People v. Shaw
(April 16, 2002) __Cal.App.4th __

ISSUE

Did officers conduct a "search" when they went into the back of a drug dealer's apartment building and examined a hole in which the dealer hid his stash?

FACTS

After receiving reports of narcotics activity at a four-unit apartment building, two San Diego police officers went to the home behind the building and received the owner's permission to conduct surveillance from his backyard. While looking over or through a common fence during the late night and early morning hours, the officers saw several people go into apartment 3, stay a short time, then leave. They also saw Shaw leave the apartment twice, walk to the back of the apartment building where he reached down to the ground, did something the officers couldn't see, then return to the apartment.

Curious, one of the officers slipped through a break in the fence and discovered that Shaw had been reaching for a large piece of wood that was covering a hole in the ground. Lifting the wood and looking inside the hole, the officer discovered several pieces of rock cocaine.

Shaw was subsequently arrested and convicted of cocaine sales.

DISCUSSION

Shaw contended the cocaine should be suppressed because the officer's entry into the back of the apartment building constituted an illegal "search," and so did his act of examining the contents of the hole.

The court pointed out that a "search" can occur only if officers infringe on a person's reasonable expectation of privacy. Consequently, there was no "search" unless Shaw could reasonably expect privacy as to, (1) the back area of the apartment, or (2) the hole in the ground.

Initial observations: The officers' initial observations of Shaw's activities in the back of the apartment were clearly lawful because the officers had obtained the neighbor's permission to conduct surveillance from his backyard. Said the court, "[T]he officers made their observations from a vantage point where they had a legal right to be."[1]

Entry into the back yard: A warrantless entry into the fenced-off back yard of a single family residence would ordinarily constitute a "search" because it is usually reasonable for homeowners to expect that people won't be walking

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[1] See *Horton* v. *California* (1990) 496 US 128, 136; *Minnesota* v. *Dickerson* (1993) 508 US 366, 375; *Washington* v. *Chrisman* (1982) 455 US 1, 5-6 ["The 'plain view' exception to the Fourth Amendment warrant requirement permits a law enforcement officer to seize what clearly is incriminating evidence or contraband when it is discovered in a place where the officer has a right to be."]; *People* v. *Camacho* (2000) 23 Cal.4th 824, 832; *Guidi* v. *Superior Court* (1973) 10 Cal.3d 1, 6 ["It is elementary that the legality of the seizure of an object falling within the plain view of an officer is dependent upon that officer's right to be in the position from which he gained his view of the seized object."].

around or through their yards. But it's an entirely different matter when the entry is made into the back of an apartment building. As the court in *Shaw* pointed out, "[W]hat might be one person's curtilage in the context of a private single occupancy residence becomes less subject to privacy expectations in the context of the grounds of a multi-unit apartment complex."

Consequently, because Shaw had no right to prevent other renters or their invitees to enter the back of the apartment, the officer's entry was not a "search."

Lifting the wood; looking in: Finally, the court ruled the officer's act of lifting the piece of wood and looking into the hole was not a "search" because Shaw could not reasonably expect the contents to be private. Said the court, "[P]utting drugs in a hole in the ground in the common area of an apartment complex . . . is an effective renunciation of any reasonable expectation of privacy."

Shaw's conviction was affirmed.