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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHARLES NILE MIXON,

Defendant-Appellant.

No. 25-5443

Appeal from the United States District Court for the Eastern District of Tennessee at Greeneville.
No. 2:23-cr-00101-1—Clifton Leland Corker, District Judge.

Argued: June 2, 2026

Decided and Filed: October 8, 2026

Before: McKEAGUE, READLER, and BLOOMEKATZ, Circuit Judges.

COUNSEL

ARGUED: Jennifer Niles Coffin, Erin Phillipi Rust, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Chattanooga, Tennessee, for Appellant. Luke A. McLaurin, UNITED STATES ATTORNEY'S OFFICE, Knoxville, Tennessee, for Appellee. **ON BRIEF:** Jennifer Niles Coffin, Erin Phillipi Rust, FEDERAL DEFENDER SERVICES OF EASTERN TENNESSEE, INC., Chattanooga, Tennessee, for Appellant. Luke A. McLaurin, UNITED STATES ATTORNEY'S OFFICE, Knoxville, Tennessee, for Appellee.

READLER, J., delivered the opinion of the court in which McKEAGUE, J., concurred. BLOOMEKATZ, J. (pp. 25–35), delivered a separate opinion concurring in part, dissenting in part, and dissenting from the judgment.

OPINION

READLER, Circuit Judge. A jury convicted Charles Mixon for carjacking and for engaging in a host of gun-related crimes. During a subsequent phase of the trial, the jury determined that Mixon had three or more prior convictions for violent felonies that he had committed on different occasions. That latter finding earned him a harsher sentence under the Armed Career Criminal Act (ACCA). Before us, Mixon asserts a Commerce Clause challenge to the validity of his present convictions, contests the classification of his prior offenses as violent felonies under ACCA, and takes issue with the district court's admission of prejudicial evidence concerning one of his past crimes. As all three arguments prove unavailing for Mixon, we affirm.

I.

Allison Beaver was preparing to head home from her late-night shift at a Taco Bell located in Bristol, Tennessee. But as she crossed the restaurant's parking lot to reach her car, Mixon pointed a handgun at her and ordered her to get into the passenger seat of her vehicle. Mixon took the driver's seat and told Beaver to "get naked." After initially complying with Mixon's command, Beaver escaped from the vehicle as Mixon turned his attention to driving. She fled inside the Taco Bell and called the police. Rather than pursue Beaver, Mixon drove off in her car. Shortly thereafter, an officer tried to stop Mixon. But he got away, crossing into neighboring Bristol, Virginia. (The state border runs through the middle of downtown Bristol, leaving neighboring Bristol communities (known as twin cities) on each side, *see About Bristol*, City of Bristol, Virginia, https://perma.cc/GH9H-2VVF.)

Mixon turned up the next day in Bristol, Virginia, at the home of his mother and stepfather. Mixon confessed the previous night's crime to his stepfather, admitting that he had stolen his stepfather's gun to carry out the carjacking. When his stepfather asked that Mixon return the gun, Mixon refused and fled the house. His stepfather called the police, who

apprehended Mixon as he crossed back into Bristol, Tennessee. Officers found the stolen gun in Mixon's fanny pack.

A grand jury indicted Mixon for a host of crimes: carjacking, 18 U.S.C. § 2119; using and brandishing a firearm in furtherance of that crime, 18 U.S.C. § 924(c)(1)(A)(i)–(ii); being a felon in possession of a firearm while having at least three qualifying convictions under ACCA, 18 U.S.C. §§ 922(g)(1), 924(e)(1); and possessing a stolen firearm, 18 U.S.C. § 922(j). Mixon moved to dismiss the indictment on the ground that his charging statutes exceed Congress's Commerce Clause power as applied to him. He separately argued that the district court should dismiss the ACCA enhancement to his felon in possession charge because the Texas burglary statute, under which Mixon received three of his four asserted previous "violent felony" convictions, does not equate to "burglary" under 18 U.S.C. § 924(e)(2)(B)(ii). The district court rejected both arguments.

The case proceeded to trial. Because the government would have to show the jury prejudicial evidence of Mixon's past crimes to prove the ACCA enhancement, the district court bifurcated the proceedings. *See Erlinger v. United States*, 144 S. Ct. 1840, 1859 (2024). In the first phase, the parties tried the elements of all offenses except the ACCA enhancement, leaving the jury to render a verdict as to the four substantive counts. The government presented evidence detailing the carjacking, Mixon's flight from authorities, and his eventual capture. The jury heard testimony establishing that Beaver's car had been manufactured in Michigan and shipped to Tennessee. It also learned that the handgun found with Mixon was made in Virginia, purchased by his stepfather in Texas, and brought with him to Bristol, where Mixon stole it. Mixon stipulated to his felon status to prevent the government from introducing evidence about his criminal history, consistent with the Supreme Court's holding in *Old Chief v. United States*, 519 U.S. 172 (1997), which requires the government to accept a defendant's stipulation to felon status in § 922(g)(1) cases so as not to run afoul of Federal Rule of Evidence 403. 519 U.S. at 174. The jury found Mixon guilty on all four counts.

