PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-4348

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TIMOTHY ZACHARY GREEN,

Defendant - Appellant.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. George Jarrod Hazel, District Judge. (8:17−cr−00590−GJH−1)

Argued: March 22, 2024 Decided: July 2, 2024

Before GREGORY, WYNN, and HARRIS, Circuit Judges.

Affirmed by published opinion. Judge Harris wrote the opinion, in which Judge Gregory and Judge Wynn joined.

ARGUED: Cullen Oakes Macbeth, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Greenbelt, Maryland, for Appellant. Jason Daniel Medinger, OFFICE OF THE UNITED STATES ATTORNEY, Baltimore, Maryland, for Appellee. **ON BRIEF:** James Wyda, Federal Public Defender, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Baltimore, Maryland, for Appellant. Robert K. Hur, United States Attorney, Erek L. Barron, United States Attorney, Baltimore, Maryland, Gregory Bernstein, Assistant United States Attorney, Jessica Collins, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Greenbelt, Maryland, for Appellee.

PAMELA HARRIS, Circuit Judge:

Defendant Timothy Green was convicted of being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1), after the police seized a gun from the residential backyard in which he was arrested. On appeal, Green challenges the denial of his motion to suppress the gun on Fourth Amendment grounds. Finding no violation of the Fourth Amendment, we affirm the denial of the motion to suppress and the district court's judgment.

I.

A.

This case began in the pre-dawn hours of June 25, 2017, when the defendant, Timothy Green, drove to a home on Sweet Bay Drive in Prince George's County, Maryland, to confront a cousin regarding a dispute. There is some disagreement about what exactly happened next, but multiple witnesses reported that Green kicked in the front door while brandishing a firearm. Police officers responding to several 911 calls observed Green fleeing the area but lost track of him as he drove away.

Based on the Sweet Bay Drive incident, a county court issued an arrest warrant for Green on home invasion, assault, and firearm charges. Sergeant David Hansen, a supervisor of a "Special Assignment Team" with the County Police Department, was charged with locating Green and executing the warrant. Hansen performed a records check, which provided information about Green's car and revealed that Green had been convicted of a felony robbery.

A few days later, a different law enforcement officer spotted Green in his car and followed him, reporting to Hansen that Green was driving erratically and had become involved in a "road rage" incident. The officer watched as Green parked outside a residential property on Auth Road in Prince George's County. After establishing surveillance, he informed Hansen that his suspect was now in the backyard of the Auth Road residence, which was surrounded by a chain-link fence. Green was sitting with an unidentified man in an "open gazebo" – a gazebo with four pillars and a roof but no sides.[1]

Hansen organized his team members to execute the arrest. Given Green's criminal record, the violent home invasion of which he was suspected, and the road rage incident just before, Hansen arranged for a significant show of force: A helicopter flew over the property while multiple uniformed officers in marked cars converged on the home and then approached the yard from both the front and the rear. Hansen was the first officer to reach the property, walking along the outside of the fence until he had a clear view of Green and the other man under the gazebo. At that point, while still outside the fence, Hansen drew his gun, announced his presence, and told Green he was under arrest.

What followed was a fast-moving sequence of events critical to the suppression motion at the heart of this case. Green, alerted by Hansen, stood up, took in his situation – the helicopter, the officers – and then pulled a handgun from his shorts, holding it in what Hansen later described as a non-threatening manner. Hansen yelled "gun!" to his fellow

[1] Photographs of the property introduced at the hearing on the motion to suppress depicted "an open-sided structure that consists of four metal pillars and a canvas canopy on top." *United States v. Green*, No. GJH-17-590, 2018 WL 3655914, at *1 n.4 (D. Md. Aug. 2, 2018).

officers, and some of those officers – but not Hansen – went over the fence and into the yard to apprehend Green. Green then placed the handgun on a shelf attached to one of the gazebo's poles and began to back away toward the rear of the yard, seeming to Hansen to be "trying to figure out an avenue of escape." J.A. 76. By then, multiple officers – but still not Hansen – had entered the yard from front and rear, and they caught Green against the back fence, approximately 25 feet away from the gazebo where the gun and the as-yet-unidentified man remained.

