COURT OF APPEALS
DECISION
DATED AND FILED

October 16, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 01-0261-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHARON A. DIXON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELSA C. LAMELAS and CLARE L. FIORENZA, Judges. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

¶1 PER CURIAM. Sharon Dixon appeals from the judgment of conviction entered after a jury convicted her of one count of arson of a building, party to a crime, contrary to WIS. STAT. §§ 943.02(1)(b) and 939.05, and one count of possession of a controlled substance, contrary to WIS. STAT.

§§ 961.16(2)(a)(10) and 941.41(3g)(a)1.[1] Dixon also appeals from the trial court's order denying her motion to suppress and her motion for postconviction relief. Dixon claims that: (1) she was denied her constitutional right to confront the witnesses against her; (2) her trial counsel was ineffective; (3) the search warrant affidavit was insufficient to support a finding of probable cause; and (4) the search warrant did not authorize the seizure of two safes from her residence. We disagree and affirm.

I. BACKGROUND.

¶2 On October 28, 1997, the fire department was called to a burning property at 200 East Washington Street in Milwaukee. The property consisted of a bar called "Fannie's," which occupied the first floor, and an apartment on the second floor. Dixon owned the building and the bar and maintained her residence in the second floor apartment. It took over twenty firefighters to finally extinguish the fire. Detective Jeffrey Fennig, an arson investigator for the Milwaukee police department, immediately began an investigation. Based on his experience and evidence sent to the state crime lab, Detective Fennig concluded that the fire had been set intentionally. At the time of the fire, Dixon was away from the building, having dinner with friends.

¶3 Detective Fennig began interviewing employees and patrons of the bar. These individuals stated that, in the week preceding the fire, Dixon had removed personal property from the bar and her residence and placed them in a storage unit. Detective Fennig also discovered that Dixon was experiencing

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

severe financial problems. Detective Fennig interviewed Dixon, who confirmed that she was experiencing financial difficulties not only with Fannie's, but also with a restaurant she owned named "Mike and Anna's." Dixon admitted that she was presently in a dispute with the I.R.S. over $30,000 in various tax obligations. Dixon also owed the City of Milwaukee approximately $6,000 in unpaid property taxes.

¶4 Pursuant to a search warrant issued on November 20, 1997, the police searched Dixon's residence. They seized assorted papers, mail, and financial records. The police also seized two safes. One of the safes was later found to contain various personal documents and three prescription pill bottles containing 274 morphine tablets. Dixon was arrested and charged with one count of arson, one count of possession of a controlled substance, and one count of possession of explosives.[2] A jury ultimately convicted Dixon on the two remaining counts.

¶5 At trial, the State argued that two witnesses who had testified at the preliminary hearing, Gail Gutjhar and Patricia Johnson, were unavailable. The State requested permission to read their preliminary testimony into the record pursuant to WIS. STAT. §§ 908.04(1) and 908.045(1).[3] Gutjhar, an employee at

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[2] The explosives charge was dismissed after the preliminary hearing.

[3] WISCONSIN STAT. § 908.04 provides:

> **Hearsay exceptions; declarant unavailable; definition of unavailability. (1)** "Unavailability as a witness" includes situations in which the declarant:
>
> (a) Is exempted by ruling of the judge on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or

(continued)

Fannie's, had testified at the preliminary hearing regarding Dixon's financial problems. She testified that Dixon was in a dispute with I.R.S. and that Dixon had stated that she would burn the bar to the ground before letting the I.R.S. take it. Gutjhar also testified that, prior to the fire, Dixon had removed property from her residence above the bar and from the bar itself. Johnson's preliminary testimony established that she had rented a storage unit for Dixon at Dixon's request.

¶6 Dixon argued that these witnesses were not unavailable because the State had failed to make a reasonable attempt to serve them and, therefore, their preliminary testimony was not admissible under WIS. STAT. §§ 908.04(1) and

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> (b) Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the judge to do so; or
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> (c) Testifies to a lack of memory of the subject matter of the declarant's statement; or
>
> (d) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
>
> (e) Is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

WISCONSIN STAT. § 908.045(1) provides:

> **Hearsay exceptions; declarant unavailable.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:
>
> **(1)** FORMER TESTIMONY. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of another proceeding, at the instance of or against a party with an opportunity to develop the testimony by direct, cross-, or redirect examination, with motive and interest similar to those of the party against whom now offered.