Because the jury found Mixon guilty of his § 922(g) felon in possession charge (among other crimes) the trial proceeded to the second phase. At that stage, the jury was asked to determine whether Mixon had at least "three previous convictions" for "violent felon[ies]" that

were "committed on occasions different from one another." 18 U.S.C. § 924(e)(1). If so, Mixon would be subject to a 15-year mandatory minimum sentence for his § 922(g) offense. *See id.* The government sought to introduce four prior Texas state convictions—a robbery committed in 2000, and three burglaries Mixon committed over the span of a week in 2013—with the goal of proving that at least three of those offenses occurred on "occasions different from one another," *id.*, a finding necessary to secure an ACCA sentencing enhancement. Mixon offered to stipulate that he committed the 2000 robbery on a different occasion from his other offenses, which he believed should keep the government from presenting the jury with details of the crime. To Mixon's mind, the particulars of his 2000 offense were unduly prejudicial because they closely resembled his most recent carjacking, meaning that *Old Chief* required the government to accept his stipulation. The district court, however, determined that the logic of *Old Chief* did not apply in this setting and thus let the government present evidence tied to Mixon's 2000 robbery.

The government offered the jury documents and testimony describing Mixon's convictions. The officer who investigated the 2000 robbery testified that the victim had finished her shift at Dairy Queen and started driving away in her pickup truck, at which point Mixon, who was hiding in the rear of the truck, sprung up, pressed something into the victim's neck, and told her to move over. Startled, the victim slammed on the brakes and jumped from the vehicle. The government also introduced documents related to Mixon's subsequent arrest and conviction.

The government gave similar treatment to Mixon's 2013 burglaries, aided by testimony from the investigating officer. Mixon and a friend burglarized a commercial garage where Mixon had been employed, stealing tools from the shop. Two days later, the two broke into an acquaintance's home, making off with electronics, jewelry, and other valuables. And a few days after that, Mixon and his friend broke into yet another home, where they stole firearms and electronics. The government produced documentation of Mixon's arrest and conviction for all three crimes.

Following its deliberations, the jury concluded that Mixon had committed at least three of those felonies on occasions different from each other. ACCA thus mandated a minimum 15-year sentence for Mixon's felon in possession offense. 18 U.S.C. § 924(e)(1). Added together with

his other crimes, Mixon received a within-Guidelines sentence of 377 months in prison. This appeal followed.

II.

Mixon mounts three challenges on appeal. One, that his present convictions exceeded Congress's Commerce Clause power as applied to him. Two, that his Texas burglary convictions do not qualify as violent felonies under ACCA. And three, that the district court should have enforced Mixon's offer to stipulate to the commission of his 2000 robbery.

A. We can easily dispose of the first argument. Invoking *United States v. Lopez*, 514 U.S. 549 (1995), Mixon contends that his carjacking and firearms convictions criminalized purely local, non-economic conduct, and are thus invalid exercises of congressional Commerce Clause power. *See* 514 U.S. at 561–62. In Mixon's view, the government could not convict him merely by showing that the firearm and vehicle tied to his conduct had been manufactured in—and thus necessarily transported from—another state. The district court rejected this argument, a decision we review de novo. *See United States v. Abdulmutallab*, 739 F.3d 891, 905 (6th Cir. 2014).

As the district court rightly noted, our post-*Lopez* precedents have long foreclosed Mixon's position. Regarding his felon in possession and stolen firearm convictions, we have held that "a gun that previously had moved in interstate commerce provides a sufficient nexus . . . to regulate" conduct like Mixon's "pursuant to the Commerce Clause." *United States v. Chesney*, 86 F.3d 564, 572 (6th Cir. 1996); *United States v. Henry*, 429 F.3d 603, 619–20 (6th Cir. 2005) (citing 18 U.S.C. § 922(g)(1)); *see also United States v. Luna*, 165 F.3d 316, 320 (5th Cir. 1999) (citing 18 U.S.C. § 922(j)'s "virtually identical" jurisdictional element). The same goes for Mixon's carjacking offenses, as Beaver's car had been "shipped from the manufacturer" to "another state." *United States v. Johnson*, 22 F.3d 106, 108–09 (6th Cir. 1994); *United States v. McHenry*, 97 F.3d 125, 129 (6th Cir. 1996). And we have further held that automobiles qualify as "instrumentalities" of interstate commerce that Congress may regulate more broadly. *See McHenry*, 97 F.3d at 126–27 (citing *Lopez*, 514 U.S. at 558).