Roughly 15 seconds after announcing his presence, and while his team members were apprehending and handcuffing Green, Hansen himself jumped over the fence into the yard and went directly to the handgun in the gazebo. According to Hansen, once he saw that his officers had Green under control, his first priority was to secure the handgun – sitting on a shelf next to an unknown person – so that it could not be used against the officers who were directly effectuating the arrest. Hansen stood next to the gun "so nobody could gain access to it," J.A. 80, and began talking to the man in the gazebo, who would turn out to be Al Yates, the owner of the Auth Road property and a cousin of Green's. The entire episode – from Hansen's initial arrival on the scene to Green's apprehension and the securing of the gun – transpired over approximately 30 seconds.

Hansen did not move or touch the handgun, believing it might be evidence related to the Sweet Bay Drive home invasion or a felon-in-possession charge. Instead, once the arrest had been completed and approximately ten minutes after his initial entry, Hansen photographed the gun where it sat on the gazebo shelf. Police remained on the scene for some time, taking additional photographs of the home and gazebo. Ultimately, the gun –

a black semi-automatic handgun matching the description of the one brandished on Sweet Bay Drive – was seized by the police as evidence.

B.

Green was indicted on one count of being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1).[2] He moved to suppress the handgun, arguing that the officers' entry onto the Auth Road property and the subsequent seizure of the gun violated the Fourth Amendment. In its opposition, the government argued first that Green lacked standing to bring his Fourth Amendment challenge because he had no legitimate expectation of privacy in the home or yard of his cousin, Yates.[3] And in any event, the government argued, the arrest warrant gave the officers the right to enter Yates's yard, and once there, they were permitted to seize the gun under the Fourth Amendment plain-view doctrine.

The district court held a suppression hearing at which Sergeant Hansen and Yates testified. Hansen's testimony, focusing on Green's arrest, outlined the scenario described above. In his direct testimony and on cross-examination, Hansen also attempted to pinpoint the moment at which he had jumped the fence and entered Yates's yard: It was while the

[2] The government ultimately dismissed all charges related to the Sweet Bay Drive incident. At sentencing, the government explained that the charges were "nolle prossed" when certain family-member victims and witnesses were unwilling to cooperate in the prosecution.

[3] The government did not dispute before the district court, and does not dispute on appeal, that Yates's fenced-in yard qualifies as "curtilage" for Fourth Amendment purposes – "the area immediately surrounding and associated with the home" – and is thus entitled to the same Fourth Amendment protections as Yates's home itself. *See Collins v. Virginia*, 584 U.S. 586, 592 (2018) (internal quotation marks omitted).

other officers were apprehending Green at the back fence, once Hansen could see that his officers "had [Green] under control to be able to effect the arrest." Hansen could not say whether the "handcuffs were actually on" Green yet, but the officers would have been "in the process" of making the arrest and handcuffing Green when Hansen entered the yard. J.A. 92.

Yates's testimony was directed at the standing question, which turned on Green's relationship to the Auth Road residence. According to Yates, Green was a long-time and regular guest in Yates's home, visiting once or twice a week for the past three or four years. The cousins enjoyed socializing together at the house; they talked, played games, often cooked out on the grill, and sometimes had "a beer or two." J.A. 110. Although Green had never spent a night at the house, Yates "fe[lt] comfortable with Mr. Green moving through [his] house freely," J.A. 112, and Green sometimes brought friends with him when he visited. Yates also testified that he had not given Green permission to bring a firearm onto his property and that he was not aware of Green's handgun until he saw it in the gazebo on the day of the arrest.

