it actually is.

¶44 Agent Patterson described methamphetamine as "a narcotic, illegal narcotic." He only referred to methamphetamine as a narcotic one time. There is no reasonable probability that defense counsel's failure to confront Agent Patterson about his incorrect characterization of methamphetamine as a narcotic changed the outcome of the case. It is common knowledge that methamphetamine is a dangerous drug. The Illinois legislature enacted the Methamphetamine Control and Community Protection Act because methamphetamine is fundamentally different from other drugs regulated by the Illinois Controlled Substances Act, because it is used, distributed, and manufactured in Illinois, and because the manufacture of methamphetamine is extremely dangerous. 720 ILCS 646/5 (West 2008). The purpose of the Methamphetamine Control and Community Protection Act is to "reduce the damage that the manufacture, distribution, and use of methamphetamine are inflicting on children, families, communities, businesses, the economy, and the environment in Illinois." 720 ILCS 646/5 (West 2008). It would be hard for Agent Patterson's reference to methamphetamine as a narcotic to make it sound more dangerous and highly regulated than it is given that the Illinois legislature enacted a special act to deal with methamphetamine. Defense counsel's failure to confront Agent Patterson with his incorrect characterization of methamphetamine as a narcotic did not prejudice the defendant.

¶45 The defendant argues that defense counsel was ineffective for failing to impeach Ms. Black with prior inconsistent statements. Ms. Black told the police on September 12, 2009, that she had no knowledge of methamphetamine being manufactured in the shed. The defendant asserts that if Ms. Black had been properly confronted with this prior statement and admitted she made it, it would have been substantive evidence to contradict her claim at trial that the defendant had been manufacturing methamphetamine there. If she denied

giving that statement after being confronted with it, competent counsel could have called Deputy Eller and Investigator Furlong to confirm that she had given a prior inconsistent statement. He argues that either way Ms. Black would have been impeached and her unreliability would have been exposed to the jury.

¶ 46 Generally, a proper foundation must be laid before a witness may be impeached by her prior inconsistent statements. *People v. Henry*, 47 Ill. 2d 312, 321 (1970). "This is typically done by directing the attention of the witness to the time, place, to whom made, other circumstances of the inconsistent statement, and the substance of it." *Id.* The purpose of requiring a proper foundation is to protect the witness against unfair surprise and to provide an opportunity for her to explain the statement with which she is confronted. *Id.* If a witness denies making a prior statement inconsistent with her trial testimony, it is incumbent upon the cross-examiner to offer evidence that such a statement was in fact made. *People v. Moore*, 54 Ill. 2d 33, 37-38 (1973).

¶ 47 Ms. Black testified that she had been interviewed twice by the authorities. She acknowledged that she had not been completely forthcoming during those interviews, but stated that her trial testimony was a truthful recitation of what she knew. Defense counsel asked her if during her taped interview she told Deputy Eller and Investigator Furlong that she knew nothing about the methamphetamine-manufacturing operation. She replied, "Not on the taped one I don't think, but on the taped one I told them basically what I knew." She was then asked if her testimony was different from what she said in her taped interview. She replied that she did not remember, but she did not think so. In an incident/offense report dated September 12, 2009, Deputy Eller wrote that he and Investigator Furlong spoke to Ms. Black about her involvement/participation in the methamphetamine-manufacturing case and she advised them that "she didn't know anything about any methamphetamine being manufactured in the machine shed." In an incident/offense report completed by Deputy Eller

regarding the videotaped interview of Ms. Black on September 17, 2009, he wrote that she informed him and Investigator Furlong that the defendant cooked methamphetamine in the machine shed and that Mr. Jostes received methamphetamine in return for allowing the defendant to use the shed to make it.

¶ 48 Defense counsel did not offer extrinsic evidence of the statement where Ms. Black stated she knew nothing about the methamphetamine-manufacturing operation. However, his failure to lay a proper foundation and introduce extrinsic evidence of Ms. Black's prior inconsistent statement did not prejudice the defendant. If the prior inconsistent statement had been properly introduced, it would have confirmed what Ms. Black already admitted, that she was not entirely forthcoming during her interviews with the police. The jury also considered Mr. Jostes's testimony that he let the defendant manufacture methamphetamine in his shed in exchange for a cut of the product, Deputy Eller's testimony that the key to the wooden box containing tanks that tested positive for anhydrous ammonia was found in the defendant's car, Deputy Eller's testimony that he found orange caps at the defendant's house that were similar to an orange cap found in the burn pile outside the shed, and Investigator Furlong's testimony that a brochure about the Williamson County Pilot Program was found in the defendant's home. Defense counsel's failure to properly impeach Ms. Black did not render the result of the trial unreliable or the proceedings fundamentally unfair.

¶ 49 The defendant argues that his counsel was ineffective for failing to impeach Ms. Black with the details of her favorable guilty plea deal. Court records show that on February 3, 2010, Ms. Black pled guilty to possession of methamphetamine and received a two-year term of probation. He argues that this information should have been disclosed to the jury by defense counsel to show Ms. Black's motive in testifying against the defendant.