Mixon, to his credit, acknowledges that precedent dooms his Commerce Clause challenge. He seeks only to preserve the argument for review down the road. *See United States v. Hemani*, 146 S. Ct. 1677, 1698 (2026) (Thomas J., concurring) (citing *Chesney*, 86 F.3d at 580 (Batchelder, J., concurring)). While we consider the argument so preserved, we are not optimistic of its chances of success. Unlike most *Lopez*-based challenges to criminal statutes, Mixon's crime "directly involve[d] interstate commerce." *United States v. Vaughn*, No. 23-5790, 2024 WL 4615853, at *4 (6th Cir. Oct. 30, 2024) (citing *United States v. Napier*, 233 F.3d 394, 400–01 (6th Cir. 2000); *United States v. Thompson*, 361 F.3d 918, 923 (6th Cir. 2004)); *see Lopez*, 514 U.S. at 558–59. The government, remember, presented evidence at trial establishing that Mixon himself transported the gun and the carjacked vehicle over state lines while fleeing law enforcement. The district court's instructions, in turn, allowed the jury to convict Mixon under that rationale. So even if Mixon's view of the Commerce Clause takes root one day, it seems doubtful that a jurisprudential shake-up would make much of a difference to Mixon. *See* Fed. R. Crim. P. 52(a); *Hedgpeth v. Pulido*, 555 U.S. 57, 61 (2008) (per curiam).

B. Turn next to Mixon's challenge to the application of ACCA's 15-year mandatory minimum sentence, which we evaluate de novo. *See United States v. Buie*, 960 F.3d 767, 770 (6th Cir. 2020). ACCA imposes that minimum sentence on a defendant convicted under § 922(g) if the defendant "has three previous convictions . . . for a violent felony or a serious drug offense . . . committed on occasions different from one another." 18 U.S.C. § 924(e)(1). Accepting for this purpose that his 2000 Texas robbery conviction counts as an ACCA-qualifying offense, Mixon nonetheless asserts that he is not subject to ACCA because his three Texas burglary convictions in 2013 do not count as violent felonies for ACCA purposes, leaving him well short of the "three previous convictions" mark needed for ACCA's mandatory minimum to apply to him.

In taking up Mixon's argument, we look first to ACCA's text, which defines "violent felony" to include "burglary." *Id.* § 924(e)(2)(B)(ii). That textual prompt begs the question whether Mixon's 2013 state law offenses each qualify as a "burglary" under ACCA. *Id.* By way of background, we note that while ACCA at one time expressly defined that term, Congress deleted the definition in a 1986 amendment. 18 U.S.C. app. § 1202(c)(9) (Supp. III 1985),

amended by Firearm Owners' Protection Act, Pub. L. No. 99-308, § 104(b), 100 Stat. 449, 458 (1986), *and* Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, § 1402(b), 100 Stat. 3207, 3207–40. To fill that definitional gap, the Supreme Court fashioned a methodology for discerning whether a state law burglary conviction counts as a "burglary" under ACCA, what has come to be known as the "categorical approach." *Taylor v. United States*, 495 U.S. 575, 602 (1990). It works as follows. *Taylor* accorded the term "burglary" as used in ACCA its "generic" meaning, illustrated by the state law consensus at the time of ACCA's 1986 amendment: "an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." *Id.* at 598 (citing Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 8.13(a), (c), (e) (1986)). We then ask whether "the state statute—regardless of its 'exact definition or label'—'substantially corresponds' to or is narrower than" burglary's generic definition. *Quarles v. United States*, 587 U.S. 645, 650 (2019) (quoting *Taylor*, 495 U.S. at 599, 602). If so, the state burglary crime may serve as an ACCA predicate. *Id.* But if the offense sweeps up a broader swath of conduct than generic burglary, then it cannot. *Id.*

As Mixon sees things, Tex. Penal Code Ann. § 30.02(a) [hereinafter Section 30.02(a)], the Texas burglary statute underlying his 2013 convictions, does not fall within *Taylor*'s generic burglary definition. Section 30.02(a) commands that "[a] person commits an offense if, without the effective consent of the owner, the person":

> (1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or
>
> (2) remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or
>
> (3) enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.

At the outset, we note Mixon's concession that Section 30.02(a)(1) and (a)(2) track generic burglary. And from the record available to us, Mixon's 2013 burglaries look quite a bit like Section 30.02(a)(1) convictions. In a different world, our analysis would likely end there. But ACCA's categorical approach regime generally prohibits us from considering the "particular

facts" of a conviction, as tempting as that may be. *Descamps v. United States*, 570 U.S. 254, 261 (2013) (quoting *Taylor*, 495 U.S. at 600).

As with many rules there is an exception to the just-mentioned prohibition. It applies in instances where the state statute at issue is "divisible"—that is, if the statutory text sets out distinct crimes with separate elements. *Mathis v. United States*, 579 U.S. 500, 505 (2016). If the statute operates in that manner, we may look to a limited class of documents to see which offense the defendant committed. *Id.* at 505–06. That is not the case here, however, as Section 30.02(a) is "indivisible." *Id.* at 505. Though Texas's burglary statute is "alternatively phrased," *id.* at 506, Texas courts have concluded that Sections 30.02(a)(1) and (a)(3) do not set out "distinct criminal offenses," meaning that a jury need not agree on which subsection applies to sustain a conviction. *Martinez v. State*, 269 S.W.3d 777, 783 (Tex. App. 2008). That state "judicial interpretation[]" of state law binds us. *United States v. Cervenak*, 135 F.4th 311, 321 (6th Cir. 2025) (en banc) (quoting *United States v. Ritchey*, 840 F.3d 310, 318 (6th Cir. 2016)). Accordingly, Section 30.02(a) provides for three different "factual means" for committing the elements of one offense, not three different sets of elements, *Mathis*, 579 U.S. at 506, a point both parties agree on, as do our sister circuits, *see United States v. Herrold*, 941 F.3d 173, 176–77 (5th Cir. 2019) (en banc); *United States v. Pena*, 952 F.3d 503, 509–10 (4th Cir. 2020); *United States v. Hutchinson*, 27 F.4th 1323, 1326–27 (8th Cir. 2022). So for today's purposes, we presume that Mixon's Texas burglary convictions could have rested on Section 30.02(a)(3). *See Cervenak*, 135 F.4th at 320 (quoting *Mellouli v. Lynch*, 575 U.S. 798, 805 (2015)).