908.045(1). The trial court disagreed, determining that the State made reasonable efforts to produce these witnesses, and allowed the admission of their preliminary hearing testimony.

II. ANALYSIS.

A. Confrontation Right

¶7 Generally, the trial court's decision on the admissibility of former testimony is a matter of discretion. ***State v. La Fernier***, 44 Wis. 2d 440, 446, 171 N.W.2d 408 (1969). However, in the present case, where the focus of the claim is on the constitutional right of a defendant to confront unavailable witnesses, the issue is one of constitutional fact. ***State v. Dunlap***, 2000 WI App 251, ¶17, 239 Wis. 2d 423, 620 N.W.2d 398 ("a determination of whether the circuit court's actions violate the defendant's constitutional rights to confrontation and to present a defense is a question of constitutional fact"). "This court has traditionally treated questions of constitutional fact as mixed questions of fact and law, and it has applied a two-step standard when reviewing lower court determinations of constitutional fact." ***State v. Phillips***, 218 Wis. 2d 180, 189, 577 N.W.2d 794 (1998).

> The standard of review by the appellate court of the trial court's findings of evidentiary or historical facts is that those findings will not be upset on appeal unless they are [clearly erroneous]. This standard of review does not apply, however, to the trial court's determination of constitutional questions. Instead, the appellate court independently determines the questions of "constitutional" fact.

State v. Woods, 117 Wis. 2d 701, 715, 345 N.W.2d 457 (1984) (citation omitted). "[T]he principle reason for independent appellate review of matters of

constitutional fact is to provide uniformity in constitutional decision-making." ***Phillips***, 218 Wis. 2d at 194.

¶8 Dixon claims that her right to confront the witnesses against her was denied when the trial court allowed preliminary hearing testimony of Johnson and Gutjhar to be read to the jury. The State responds that they made reasonable attempts to produce these witnesses, and, in the alternative, the State argues that if the admission of the witnesses' former testimony denied Dixon her confrontation right, the error was harmless. Assuming *arguendo* that the State failed to take reasonable efforts to produce these witnesses, we conclude the error was harmless because the testimony was duplicative and Dixon has failed to demonstrate any resulting prejudice.

¶9 The Sixth and Fourteenth Amendments to the United States Constitution and Art I, § 7 of the Wisconsin Constitution assure criminal defendants the right to confront any witnesses against them.[4] The Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him …." Article 1, § 7 of the Wisconsin Constitution similarly provides: "In all criminal prosecutions the accused shall enjoy the right … to meet the witnesses face to face …."

¶10 This right is "an essential and fundamental requirement for a fair trial," ***Sheehan v. State***, 65 Wis. 2d 757, 764, 223 N.W.2d 600 (1974), because it "assur[es] that the trier of fact [has] a satisfactory basis for evaluating the truth of

[4] The confrontation right in the Sixth Amendment of the United States Constitution was made applicable to the states in ***Pointer v. Texas***, 380 U.S. 400 (1965).

the prior statement," ***Dutton v. Evans***, 400 U.S. 74, 89 (1970) (citation omitted). More importantly, the right of cross-examination is "a primary component of the more general right of confrontation." ***State v. Bauer***, 109 Wis. 2d 204, 208 n.3, 325 N.W.2d 857 (1982).

¶11 In ***Bauer***, our supreme court summarized the applicable standards for determining whether hearsay evidence is admissible against a criminal defendant in accord with the right of confrontation:

> The threshold question is whether the evidence fits within a recognized hearsay exception. If not, the evidence must be excluded. If so, the confrontation clause must be considered. There are two requisites to satisfaction of the confrontation right. First, the witness must be unavailable. Second, the evidence must bear some indicia of reliability.

Id. at 215.