The district court denied Green's motion to suppress. *See United States v. Green*, No. GJH-17-590, 2018 WL 3655914 (D. Md. Aug. 2, 2018). The government's threshold argument, the court held, was correct: Green lacked standing to bring a Fourth Amendment challenge to the officers' entry onto Yates's property and the seizure of the gun. "Even where officers conduct an unreasonable search or seizure," the court explained, "only the individual whose Fourth Amendment rights were violated may object." *Id.* at *2 (citing *United States v. Gray*, 491 F.3d 138, 144 (4th Cir. 2007)). A defendant like Green, seeking

to suppress evidence seized from another's property, must show "not only that the search of [the property] was illegal but also that he had a legitimate expectation of privacy" in that property. *Id.* (quoting *Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980)).[4]

The district court began by describing the two Supreme Court precedents establishing "the outer boundaries of when [] an individual does or does not have an expectation of privacy" in someone else's home. *Id.* In *Minnesota v. Olson*, the Supreme Court held that a defendant's "status as an overnight guest is alone enough" to show the requisite expectation of privacy; and in *Minnesota v. Carter*, it found that expectation of privacy lacking when the defendants visited someone else's apartment for a "matter of hours" and only for a "business transaction," with no other relationship to the homeowner. *Id.* (quoting *Minnesota v. Olson*, 495 U.S. 91, 96-97 (1990), and *Minnesota v. Carter*, 525 U.S. 83, 90 (1998)). The facts of Green's case, the court reasoned, put it "somewhere in between" those two precedents: Green was never an overnight guest at the Auth Road house, as in *Olson* – but he also was a regular social guest at the home of a family member, unlike the one-time commercial visitor in *Carter*. *Id.* at *3.

Considering all the facts and circumstances, the district court concluded that Green's case was closer to *Carter* than to *Olson*, and that Green's "connections with the

[4] As the district court explained, Fourth Amendment "standing" is distinct from the familiar Article III jurisdictional requirement. *See Green*, 2018 WL 3655914, at *2 n.5. In this context, "standing" refers to the substantive rule that Fourth Amendment rights are personal, so that Fourth Amendment protections are triggered only when an individual suffers an invasion of his own privacy rights. *See United States v. Ferebee*, 957 F.3d 406, 412 (4th Cir. 2020); *see also Rakas v. Illinois*, 439 U.S. 128, 139-40 (1978); *Rawlings*, 448 U.S. at 104-06.

property were too tenuous to establish a Fourth Amendment reasonable expectation of privacy." *Id.* Because Green could not challenge the officers' entry into Yates's yard or their seizure of the handgun, the district court denied Green's motion to suppress without addressing the government's alternative arguments.

Green went to trial and was convicted of the felon-in-possession charge under 18 U.S.C. § 922(g)(1). At sentencing, the district court adopted the presentence investigation report ("PSR") Sentencing Guidelines range of 77 to 96 months' imprisonment. The primary dispute at sentencing concerned the relevance of the Sweet Bay Drive incident: The government urged the district court to consider the incident in applying the sentencing factors of 18 U.S.C. § 3553(a), while Green argued that evidence of his alleged conduct – kicking in a door and pulling out a gun – was unreliable, given inconsistencies in witness affidavits and the failure of the victims to follow up on the allegations or testify in court.

The district court overruled Green's objections. Relying especially on the "compelling" 911 calls from the night of the home invasion, the court found that the government had established Green's violent conduct by a preponderance of the evidence. J.A. 1040. Considering that evidence along with all other relevant circumstances, the district court sentenced Green to a within-Guidelines sentence of 84 months' imprisonment.

Green timely appealed.

II.

Though this case comes to us today after a long and complicated procedural history,[5] it now presents just one significant issue: whether the district court properly denied Green's motion to suppress the gun seized in Yates's yard. In considering that question, we review the district court's factual findings for clear error and its legal conclusions de novo. *United States v. Slocumb*, 804 F.3d 677, 681 (4th Cir. 2015). "[T]he ultimate question of whether a given set of facts gives rise to a reasonable expectation of privacy is a legal question." *United States v. Ferebee*, 957 F.3d 406, 416 (4th Cir. 2020).