1. With that understanding in mind, we turn to Section 30.02(a)(3). Generic burglary requires "intent to commit a crime." *Taylor*, 495 U.S. at 598 (citing LaFave & Scott, *supra*, § 8.13(a), (c), (e)). Section 30.02(a)(3), on the other hand, makes no express mention of intent. It creates criminal liability whenever a defendant unlawfully "enters a building or habitation and commits or attempts to commit a felony, theft, or an assault." Section 30.02(a)(3).

Without an explicit requirement to demonstrate an intent to commit a crime, the question, in effect, becomes whether such intent exists implicitly within Section 30.02(a)(3). If not, says Mixon, Section 30.02(a) sweeps beyond generic burglary. To derive an answer, we look to decisions of the Texas Court of Criminal Appeals, Texas's high court for matters of criminal

law. *See Cartwright v. United States*, 12 F.4th 572, 576 (6th Cir. 2021) ("In determining the elements of a state-law crime, we defer to the state supreme court's determination of the state's law." (citing *Johnson v. United States*, 559 U.S. 133, 138 (2010))); *see Cervenak*, 135 F.4th at 328. And we need not look far. In *DeVaughn v. State*, 749 S.W.2d 62 (Tex. Crim. App. 1988) (en banc), the Texas Court of Criminal Appeals held that "the attempted or completed theft or felony required by § 30.02(a)(3) . . . merely supplants the specific intent which accompanies entry in" Sections 30.02(a)(1) and (a)(2). 749 S.W.2d at 65. So rather than an intent-free version of Section 30.02(a)(1) or (a)(2), Section 30.02(a)(3) instead covers one "who enters without effective consent but, lacking intent to commit any crime upon his entry, subsequently forms that intent and commits or attempts a felony or theft." *Id.* (citation modified). Later decisions have adhered to *DeVaughn*'s formulation. *See Flores v. State*, 902 S.W.2d 618, 620 (Tex. App. 1995) (citing *DeVaughn*, 749 S.W.2d at 65); *Jacob v. State*, 892 S.W.2d 905, 909 (Tex. Crim. App. 1995) (en banc) (discussing how proof of a completed assault "shows an intent to commit the assault"); *Martinez*, 269 S.W.3d at 783 ("[S]ubsections (a)(1) and (3) are essentially alternative means of proving a single mens rea requirement . . . ." (citing *Ramos v. State*, No. 04-05-00543-CR, 2006 WL 1624230, at *1 (Tex. App. June 14, 2006); *Yates v. State*, No. 05-05-00140-CR, 2005 WL 3007786, at *3 (Tex. App. Nov. 10, 2005)). Accordingly, to be convicted under Section 30.02(a)(3), the state "must . . . prove" that the defendant "formed an intent to commit . . . a felony, theft or an assault." *Leaks v. State*, No. 13-03-613-CR, 2005 WL 704409, at *2 (Tex. App. Mar. 24, 2005) (citing *Flores*, 902 S.W.2d at 620).

Because Section 30.02(a)(3) requires a defendant to "form[]" the "specific intent" to commit a crime, *DeVaughn*, 749 S.W.2d at 65 (citation modified), the "assault" and "felony" offenses included in Section 30.02(a)(3) could only refer to intended offenses, no different than in the rest of Section 30.02(a). That forecloses the possibility that Mixon was convicted for a mere trespass plus an unintended crime. In effect, Texas courts have read generic burglary's intent element into Section 30.02(a)(3). *Taylor*, 495 U.S. at 598. That the intent component exists only implicitly makes no difference. *Taylor* leaves room for "variations in terminology," so long as "the state statute corresponds in substance to the generic meaning of burglary." *Id.* at 599. Here, in fact, Section 30.02(a)(3) is narrower than generic burglary in that the Texas law requires not only the intent to commit a crime, but also that the intended crime was "commit[ted]

or attempt[ed]," something generic burglary does not require. In sum, Section 30.02(a)(3) "substantially corresponds" to generic burglary. *Quarles*, 587 U.S. at 650 (quoting *Taylor*, 495 U.S. at 599).