¶12 Dixon contends that the State failed to make reasonable efforts to produce these witnesses. First, Dixon argues that even though Johnson resided in Michigan prior to the trial, the State should have attempted to extradite her pursuant to the Uniform Witness Extradition Act.[5] Second, Dixon alleges that the State was not diligent in its efforts to serve Gutjhar, who was apparently evading service, and should have compelled her attendance pursuant to a body attachment.[6] Because we conclude that any error concerning the admission of the preliminary hearing testimonies of Johnson and Gutjhar was harmless, we decline to address

[5] This act is found in WIS. STAT. § 976.02.

[6] WISCONSIN STAT. § 885.11(2) authorizes this procedure.

whether their preliminary hearing testimony was admissible.[7] *See* ***Kelly v. Southern Wisc. Ry. Co.***, 152 Wis. 328, 341, 140 N.W. 60 (1913) (stating that a judgment will not be reversed where it does not appear that, had an erroneous admission of evidence not been made, the result would have been more favorable to the appellant).

¶13 Confrontation Clause violations are subject to harmless error analysis. *See* ***Coy v. Iowa***, 487 U.S. 1012, 1021 (1988); ***State v. Zellmer***, 100 Wis. 2d 136, 150, 301 N.W.2d 209 (1981). WIS. STAT. § 805.18(2) provides:

> **805.18 Mistakes and omissions; harmless error.**
>
> **(2)** No judgment shall be reversed or set aside or new trial granted in any action or proceeding on the ground of … improper admission of evidence … unless … it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment, or to secure a new trial.

¶14 If a trial court has improperly admitted evidence, the harmless error statute "prohibits the court from reversing unless an examination of the entire proceeding reveals that the admission of the evidence has affected the substantial rights of the party seeking reversal." ***State v. Armstrong***, 223 Wis. 2d 331, 368, 588 N.W.2d 606 (1999) (citation omitted). "Under this test, we will reverse only where there is a reasonable possibility that the error contributed to the guilty verdict." ***State v. Doerr***, 229 Wis. 2d 616, 626, 599 N.W.2d 897 (Ct. App. 1999). "The test of harmless error is whether the appellate court in its independent determination can conclude there is sufficient evidence, other than and

[7] Cases should be decided on the narrowest possible grounds. ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989). Therefore, if a decision on one point disposes of the appeal, the appellate court will not decide the other issues raised. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938).

uninfluenced by the inadmissible evidence, which would convict the defendant beyond a reasonable doubt." ***State v. Givens***, 217 Wis. 2d 180, 193, 580 N.W.2d 340 (Ct. App. 1998).

¶15 At the preliminary hearing, Johnson testified that she had rented a storage locker at the behest of Dixon because Dixon wanted to move things from the restaurant and bar into the storage locker. However, other witnesses testified at the trial to these same facts. Michelle Murphy, Dixon's employee, testified that she went with Johnson to the storage facility to rent a locker for Dixon. The manager of the storage facility testified that he rented a storage unit to Johnson. Balfour, a friend of Dixon, testified that Dixon talked with her about renting a storage unit. Finally, Dixon herself admitted that she had asked Johnson to rent a storage locker so that she could put items from her residence and bar into it. Thus, Johnson's information was provided by other witnesses.

¶16 Gutjhar's preliminary hearing testimony established that she had worked for Dixon at the bar for approximately ten years and that during that time Dixon owned a karaoke machine which was never removed from the premises, even for repairs. The State offered this testimony to prove that Dixon's removal of the karaoke machine from the bar on the night of the fire was not done because it needed repairs, as she had claimed, but because she wanted to save it from the fire. Gutjhar also testified that Dixon was having financial problems. Gutjhar stated that on one occasion, Dixon claimed that she would burn the bar to the ground before she would let the I.R.S. take it.

¶17 Again, this evidence was duplicative because a number of other witnesses testified to the same facts. Darlene Jurgella, a patron of the bar, testified that she had been in Fannie's the day before the fire and the karaoke machine was

in working order. David Wahoski, a bartender at Fannie's, testified that he had worked a few days before the fire and the karaoke machine was not broken. Balfour also testified that the night before the fire, Dixon had removed a number of compact discs from the karaoke machine and took them out of the bar.

