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ISSUES TO DEVELOP AT TRIAL

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*This issue suggests suppression challenges you can make in the wake of *People v. Shaw*, which, for the first time, held that arrests **outside** the home may still violate *Payton*.*

People v. Shaw, 2026 N.Y. Slip Op. 00961 (Feb. 19, 2026), creates an important opportunity to challenge police tactics used to induce a person to leave a home so that officers can make a warrantless arrest. Although *Shaw* itself involved an overwhelming show of police force, its reasoning is not necessarily limited to such extreme circumstances. We propose claims you can develop in your suppression hearings where less overt police tactics are involved -including deception, misrepresentation, and other “ruses” used to induce a person to cross the threshold-even where older cases treated those tactics as permissible.

What *Shaw* Holds

Under *Payton v. New York*, absent exigent circumstances, police generally may not enter a home without a warrant to make an arrest. *Shaw* holds that police cannot evade that constitutional protection simply by remaining physically outside the home. When officers “subject someone to a display of authority that induces them to exit the home under coercion,” the privacy of the home “has been invaded to the same extent as if the officers had physically entered.” Such a “constructive entry” violates both the Fourth Amendment and article I, § 12 of the New York Constitution.

The facts of *Shaw* made coercion easy to find. More than a dozen SWAT officers surrounded the building, dressed in tactical gear and carrying assault rifles; an armored vehicle was present; and an officer announced that the building was surrounded and ordered Shaw to come outside with his hands up. The Court concluded that, faced with that “overwhelming show of authority,” no reasonable person would have felt free to disregard the command.

But the Court expressly recognized that other cases will present “a close question as to the line between voluntariness and coercion.” This presents an opportunity for you to push *Shaw*’s boundaries.

Why *Shaw* May Reach Beyond Overt Shows of Force

Before *Shaw*, courts often upheld arrests where police used a ruse or deception to persuade a suspect to leave a home, reasoning that the police did not physically enter and the suspect

technically came outside voluntarily. *Shaw* provides a basis for questioning whether that analysis gives sufficient weight to the constitutional interest at stake.

The critical question after *Shaw* should not simply be whether the police physically entered the home, or whether the person literally walked outside on their own. The question should be whether the police, through their conduct, caused the person to relinquish the protection of the home in circumstances that were not genuinely voluntary.

Indeed, *Shaw* distinguishes permissible cases on precisely that basis. It describes a simple “knock and talk” as different from police conduct that effectively forces a person outside, and explains that prior cases permitting arrests after defendants came to their doors or exited their homes involved “noncoercive” police tactics and voluntary exits. Thus, voluntariness — not merely the location at which officers ultimately place the person under arrest — is central to the inquiry.

That leaves an important question open: What constitutes coercion for purposes of *Shaw*?

A ruse may present a very different form of coercion from the armed show of authority in *Shaw*, but trial lawyers should argue that deception can likewise undermine a genuinely voluntary decision to surrender the protection of the home. For example, police may falsely tell a resident that there is an emergency outside; invent a reason why the resident must come downstairs; impersonate someone or conceal that they are police; falsely claim that the resident is needed for some purpose unrelated to an arrest; or otherwise manufacture circumstances designed specifically to cause the resident to leave the home so that police can arrest them without obtaining a warrant.

The argument is not that every police deception is necessarily coercive or that *Shaw* has already overruled cases approving such tactics. Rather, it is that after *Shaw*, courts must examine whether the police conduct actually produced a voluntary relinquishment of the home's protection instead of treating the absence of physical force or an express command as dispositive.

This claim should be preserved under both the federal and state constitutions (New York State Const., Art. 1, § 12). *Shaw* expressly held that Article 1, § 12 encompasses constructive entry and emphasized New York’s “more robust protections against *Payton* violations,” particularly because warrantless arrests can permit police to obtain advantages they would not have had if they followed the warrant process. This refers to circumventing the warrant requirement in order to avoid the defendant’s right to counsel, which would otherwise attach, under New York law, upon the issuance of the arrest warrant. A deliberate ruse designed to accomplish an arrest outside the home that police could not lawfully accomplish inside the home presents a strong setting in which to develop that principle.