We are not alone in this conclusion. Every circuit to confront this question has reached the same result. *See United States v. Bonilla*, 687 F.3d 188, 193 (4th Cir. 2012) ("[Section 30.02(a)(3)] *necessarily* requires proof that the defendant formulated the intent to commit a crime . . . ."), *cert. denied*, 517 U.S. 829 (2013); *Pena*, 952 F.3d at 510–11 & n.6 (reaffirming *Bonilla*); *Herrold*, 941 F.3d at 179 (citing *DeVaughn*, 749 S.W.2d at 65), *cert. denied*, 141 S. Ct. 273 (2020); *United States v. Wallace*, 964 F.3d 386, 390 (5th Cir. 2020) (reaffirming *Herrold*), *cert. denied*, 141 S. Ct. 910 (2020); *Hutchinson*, 27 F.4th at 1327–28 ("[T]he Texas Court of Criminal Appeals has made plain that the Texas burglary statute requires a specific intent to commit the crime."), *cert. denied*, 143 S. Ct. 1054 (2023).

Our decisions with respect to comparable statutes are of a piece. Tennessee's burglary statute, notably, copied the Texas one nearly verbatim. *See State v. Bowens*, No. E2017-02075-CCA-R3-CD, 2018 WL 5279374, at *9 (Tenn. Crim. App. Oct. 23, 2018). *Compare* Section 30.02(a)(3), *with* Tenn. Code Ann. § 39-14-402(a)(3) ("Enters a building and commits or attempts to commit a felony, theft or assault"). And, it bears noting, we have repeatedly rejected Mixon's intent-based argument in that setting. *See United States v. Priddy*, 808 F.3d 676, 685 (6th Cir. 2015); *United States v. Ferguson*, 868 F.3d 514, 515 (6th Cir. 2017); *United States v. Betts*, No. 22-5006, 2022 WL 3137710, at *1 (6th Cir. Aug. 5, 2022). The same is true of Michigan's home invasion statute. *See United States v. Paulk*, 46 F.4th 399, 404 (6th Cir. 2022); Mich. Comp. Laws Ann. § 750.110a(4)(a) ("enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a misdemeanor").

2. Mixon and the dissenting opinion offer a competing interpretation of Section 30.02(a)(3). To begin, they point out that Section 30.02(a)(3) criminalizes unlawful entry plus the commission of a "felony" or an "assault." In Texas, one can commit "assault" not only by "intentionally" or "knowingly" harming another, but also by "recklessly" causing harm. Tex. Penal Code Ann. § 22.01(a)(1). And a "felony" offense under Texas law includes strict liability and negligence-based crimes. *See id.* § 22.011(a)(2) (statutory rape); *id.* § 19.05(a) (negligent

homicide). That poses a problem for the government, Mixon and the dissenting opinion say, because "intent to commit an offense has traditionally been interpreted to mean that the actor must have the intent to bring about [a] desired result." *Flanagan v. State*, 675 S.W.2d 734, 741 (Tex. Crim. App. 1982) (en banc) (citation modified). And logically speaking, one cannot intend to commit an unintentional crime. *See Borden v. United States*, 141 S. Ct. 1817, 1827–28 (2021) (plurality opinion) (holding that ACCA's "intent requirement" for a "crime of violence" does not cover "reckless conduct"); *United States v. Grant*, 15 F.4th 452, 458 (6th Cir. 2021) ("One cannot intend to commit a reckless [crime]." (citation modified)). Taking all of this together, if Section 30.02(a)(3) potentially includes unintentional crimes as predicates, as Mixon and the dissenting opinion maintain, the statute could not require "intent to commit a crime" as is necessary to fit within *Taylor*'s formulation of generic burglary. 495 U.S. at 598 (citing LaFave & Scott, *supra*, § 8.13(a), (c), (e)). Yet this argument, while debatable in theory, in practice runs into the insurmountable hurdle just mentioned, namely, that the Texas Court of Criminal Appeals has interpreted the statute otherwise, an interpretation we are "bound" to honor. *Johnson*, 559 U.S. at 138.

From its federal perch, the dissenting opinion would cast aside the Texas high court's interpretation of a Texas statute. Dissenting Op. at 28 (suggesting the "inquiry can end" without looking at state case law (citing *Cervenak*, 135 F.4th at 326)). But adherence to our federal system of divided power leaves us no "authority to place a construction on a state statute different from the one rendered by the highest court of the state." *Johnson v. Fankell*, 520 U.S. 911, 916 (1997); s*ee also Cartwright*, 12 F.4th at 576 (citing *Johnson*, 559 U.S. at 138). *Cervenak* does not suggest otherwise. There, we held that *the absence* of state case law illustrating the scope of a state criminal statute was of no moment for purposes of our ACCA predicate offense analysis when the statute's "plain language . . . demonstrate[d] . . . that [the] state would apply it to a broader swath of conduct than the generic definition of [the] offense." *Cervenak*, 135 F.4th at 326. But unlike in *Cervenak*, here we have a mountain of state case law telling us exactly how to understand Section 30.02(a)(3). True, as the dissenting opinion highlights, *Cervenak* rejected the government's reading of a particular Ohio case. Dissenting Op. at 32 (citing *Cervenak*, 135 F.4th at 324–25). But that does not mean we can ignore state case law recognizing that a state *does not* apply a criminal statute to more conduct than the

generic offense covers. *Cervenak*, 135 F.4th at 326 (noting the "plain text" remains "[s]ubject to a contrary interpretation by [the state's] courts" (citing *United States v. Taylor*, 142 S. Ct. 2015, 2025 (2022))). Put differently, *Cervenak*, as it must, "[a]ppreciat[es] the respect due state courts as the final arbiters of state law in our federal system." *Taylor*, 142 S. Ct. at 2025.