For the reasons given below, we agree with Green that the district court erred when it concluded that he lacked a reasonable expectation of privacy in his cousin's home and yard. But we also agree with the government that the Fourth Amendment was not violated

[5] When Green first appealed in 2019, we vacated his § 922(g)(1) felon-in-possession conviction under *Rehaif v. United States*, 588 U.S. 225 (2019), because his indictment did not allege, and the government did not prove at trial, his knowledge of his status as a felon. *United States v. Green*, 973 F.3d 208 (4th Cir. 2020). We directed the district court to dismiss the § 922(g)(1) count on *Rehaif* grounds alone, without reaching Green's Fourth Amendment claim. *Id.* at 209 n.*. The Supreme Court vacated that judgment after it decided *Greer v. United States*, 593 U.S. 503 (2021), taking a more stringent approach to plain-error review of *Rehaif* errors. *See United States v. Green*, 141 S. Ct. 2785 (2021) (mem.). When the case returned to us, we initially dismissed Green's appeal as moot in light of the district court's dismissal of the indictment, and then granted the government's motion for panel rehearing, directing the parties to file supplemental briefs. We now agree with the government that Green's appeal is not moot, *see United States v. Villamonte-Marquez*, 462 U.S. 579, 581 n.2 (1983), and Green now concedes that *Greer* forecloses his *Rehaif* claim.

when the officers entered Yates's yard and seized the gun. Accordingly, we affirm the denial of the motion to suppress and the judgment of the district court.[6]

A.

As the district court explained, whether Green can contest the physical evidence – the gun – seized from Yates's yard turns on whether Green had a reasonable expectation of privacy in Yates's residence. *Green*, 2018 WL 3655914, at *2. Fourth Amendment rights are personal, which means that a defendant can mount a Fourth Amendment challenge only if he has his own cognizable Fourth Amendment privacy interest in the invaded place. *Ferebee*, 957 F.3d at 412; *see also Rawlings*, 448 U.S. at 104-06. And while the Supreme Court has made clear that a person may have a reasonable expectation of privacy in another's home, it has made equally clear that not every visitor can claim that status, and that mere "presen[ce] with the consent of the householder" is not enough to show the requisite connection to the property. *Gray*, 491 F.3d at 144-45 (quoting *Carter*, 525 U.S. at 90). Before he may bring his Fourth Amendment challenge, in other words, Green has the burden of establishing that he is the *kind* of visitor who has an objectively reasonable expectation of privacy in a residence that is not his own. *See id.*

[6] In his initial appellate brief, Green also challenged his sentence, arguing that the district court erred by taking into account unreliable evidence regarding the Sweet Bay Drive home invasion. Green did not return to that argument in his initial reply brief and his supplemental brief addresses it only in passing. The district court carefully reviewed the evidence of Green's conduct on the night of the Sweet Bay Drive incident, and we see no clear error in its factual findings. *See United States v. Berry*, 814 F.3d 192, 195 (4th Cir. 2016) (in considering a procedural reasonableness challenge to a sentence, we review a district court's factual findings for clear error only).

In addressing that issue, the Supreme Court has drawn a clear distinction between social guests, on the one hand, and business visitors, on the other. *See id.* at 145-46. In *Carter*, the Court held that the defendants lacked a reasonable expectation of privacy in an apartment they visited once for commercial purposes. 525 U.S. at 90-91. A social invitation and relationship, the Court reasoned, might well indicate the kind of "acceptance into the household" typically bestowed on an overnight guest, as in *Olson*, and thus give rise to a reasonable expectation of privacy. *See id.* at 90 (discussing *Olson*, 495 U.S. at 98-99). But a one-time business visitor engaged in a "purely commercial" transaction has more in common with someone "simply permitted on the premises," and is thus without any expectation of privacy. *Id.* at 91. Put differently, a "social host" – unlike a homeowner who admits a business visitor – "often shares not only his home but also his privacy with his guest." *Gray*, 491 F.3d at 146; *see United States v. Rhiger*, 315 F.3d 1283, 1286 (10th Cir. 2003) (describing *Carter*'s "clear distinction between the status of individuals present at a residence for social purposes and those present for business or commercial matters").[7]