¶18 As far as Dixon's financial difficulties were concerned, Balfour related almost exactly the same testimony as found in Gutjhar's preliminary testimony. Balfour testified at trial regarding Dixon's financial problems with the I.R.S. and stated that Dixon had told her she would burn the property down before she would let the I.R.S. take it. Dixon herself testified that she had wanted to keep her property from the I.R.S. Dixon also admitted that she had said something about burning down her property. Additionally, an accountant, an investigator from the Bureau of Alcohol, Tobacco and Firearms, and several of Dixon's friends and employees verified that Dixon's business was: (1) in financial crisis; (2) acquiring more debt; and (3) failing to create sufficient revenue to pay off those debts.

¶19 In ***State v. Billings***, 110 Wis. 2d 661, 329 N.W.2d 192 (1983), the supreme court addressed duplicative evidence:

> If the erroneously admitted evidence merely duplicates untainted evidence, it is likely that its admission had little if any independent impact on the jury, that the error played no role or an insignificant one in the conviction, and that the court can declare a belief that the error was harmless beyond a reasonable doubt.

Id. at 669.

¶20 The preliminary hearing testimony of Johnson and Gutjhar was duplicative and played no crucial role in Dixon's conviction. There was sufficient evidence, other than the allegedly inadmissible evidence, to convict Dixon beyond

a reasonable doubt. *See* ***State v. Van Straten***, 140 Wis. 2d 306, 318-19, 409 N.W.2d 448 (Ct. App. 1987). Thus, after an independent review of the record, *see* ***Billings***, 100 Wis. 2d at 669-70, we conclude that this duplicative evidence was not prejudicial and does not undermine our overall confidence in the verdict, *see* ***State v. Alexander***, 214 Wis. 2d 628, 653, 571 N.W.2d 662 (1997).

B. Ineffective Assistance of Counsel

¶21 Next, Dixon claims that her trial counsel was ineffective for two reasons: (1) her attorney failed to call an insurance investigator who wrote a report which stated that one of the doors to the bar showed signs of forcible entry; and (2) her attorney failed to cross-examine Balfour about an immunity agreement she entered into with the state. Additionally, Dixon claims that the trial court erred by failing to hold a ***Machner***[8] evidentiary hearing. We decline to address the issue concerning the ***Machner*** hearing because Dixon first raised it in her reply brief.[9]

¶22 The familiar two-pronged test for ineffective assistance of counsel claims requires defendants to prove: (1) deficient performance, and (2) prejudice. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984); ***State v. Bentley***, 201 Wis. 2d 303, 311-12, 548 N.W.2d 50 (1996); *see also* ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996) (holding ***Strickland*** analysis applies equally to ineffectiveness claims under state constitution). To prove deficient performance, a defendant must show specific acts or omissions of counsel that

[8] *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

[9] If appellant fails to discuss an alleged error in its main brief, appellant may not do so in the reply brief. ***Swartwout v. Bilsie***, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (1981).

were "outside the wide range of professionally competent assistance." ***Strickland*** 466 U.S. at 690. A defendant's ineffective assistance of counsel claim will fail if counsel's conduct was reasonable, given the facts of the particular case, viewed as of the time of counsel's conduct. ***Id.*** Moreover, counsel "is strongly presumed to have rendered adequate assistance." ***Id.*** To prove prejudice, a defendant must show that counsel's errors were so serious that the defendant was deprived of a fair trial and a reliable outcome. *See* ***id.*** at 687. If this court concludes that the defendant has failed to prove one prong, we need not address the other prong. ***Id.*** at 697.

¶23 Ineffective assistance of counsel claims present mixed questions of fact and law. ***State v. Pitsch***, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985). A trial court's factual findings must be upheld unless they are clearly erroneous. ***State v. Harvey***, 139 Wis. 2d 353, 376, 407 N.W.2d 235 (1987). Whether counsel's performance was deficient and, if so, whether the deficient performance prejudiced the defendant are questions of law, which we review *de novo*. ***Pitsch***, 124 Wis. 2d at 634. The defendant has the burden of persuasion on both prongs of the test. ***Strickland***, 466 U.S. at 687.