Turning to the substance of the Texas courts' interpretation of Section 30.02(a)(3), Mixon faults us for misreading *DeVaughn*, which he believes does not narrow Section 30.02(a)(3) at all. Yet Mixon does not dispute *DeVaughn*'s supposition that a completed or attempted felony under Section 30.02(a)(3) takes the place of the "specific intent" found in Section 30.02(a)(1) and (a)(2). 749 S.W.2d at 65. Nor does he critique subsequent Texas decisions describing the state's burden to "prove that [the defendant] formed an intent to commit . . . a felony, theft or an assault." *Leaks*, 2005 WL 704409, at *2 (citing *Flores*, 902 S.W.2d at 620). Instead, Mixon emphasizes that *DeVaughn* did not explicitly consider reckless assault, a point joined by the dissenting opinion. Dissenting Op. at 31–32. But that omission is tied to the fact that Texas added assault as a predicate after *DeVaughn* was decided without altering *DeVaughn*'s understanding of Section 30.02(a)(3). Tex. Penal Code Ann. § 30.02(a)(3) (West Supp. 1999); *Martinez*, 269 S.W.3d at 783; *see Pena*, 952 F.3d at 511 n.7 ("The existence of the additional 'assault' language does not change the result for purposes of [generic-offense] analysis."). Nor, in any event, does *DeVaughn*'s failure to expressly mention unintentional crimes give us pause. Again, *DeVaughn*'s reasoning necessarily eliminates such crimes as burglary predicates. That no previous defendant appears to have raised this issue reflects Mixon's creativity, but it also illustrates that no court has interpreted Section 30.02(a)(3) or *DeVaughn* as Mixon does. *See United States v. Brown*, 957 F.3d 679, 687 (6th Cir. 2020) ("Inventive lawyers can always imagine hypothetical convictions under which a state statute would categorically fall outside [ACCA] . . . ." (citing *Moncrieffe v. Holder*, 569 U.S. 184, 205–06 (2013))).

The dissenting opinion, for its part, reads *DeVaughn* differently than any other court has done. *See* Dissenting Op. at 29–32. It understands *DeVaughn* to leave room for Section 30.03(a)(3) prosecutions that lack "a finding of intent." *Id.* at 30. It does not. *DeVaughn* expressly adopted the Texas Practice Commentary's description of Section 30.02(a)(3), which explained that the provision addresses instances where a burglar, "lacking any intent to commit a

crime upon his entry, *subsequently forms that intent* and commits or attempts a felony or theft." *DeVaughn*, 749 S.W.2d at 65 (emphasis added) (citation modified). True, as the dissenting opinion notes, the Practice Commentary describes what Section 30.02(a)(3) "*includes*" as burglary, which is not necessarily exhaustive. Dissenting Op. at 31 (emphasis added). But read in context, "includes as burglary" simply means that the ensuing description addresses what Section 30.02(a)(3) adds to the other two prongs of the burglary statute. That description is thus most naturally read to refer to *all* variations of Section 30.02(a)(3) burglary.

The dissenting opinion next emphasizes a footnote in *DeVaughn* stating that "'intent to commit a felony or theft' is not an element of [Section 30.02(a)(3)]." Dissenting Op. at 30 (quoting 749 S.W.2d at 65 n.4). Here again, the dissenting opinion takes language out of context. In the body of the opinion the footnote referenced, the Texas Court of Criminal Appeals addressed the threshold aspect of a Texas burglary offense—when an individual "enters a building or habitation," Section 30.02(a)(3)—and the footnote made plain that, for that aspect of the offense, regardless of the language in the statute, the government must show that the defendant intended that act. *DeVaughn*, 749 S.W.2d at 65 & n.4 (citing *Day v. State*, 532 S.W.2d 302, 305 n.1 (Tex. Crim. App. 1975) ("[T]o constitute the offense of burglary by committing a felony or theft, the proof must show that the entry was either knowingly or intentionally done.")). The footnote did not address, as the dissenting opinion would have one believe, the separate question under Section 30.02(a)(3) that asks whether a defendant, once having entered a building or habitation, must then form the intent to commit or attempt a felony. *See id.* at 64 n.3 (making the same point about entry for Sections 30.02(a)(1) and (2)). *DeVaughn* addressed that issue in the following paragraphs. *See id.* at 65. A selective quotation from a footnote on a distinct topic cannot negate that discussion.