Preserving the Claim

Your core argument is straightforward:

Under *Shaw*, police may not accomplish indirectly what *Payton* prohibits them from accomplishing directly. When officers deliberately use deception, a ruse, a false assertion of authority, or other police-created circumstances to induce a person to leave the protection of the home so that they can make a warrantless arrest, your client's exit was not truly genuinely voluntary or instead constituted submission to police-created coercion. The absence of physical entry, weapons, or an express command to come outside should not end the inquiry.

Here are some suggestions for how to support and best preserve this argument:

1. Litigate the circumstances that caused your client to leave the home.

Do not concede that the exit was "voluntary" merely because police did not expressly order the client outside. Develop exactly why the client came out and what the police did to bring that about.

At the suppression hearing, elicit:

- exactly what officers said and did before the client exited;
- whether anything they said was false or misleading;
- whether police concealed their identity or their actual purpose;
- whether the officers' stated reason for getting the client outside was genuine;
- whether the police had already decided to arrest the client before employing the tactic;
- whether the tactic was deliberately selected to induce the client to leave the home;
- what the client understood was happening and why the client came outside;
- whether the client would have exited absent the police representation or conduct; and
- whether police sought or considered obtaining an arrest warrant.

Where possible, obtain body-camera footage, radio transmissions, reports, notes, and testimony concerning the planning of the encounter, not simply the moment of arrest.

2. Ask officers directly why they used the tactic.

If officers deliberately devised a ruse because they knew they could not enter the home without a warrant, make that fact explicit in the record.

This is particularly important because *Shaw* itself noted that police deliberately chose not to obtain an arrest warrant because they wanted to interview *Shaw* before his right to counsel attached. And in discussing attenuation, the Court emphasized the constitutional concern created when unlawful police conduct puts officers in a better position than lawful procedures would have.

3. Frame the issue as involuntary relinquishment of the protection of the home-not simply “police deception.”

Older cases approving police ruses may lead a suppression court to respond that deception alone does not make police conduct unconstitutional. Do not stop at the proposition that the police “tricked” your client.

Tie the deception directly to *Shaw*: the police deliberately induced the client to cross the constitutionally protected threshold so they could accomplish a warrantless arrest that they could not lawfully have accomplished by entering the home themselves.

The question is therefore whether, considering all of the circumstances, the client's exit represented a genuinely voluntary decision to leave the home or instead resulted from police tactics deliberately calculated to procure an exit the police could not otherwise compel.

4. Preserve both federal and independent state constitutional claims.

Invoke the Fourth Amendment and article I, § 12 separately. Do not rely on a bare parallel citation to the State Constitution.

Argue expressly that, even if existing federal precedent permits the particular tactic, article I, § 12 should provide greater protection in light of *Shaw*, New York's heightened protection of the home, and the incentive police otherwise have to circumvent warrant and right-to-counsel requirements.

Know Your Fruits

An unlawful arrest matters only if there is something to suppress as its fruit. So, before investing heavily in a *Shaw* claim, identify what the police obtained because they got your client out of the home and arrested them when and where they did.

Think broadly about possible fruits: statements made after the arrest; property taken from the client or recovered in a search incident to arrest; evidence found through information learned after the arrest; identifications or other investigative evidence generated as a result of the arrest; and, as in *Shaw*, evidence later recovered from the home pursuant to consent. Ask the practical counterfactual: What did the unlawful arrest enable the police to obtain that they would not otherwise have had?

Then consider causation and attenuation. It is not enough that the challenged evidence came later in time. Be prepared to show how the unlawful arrest led to it. Conversely, the People may argue that the connection was broken by intervening circumstances or that the evidence was otherwise lawfully obtainable. Relevant considerations may include how soon the evidence was obtained after the arrest; what happened in between; whether the police exploited the arrest to obtain the evidence; whether the police misconduct was undertaken for that purpose; and, where consent led to the evidence, whether the consent was both voluntary and sufficiently attenuated from the illegality. *Shaw* emphasizes that voluntariness and attenuation are separate inquiries and must be analyzed separately.

The takeaway: know at the outset what you are trying to suppress and build the hearing record connecting that evidence to the unlawful arrest. A strong *Shaw* violation without suppressible fruits may not accomplish anything for your client; a carefully developed record showing that the police used the unlawful arrest to obtain critical evidence may.

GOOD LUCK!