¶24 In regard to the insurance investigator's report, Dixon concludes that "[h]ad the jury heard the insurance company's own expert adjustors conclude that the bar was broken into, the outcome of this trial would have been different." After reviewing this report, we disagree. The report does not state that the bar had been broken into on the night of the fire. The report only indicates that a door at the north entrance of the bar "revealed evidence of forcible entry." As noted by the State, these marks could have existed before the fire or may have been made in the ten days between the date of the fire and the insurance company's investigation.

¶25 In addition, evidence of forced entry does not negate the following evidence supporting the verdict: (1) Detective Fennig testified that another door had been left open, the west door, which the detective suspected was the one that the arsonist entered; (2) an employee of Fannie's, Carrie Pocernich, testified that on the night of the fire, Dixon instructed her not to turn on the alarm system although Dixon was normally "fanatical" about security and the alarm; (3) Detective Fennig testified that he saw no evidence of damage to the north door other than old marks, and concluded that the door had not been forced; and (4) David Fass, a firefighter, testified that he had opened the north door, which was unlocked, and observed no signs of forced entry, corroborating Detective Fennig's testimony. Dixon's counsel cross-examined Detective Fennig and Firefighter Fass concerning the north door. Counsel specifically questioned Detective Fennig's conclusion that the north door had not been forced. Given this evidence, the insurance adjuster's observation of evidence of forcible entry to the north door was immaterial. Thus, Dixon has failed to show that counsel's alleged errors were so serious that the defendant was deprived of a fair trial and a reliable outcome.

¶26 With respect to the immunity agreement, Dixon has failed to demonstrate how she was prejudiced by this evidence. The jury knew of the agreement because the State made reference to the immunity agreement in its opening argument. While Dixon's counsel never cross-examined Balfour regarding the agreement, Dixon fails to set forth specific allegations explaining how this fact affected the jury's assessment of Balfour's credibility. Such a conclusory allegation, absent more, is insufficient to demonstrate prejudice. *See* ***Bentley***, 201 Wis. 2d at 316 (holding that a conclusory allegation without factual support is insufficient to support a finding of prejudice).

¶27 Because Dixon fails to establish that she was prejudiced by counsel's decisions, we conclude that she was not deprived of a fair trial and a reliable outcome. *See* ***Strickland***, 466 U.S. at 687.

C. Search Warrant Application

¶28 Next, Dixon claims that the evidence obtained through a search warrant executed on her residence was unconstitutionally seized because the search warrant affidavit failed to specify how Detective Fennig knew Dixon had increased her fire loss coverage. We disagree.

¶29 "Appellate review of an affidavit's sufficiency to support the issuance of a search warrant is limited." ***State v. Ehnert***, 160 Wis. 2d 464, 468, 466 N.W.2d 237 (Ct. App. 1991). "We accord great deference to the warrant-issuing judge's determination of probable cause and that determination will stand unless the defendant establishes that the facts are clearly insufficient to support a finding of probable cause." ***State v. Higginbotham***, 162 Wis. 2d 978, 989, 471 N.W.2d 24 (1991).

¶30 This court must determine whether the trial court "was apprised of sufficient facts to excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that the objects sought will be found in the place to be searched." ***State v. Starke***, 81 Wis. 2d 399, 408, 260 N.W.2d 739 (1978). However, the trial court's determination cannot be upheld if the affidavit provides nothing more than the legal conclusions of the affiant. ***State v. Kerr***, 181 Wis. 2d 372, 378, 511 N.W.2d 586 (1994). As the Supreme Court has stated:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him [or her], including the "veracity" and "basis of knowledge" of person's supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for … conclud[ing]" that probable cause existed.

Illinois v. Gates, 462 U.S. 213, 238-39 (1983) (quoting ***Jones v. United States***, 362 U.S. 257, 271 (1960)).

¶31 In reviewing the sufficiency of the evidence to support the issuance of the search warrant, we are confined to the record as it existed before the trial court. *See* ***Kerr*** 181 Wis. 2d at 378; ***Starke***, 81 Wis. 2d at 408. The relevant paragraph of the affidavit in support of the search warrant stated: "That as of August 1, 1997, Sharon Dixon had $50,000 fire insurance loss coverage for this property and structure and that at the time of the fire, Dixon's fire loss coverage under the same insurance policy had been increased to $210,000."