In addition to resisting *DeVaughn*'s straightforward holding, the dissenting opinion likewise takes issue with the follow-on Texas cases adhering to *DeVaughn*'s interpretation of Section 30.02(a)(3). In doing so, the dissenting opinion echoes Mixon's reliance on several Section 30.02(a)(3) cases addressing defendants who unlawfully entered a building and committed assault. *See* Dissenting Op. at 29 (citing *Wingfield v. State*, 282 S.W.3d 102, 105–06 (Tex. App. 2009); *Sneed v. State*, No. 05-12-01061-CR, 2014 WL 5477386, at *1–2 (Tex. App.

Oct. 30, 2014); *Alacan v. State*, No. 03-14-00410-CR, 2016 WL 286215, at *3 (Tex. App. Jan. 21, 2016); *Crawford v. State*, No. 05-13-01494-CR, 2015 WL 1243408, at *2 (Tex. App. Mar. 16, 2015)). In each example, however, the court at most recited the elements of burglary and assault without addressing the state's burden of proof. Equally true, as those cases involved defendants whose conduct was consistent with a specific intent to harm, one cannot fairly read the decisions as permitting a conviction based on reckless assault. *See Hutchinson*, 27 F.4th at 1327. Only *Daniel v. State*, No. 07-17-00216-CR, 2018 WL 6581507 (Tex. App. Dec. 13, 2018), expressly mentions Section 30.02(a)(3)'s intent element. 2018 WL 6581507, at *3. And it did so simply to observe that Section 30.02(a)(3) does not always require "intent at the time of entry," *id.*, something *DeVaughn* itself observed, 749 S.W.2d at 65; *see Hutchinson*, 27 F.4th at 1327 (distinguishing *Daniel*).

Mixon's last piece of evidence comes from a 2024 burglary conviction in Dallas County. The defendant there pleaded guilty to "having entered into [a] building without the expressed consent of the owner of the building, and then committing assault by recklessly causing bodily injury." R. 21-1, PageID 79. Because the trial court accepted that plea, Mixon sees that development as proof that Section 30.02(a)(3) "means what it says." Appellant Br. 49. The dissenting opinion, too, points to this plea as an "illustrat[ion] that the Texas burglary statute criminalizes conduct that does not include intent to commit a crime." Dissenting Op. at 28. But the documentation Mixon and the dissenting opinion offer tells us nothing of what the defendant actually did. Only the indictment gives some indication. And upon inspection, that document accuses the defendant of "enter[ing] a habitation . . . with the intent to commit assault" and "then and there commit[ting] assault." R. 21-1, PageID 93. Those statements entirely undermine Mixon's and the dissenting opinion's arguments. True, the trial court still accepted the defendant's confession to a reckless assault as legally sufficient. But the court never consciously interpreted Section 30.02(a)(3) and at most implied Mixon's desired construction by accepting the plea. *See Webster v. Fall*, 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record . . . are not to be considered as having been so decided as to constitute precedents."). *Contra* Dissenting Op. at 29 (suggesting the court's acceptance of the guilty plea amounted to an "interpretation" of Section 30.02(a)(3)). Besides, this lone, non-precedential state trial court action stands as an outlier in Texas jurisprudence. Even accepting that the categorical approach

at least theoretically treats plea agreements as evidence of a statute's practical application, *see Taylor*, 142 S. Ct. at 2024, we nonetheless should not take an entire statute outside ACCA's reach based on "a few . . . outlier lower court decisions," *Perez v. United States*, 885 F.3d 984, 990 (6th Cir. 2018) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)), let alone one. The dissenting opinion's desire to elevate a single state court guilty plea over an interpretation of Texas's high court speaks for itself.

As a final measure, Mixon asks us to buck the Texas Court of Criminal Appeals's interpretation of Section 30.02(a)(3), and instead favor the rationale in *Van Cannon v. United States*. 890 F.3d 656 (7th Cir. 2018). The dissenting opinion would have us do the same. *See* Dissenting Op. at 29. In *Van Cannon*, the Seventh Circuit considered an argument like Mixon's with respect to Minnesota's statute, 890 F.3d at 664, which defined as burglary instances where one "enters a building without consent and commits a crime while in the building," Minn. Stat. § 609.582(2)(a). And like Mixon, *Van Cannon* reasoned that because "some [crimes] require only recklessness or criminal negligence," "intent to commit a crime" is not implicit within the statute. 890 F.3d at 664. Yet as *Van Cannon* dealt with a different state's statute, it had a different state court defining its contours. And courts in the Land of 10,000 Lakes have given their law a broader reading than have the Lone Star State's courts in interpreting Section 30.02(a)(3). *See United States v. Bugh*, 459 F. Supp. 3d 1184, 1201–02 (D. Minn. 2020) (collecting cases upholding burglary convictions premised on negligence crimes). As a result, *Van Cannon* has little bearing on this case.