[7] We agree with Green that the importance of the social-versus-business distinction is further emphasized by the separate concurring and dissenting opinions in *Carter*, expressing the view that "almost all social guests have a legitimate expectation of privacy . . . in their host's home," 525 U.S. at 99 (Kennedy, J., concurring), and explaining that the logic of *Olson* cannot be limited to *overnight* social guests because "[o]ne need not remain overnight to anticipate privacy in another's home," *id.* at 109 (Ginsburg, J., dissenting). Indeed, Green suggests that if we add up the votes and separate opinions in *Carter*, we will find a "general rule" that social guests have a reasonable expectation of privacy in the homes they visit. *See id.* at 102 (Kennedy, J., concurring); *see also Rhiger*, 315 F.3d at 1286 (analyzing separate opinions). But we need not go that far to recognize the importance *Carter* attaches to a defendant's status as a social guest rather than business visitor. *See Gray*, 491 F.3d at 145-46.

The district court here recognized that Green was a social rather than business visitor, distinguishing his case from *Carter*. *See Green*, 2018 WL 3655914, at *3. But in our view, the court failed to give Green's status as a social guest sufficient weight. It is true, as the district court reasoned, that Green, unlike the social guest in *Olson*, was never an overnight guest at Yates's home. *See id*. But even before *Carter*, our court recognized that *Olson*'s rationale extends to social guests who do *not* spend the night if they nevertheless have the kind of relationship with their hosts that gives rise to a reasonable expectation that their privacy will be protected. *See Bonner v. Anderson*, 81 F.3d 472, 475 (4th Cir. 1996). And after *Carter*, it is even more apparent that while "the overnight aspect of [a] visit" is of course a key "factor" in the analysis, *id.*, what matters most is the social as opposed to commercial nature of a relationship and visit, and not whether the visit includes an overnight stay. *See Carter*, 523 U.S. at 91 (relying on "purely commercial nature" of visit and "lack of any previous connection between [defendants] and the householder" to distinguish *Olson*).

To be clear, we need not and do not decide today that all social guests have a reasonable expectation of privacy. But on the facts found by the district court, *see Green*, 2018 WL 3655914, at *2, Green is not just any social guest. First, he has a deep and familial relationship with the homeowner in question. *Id.* Those are factors we have emphasized in holding that a social (but non-overnight) visitor has a reasonable expectation of privacy, *see Bonner*, 81 F.3d at 475; *Gray*, 491 F.3d at 153 (describing *Bonner*), because that kind of social connection can give rise to the requisite "mutual trust" between visitor and host, *see Gray*, 491 F.3d at 146, 153. Second, Green was a regular visitor to the Auth

Road property over a long period of time, and his visits were exclusively social in nature. *See Bonner*, 81 F.3d at 475; *cf. Gray*, 491 F.3d at 153 (finding no reasonable expectation of privacy where guest's commercial purpose outweighed any social relationship). And while Green never spent the night at Yates's home, he had "free rein of the house," *Green*, 2018 WL 3655914, at *2, with the ability to enter all portions of the property and to bring friends with him when he visited. Taken together, these factors indicate precisely the "degree of acceptance into the household," *Carter*, 525 U.S. at 90, that generates a reasonable expectation of privacy for a social guest. Under *Carter* and our own court's precedent, Green had a reasonable expectation that the Auth Road property and its curtilage was a "place where he and his possessions [would] not be disturbed" by anyone but Yates and those Yates admitted. *See Olson*, 495 U.S. at 99.

For its contrary ruling, and at the urging of the government, the district court relied largely on one fact: that Green brought his illegal gun onto Yates's property without Yates's permission. *Green*, 2018 WL 3655914, at *3. But neither *Olson* nor *Carter* suggests this is a dispositive or even relevant factor, and indeed, *Olson* lays down a categorical rule – overnight social guests have a legitimate expectation of privacy in their hosts' homes, *Olson*, 495 U.S. at 98-99 – that would be inconsistent with a carve-out for overnight guests carrying contraband of which their hosts are (or claim to be) unaware. And it is well-settled, of course, that the "Fourth Amendment's protection of the home does not turn on whether illegal activity takes place therein." *Gray*, 491 F.3d at 144.