¶32 Dixon contends this paragraph of the affidavit was insufficient to show the affiant's, Detective Fennig's, basis for his knowledge of insurance coverage. The State argues that it is fair to infer that the information contained in this paragraph had been obtained by the detective's review of the insurance policies. Although we agree with Dixon that the search warrant affidavit failed to establish the affiant's source of insurance information, absent this information, the affidavit was sufficient to establish probable cause.

¶33 The affidavit made no reference to how Detective Fennig had obtained the information regarding Dixon's insurance. While the detective noted in the affidavit that he had reviewed a credit bureau report, mail from the I.R.S.,

and other financial documents, he never stated that he had reviewed any insurance policies or spoken with any witnesses regarding the policy. After review of the affidavit, we cannot determine where the detective obtained this information. If it was relayed to him by one of Dixon's employees or friends, he failed to set forth the basis of knowledge of those that supplied the information. If he personally reviewed the insurance policies, he failed to include that information.

¶34 We agree that this paragraph failed to set forth either the basis of knowledge of potential hearsay information or the detective's own source of the information. Nevertheless, absent the paragraph regarding Dixon's insurance, the remaining information was sufficient to support a finding of probable cause.

¶35 As we have stated, probable cause is a fluid concept, turning on the assessment of probabilities in a particular factual context that must be examined in light of the totality of the circumstances. ***Ehnert***, 160 Wis. 2d at 469. Probable cause was present here. The search warrant sought to obtain financial records, mail, invoices and other business and personal records from Dixon's residence. The search warrant affidavit contained information that: (1) Detective Fennig was currently investigating arson charges against Dixon; (2) the offense occurred at 200 E. Washington in Milwaukee, the location of Fannie's bar and Dixon's residence; (3) his original investigation led him to believe this was arson; (4) the Wisconsin Regional Crime Lab confirmed that a petroleum based product consistent with gasoline was used to intentionally set the fire; (5) an interview of Dixon revealed she owned the bar, lived in the apartment above the bar, and was experiencing extreme financial difficulties; (6) a credit report obtained pursuant to a court ordered subpoena verified her extensive financial problems, outstanding debts, and court ordered judgments; (7) Dixon had failed to pay property taxes for two years preceding the fire and owed the City of Milwaukee over $6,000;

(8) Dixon admitted that she was presently in a dispute with the I.R.S. over $30,000 in various tax obligations; and (9) pursuant to a consensual search, Detective Fennig observed a number of bills and financial records throughout the second floor residence. We conclude that the affidavit set forth sufficient facts to excite an honest belief in a reasonable mind that the objects sought—Dixon's business and personal financial records—would be found in Dixon's residence. *See* ***Starke***, 81 Wis. 2d at 408.

D. Safes Were Authorized Items to be Seized in the Search Warrant

¶36 Finally, Dixon contends that the search warrant did not authorize the seizure of two safes that were taken to the fire department and forcibly opened. Inside, the police discovered a number of personal papers and the morphine tablets.

¶37 The warrant authorized the seizure of all "financial records—both business and personal for Sharon Dixon"—as well as "opened and closed/sealed mail." The warrant was limited to the premises described as a "2-1/2 story wood frame building with Lannon[-]type stone exterior on the first floor and a white stucco exterior on the second floor located at 200 E. Washington."

¶38 "A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search." ***State v. Herrmann***, 2001 WI App 38, ¶17, 233 Wis. 2d 135, 608 N.W.2d 406 (citation omitted). As such, "police can search all items found on the premises that are plausible repositories for objects named in the search warrant, except those worn by or in the physical possession of persons whose search is not authorized by the warrant." ***State v. Andrews***, 201 Wis. 2d 383, 403, 549 N.W.2d

210 (1996) (footnote omitted). Here, the safes were plausible repositories for the financial records and were located on the premise clearly identified in the warrant. Therefore, the police were justified in seizing the safes pursuant to the warrant.

¶39 Accordingly, we affirm the trial court's decisions denying the motion to suppress and the motion for postconviction relief.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.