¶ 50 Defense counsel did not cross-examine Ms. Black about any possible motive for testifying against the defendant or for providing the police with information about the

defendant's involvement in the methamphetamine-manufacturing operation. The decision whether to cross-examine or impeach a witness is generally a matter of trial strategy which will not support a claim of ineffective assistance of counsel. *Pecoraro*, 175 Ill. 2d at 326. There is nothing in the record to indicate that Ms. Black's plea deal was made in consideration of, or exchange for, her testimony against the defendant. There is nothing in the record that establishes that Ms. Black had been promised that she would be given a favorable plea deal if she agreed in advance to cooperate by providing information about the defendant. Deputy Eller testified that he did not offer Ms. Black any promises or plea deals. He further testified that he did not ask the State to dismiss any charges on her behalf. Defense counsel's failure to alert the jury that Ms. Black pled guilty to possession of methamphetamine and received two years' probation was not objectively unreasonable under prevailing professional norms.

¶ 51 Finally, the defendant argues that he was denied a fair trial due to prosecutorial misconduct because the State failed to fully disclose the plea deal received by Mr. Jostes. The defendant argues that the State misled the jury by questioning Deputy Eller about whether he reduced Mr. Jostes's bond, dismissed charges against him, or made any deals with him in exchange for his testimony. The defendant asserts that this line of questioning led the jury to believe that Deputy Eller had the power to do those things and that Mr. Jostes received no benefit for providing information about the defendant or for testifying against him.

¶ 52 There is nothing in the record that indicates that Mr. Jostes was promised or received a plea deal for providing information about the defendant or for testifying against him. The State asked Deputy Eller if he promised Mr. Jostes anything in return for information on the defendant. He replied "no." The State also asked him, "[D]id you ask the State to dismiss any charges on [Mr. Jostes and Ms. Black's] behalf?" He replied "no." Guilty people who

voluntarily speak to the police often hope to benefit from the conversation, either by convincing the police of their innocence or by obtaining leniency for their cooperation. *Belser*, 327 Ill. App. 3d at 834. There can be no prosecutorial misconduct for failing to fully disclose a plea deal when there is no evidence in the record of a plea deal.

¶ 53 The defendant argues that "[f]undamental fairness requires that a jury be truthfully informed about all matters going to the credibility of a witness and his motives for testifying known by the prosecutor or an agent of the prosecutor." *People v. Junior*, 349 Ill. App. 3d 286, 290 (2004). In *Junior*, a key witness against the defendant stated that he was testifying because he was subpoenaed and that he was not promised anything in return for his testimony. *Id.* at 291. In fact, the State explained to the trial court at the witness's plea hearing that, in exchange for the State agreeing that any sentencing would be served concurrently as opposed to consecutively, the witness was going to plead to three charges and was going to testify against the defendant. *Id.* at 290. The State allowed the witness's false testimony to go uncorrected. *Id.* at 290. The State also implied during its closing argument that the witness had received no consideration for his testimony. *Id.* at 291. The court found that knowledge on the part of the State that a witness's testimony was not truthful creates an obligation to correct the false testimony. *Id.* at 292. The defendant's conviction was reversed because truthful evidence about the conditions of the witness's plea deal could show that he had a motive to testify falsely. *Id.*

¶ 54 The instant case is distinguishable. There is no evidence in the record that Mr. Jostes was offered a plea deal in exchange for information about the defendant's involvement in the methamphetamine-manufacturing operation or in exchange for his testimony against the defendant. There was no false testimony that the State failed to correct.

¶ 55 The defendant argues that proving a *quid pro quo* benefit for testimony is not required and cites *People v. Flowers*, 371 Ill. App. 3d 326 (2007), in support of this proposition. At

issue in the *Flowers* case was whether the trial court erred in precluding cross-examination of a witness about his possible motive to testify falsely. We do not deny that the federal and state constitutions protect the right to cross-examine a witness concerning his ulterior motives. *Boand*, 362 Ill. App. 3d at 127. However, this is not relevant because in the instant case, defense counsel was not precluded from cross-examining Mr. Jostes about possible bias.

¶ 56 There was no prosecutorial misconduct for failing to fully disclose Mr. Jostes's plea deal where the record contained no evidence of a plea deal. Defense counsel was not ineffective for failing to impeach Mr. Jostes about a possible plea deal in exchange for his testimony in the case. Defense counsel was not objectively unreasonable under prevailing professional norms because there was no evidence that Mr. Jostes received a plea deal and he questioned Mr. Jostes and Deputy Eller about Mr. Jostes's possible ulterior motives. Defense counsel was not ineffective for failing to object to the use of an investigative report that was a prior consistent statement because counsel's conduct did not prejudice the defendant. Defense counsel was not ineffective for failing to confront Agent Patterson about his incorrect characterization of methamphetamine as a narcotic because it did not prejudice the defendant. Defense counsel was not ineffective for failing to impeach Ms. Black with prior inconsistent statements because it did not prejudice the defendant. Defense counsel's failure to impeach Ms. Black with details of her favorable guilty plea deal was not objectively unreasonable under prevailing professional norms where there was no evidence of a plea deal. After viewing the evidence in the light most favorable to the State, there was sufficient evidence for a rational trier of fact to find the defendant guilty beyond a reasonable doubt of possession of methamphetamine.

¶ 57

CONCLUSION

¶ 58 For the foregoing reasons, the judgment of the circuit court of Montgomery County

is affirmed.

¶ 59 Affirmed.