The government relies for its argument on *United States v. Ladd*, 704 F.2d 134 (4th Cir. 1983), in which we found no reasonable expectation of privacy on the part of a guest

who "wrongly place[d] unconcealed contraband" in another person's home "without the knowledge or a word of authorization from the owner." *Id.* at 135. But *Ladd* cannot carry the weight the government assigns it. Decided well before *Olson* and *Carter*, *Ladd* does not undertake the analysis dictated by those Supreme Court cases. Nor does *Ladd* give us the background facts relevant to that analysis: On the face of the notably brief opinion, there is nothing to indicate that the defendant in *Ladd* had a meaningful social connection to the home in question, or even the owner's permission to be on the premises at all. *See id.* *Ladd* may well establish that the act of concealing contraband in another's home is not *itself* sufficient to give rise to a reasonable expectation of privacy. But nothing about *Ladd* dictates that a social guest who otherwise *would* have a reasonable expectation of privacy under the later-decided *Olson* and *Carter* precedents somehow forfeits that protection by bringing contraband onto the premises without permission.

In sum, the district court erred in concluding that on the facts of this case as it described them, *Green*, 2018 WL 3655914, at *2, Green lacked a reasonable expectation of privacy in Yates's home and yard. Because Green enjoyed a legitimate expectation of privacy in the home of his cousin and long-time social host, he was entitled to raise his Fourth Amendment claim.

B.

That Green may challenge the officers' entry into Yates's yard and subsequent seizure of his handgun, of course, does not mean that he prevails on his Fourth Amendment claim. And from the beginning, the government has argued in the alternative that no Fourth Amendment violation occurred on the day of Green's arrest. The district court did not

reach this question, but we "may affirm on any grounds apparent from the record." *United States v. Smith*, 395 F.3d 516, 519 (4th Cir. 2005). And here, the undisputed record facts make clear that the officers lawfully entered Yates's yard pursuant to an arrest warrant for Green and then seized Green's gun consistent with the Fourth Amendment plain-view doctrine.

Because the ultimate object of Green's challenge is the seizure of his handgun – the evidence he seeks to suppress – we begin there. As a general rule, the police may not seize property, meaningfully interfering with the owner's possessory interest, unless the property is identified in a warrant. *See Horton v. California*, 496 U.S. 128, 133-34 & n.5 (1990) (explaining difference between privacy interests implicated by search and possessory interests implicated by seizure). But there is an exception that allows, in certain circumstances, the warrantless seizure of an item in "plain view." *Id.* at 134-37.

There is no dispute as to the contours of the plain-view exception, which applies if the government shows that: "(1) the officer was lawfully in a place from which the object could be viewed; (2) the officer had a 'lawful right of access' to the seized item[]; and (3) the incriminating character of the item[] was immediately apparent." *United States v. Davis*, 690 F.3d 226, 233 (4th Cir. 2012); *see Horton*, 496 U.S. at 136-37. Nor is there any dispute that the first and third conditions were satisfied here: Hansen initially saw Green's firearm from a public street outside Yates's yard, where he had a lawful right to stand; and because officers knew of Green's prior felony conviction, it was immediately apparent that his possession of a gun was illegal.

What is in dispute is the second requirement – the "lawful right of access" to the seized gun. The plain-view doctrine is an exception to the Fourth Amendment warrant requirement for a *seizure*, not a search. *Davis*, 690 F.3d at 232 n.11 (citing *United States v. Jackson*, 131 F.3d 1105, 1108 (4th Cir. 1997)); *Horton*, 496 U.S. at 134. It cannot by itself justify a search intruding on protected privacy interests, *see Horton*, 496 U.S. at 141, which means that it does not authorize police officers to enter private premises to seize an item, even one in plain view from a public street, *Davis*, 690 F.3d at 234. So the question in this case is whether the police had some "prior justification" for intruding into Yates's yard, giving them the necessary "lawful right of access" to the gun in the gazebo. *Horton*, 496 U.S. at 135, 137 (citation omitted).

Green's argument on this point appears to have been refined over time. Though he initially took the position that none of the officers could enter Yates's yard to effectuate his arrest, he now concedes that once the officers had reason to believe he was on Yates's property, the arrest warrant authorized them to enter. *See Payton v. New York*, 445 U.S. 573, 602-03 (1980); *United States v. Hill*, 649 F.3d 258, 262-65 (4th Cir. 2011) (applying *Payton*'s "reason to believe" standard). The problem, according to Green, is that *Sergeant Hansen*, specifically, could not use the arrest warrant to justify *his* entry to the yard because, as Hansen's own testimony purportedly makes clear, Green already had been arrested at that moment. We disagree.[8]

[8] Accordingly, we need not consider whether suppression would be the appropriate remedy if Green were right, and Hansen – and Hansen alone – lacked lawful access to Yates's yard and the handgun. We note, however, that nothing in the record suggests that (Continued)

What Hansen's testimony in fact makes clear is that Hansen entered Yates's yard while Green was in the process of being arrested and in aid of that arrest. Recall that the scene was fast-moving, with Hansen jumping the fence just 15 seconds after the first wave of officers entered the yard. It is true, as Green emphasizes, that by then, Hansen believed there were enough officers at the back fence to control Green. *See* J.A. 98 (Hansen entered when he "felt that they had him under control to be able to effect the arrest"). But that does not mean that the arrest was over. The officers surrounding Green still were "in the process" of apprehending him, J.A. 92, and – crucially – still vulnerable, as Hansen recognized, to the handgun in the gazebo next to the unidentified companion of the home-invasion suspect they were arresting. *See Maryland v. Buie*, 494 U.S. 325, 334, 336 (1990) (recognizing authority of arresting officers to ensure their safety "while making" arrests and until they "complete the arrest and depart the premises").

We emphasize that these basic facts are undisputed; Green does not challenge Hansen's credibility or his account and instead relies on Hansen's testimony for his argument. There is, to be sure, an open question as to whether handcuffs on Green had "actually clicked shut" at the instant when Hansen went over the fence – but as Green now recognizes, that is immaterial, because the Fourth Amendment does not turn on such "hyper-technicalities." Supp. Reply Br. at 17. And while Green makes much of Hansen's

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the seizure of Green's gun was causally linked to *Hansen's* entry, in particular. Even before he entered Yates's yard, Hansen alerted his team members to the existence of the gun, and any one of those officers – concededly with a right to be on the premises – could have made the plain-view seizure. *See Segura v. United States*, 468 U.S. 796, 813-16 (1984) (discussing limits on suppression remedy in seizure context and applying independent source doctrine).

testimony that he entered the yard to "secure" the gun, arguing that Hansen was concerned chiefly with the preservation of evidence, that omits what Hansen said next: that he took steps immediately to secure the firearm because he understood it could be dangerous if wielded against the other officers making the arrest. *See* J.A. 81.

For all practical purposes, in short, Hansen's entry to the yard occurred simultaneously with, and as part of, Green's arrest. Because the arrest warrant for Green concededly authorized a police intrusion into Yates's residence to effectuate the arrest, Hansen's entry, like the entries of the other officers on the team, did not violate the Fourth Amendment. Instead, Hansen, like the other officers, had a "lawful right of access" to the yard and to the gun in the open-sided gazebo, validating the gun's seizure under the plain-view exception to the warrant requirement. Put in Fourth Amendment terms, the "search" – the intrusion into a residence in which Green had a protected privacy interest – "was authorized by the [arrest] warrant; the seizure was authorized by the 'plain-view' doctrine." *Horton*, 496 U.S. at 142.[9]

III.

For the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED

[9] Because we agree with the government on this point, we need not consider its alternative arguments defending the warrantless seizure of Green's gun under the protective sweep doctrine, *see Buie*, 494 U.S. at 327, and exigent circumstances exception, *see*, *e.g.*, *United States v. Legg*, 18 F.3d 240, 244 (4th Cir. 1994).