3. Lacking success with his flagship argument, Mixon offers us an alternative. Even if Section 30.02(a)(3) contains a specific intent element, the statute, says Mixon, still does not require that the requisite intent be formed "at the time of entry, as generic unlawful-entry burglary requires." Appellant Br. 53 (citation modified). Here, Mixon seizes on dicta from the Supreme Court's decision in *Quarles*: "Put simply, for burglary predicated on unlawful *entry*, the defendant must have the intent to commit a crime at the time of entry." 587 U.S. at 651. But read more fully, *Quarles* does not sustain Mixon's argument. There, the defendant argued that Michigan's statute was broader than generic burglary because it allowed offenders to form the intent to commit a crime "*at any time*" while unlawfully present in a dwelling. *Id.* at 648

(quoting Mich. Comp. Laws Ann. § 750.11a(4)(a) (West 2004)). The Supreme Court disagreed. While a burglary predicated solely on entry requires criminal intent to form contemporaneously with entry, the Supreme Court explained, a burglary "predicated on unlawful *remaining*" allows that intent to form "at any time" while the defendant unlawfully remains. *Id.* at 651. And because the Michigan statute encompassed both forms of burglary, it did not sweep too broadly. *See id.* at 655.

Texas law is no different. *Compare* Section 30.02(a)(3) ("enters a building . . . and commits or attempts to commit a [crime]"), *with* Mich. Comp. Laws Ann. § 750.110a(4)(a) (West 2004) ("enters a dwelling . . . and, at any time while he or she is entering, present in, or exiting the dwelling, commits a [crime]"). Although both the Michigan and Texas statutes refer to "enter[ing]," Section 30.02(a)(3) is not solely "predicated on unlawful entry." *Quarles*, 587 U.S. at 651 (emphasis omitted). After all, anyone who "enters" without intent to commit a crime yet "subsequently forms that intent" and then attempts or commits a crime necessarily remained inside to do so. *DeVaughn*, 749 S.W.2d at 65 (citation modified). So Section 30.02(a)(3) covers generic "remaining-in" burglary too. *See Quarles*, 587 U.S. at 652–53. Other courts have read Section 30.02(a)(3) exactly that way. *See Bonilla*, 687 F.3d at 193 ("'[R]emaining in' cases could be charged under section (a)(3) . . . ." (citation modified)); *see also Herrold*, 941 F.3d at 179. And, again, it is also how we understood Tennessee's sister statute. *See Priddy*, 808 F.3d at 685 ("[Tennessee's burglary statute] is also a 'remaining-in' variant of generic burglary because someone who enters a building or structure and, while inside, commits or attempts to commit a felony will necessarily have remained inside the building or structure to do so." (citing *Taylor*, 495 U.S. at 602)); Tenn. Code Ann. § 39-14-402(a)(3) (West 1995) ("Enters a building and commits or attempts to commit a felony or theft").

In short, even though the Michigan statute okayed in *Quarles* uses different words, Section 30.02(a)(3) "corresponds in substance" to that language. *Taylor*, 495 U.S. at 599. So Mixon is wrong to say that *Quarles* renders the Texas statute overbroad.

* * *

To sum up: The Texas courts have read an intent requirement into Section 30.02(a)(3). As a result, Section 30.02(a)(3) does not sweep broader than *Taylor*'s generic burglary, meaning Mixon's Section 30.02(a) convictions count as violent felonies under ACCA. In reaching this understanding of Texas law, we are in good company. Today, we join the Fourth Circuit, all 19 judges on the en banc Fifth Circuit, the Eighth Circuit, and the Texas state courts. The dissenting opinion, on the other hand, stands alone.

C. That leaves Mixon's final objection, which faults the district court for allowing the government during the trial's second phase to show the jury evidence regarding Mixon's 2000 robbery conviction. To his mind, the logic of the Supreme Court's *Old Chief* decision extends to ACCA's "occasions different" element, 18 U.S.C. § 924(e)(1). *See Old Chief*, 519 U.S. at 174 (reading Rule 403 as requiring the government to accept a defendant's stipulation to felon status in § 922(g)(1) cases). It follows, says Mixon, that Rule 403, which gives district courts discretion to exclude evidence if its probative value is substantially outweighed by the risk of unfair prejudice, required the government to accept Mixon's offer to stipulate that his 2000 robbery occurred on a different occasion from his other prior offenses. We review the district court's decision to admit details about the robbery in lieu of Mixon's stipulation for abuse of discretion. *See United States v. Boyd*, 640 F.3d 657, 668 (6th Cir. 2011).

1. Mixon raises an issue of first impression. To understand why, consider that for nearly all of ACCA's history, judges alone determined whether a defendant who violated § 922(g)(1) had three or more previous ACCA-qualifying convictions "committed on occasions different from one another." 18 U.S.C. § 924(e)(1); *see Erlinger*, 144 S. Ct. at 1862 (Kavanaugh, J., dissenting) (noting the "unanimous conclusion" among courts). That changed with the recent decision in *Erlinger*. After *Erlinger*, defendants are "entitled to have a jury resolve ACCA's occasions inquiry unanimously and beyond a reasonable doubt." 144 S. Ct. at 1852. Mixon's case was among the first post-*Erlinger* prosecutions to present the ACCA enhancement to a jury. And today is our first opportunity to consider how ACCA's occasions clause interacts with *Old Chief*.

Old Chief, on the other hand, has a longer pedigree. There, the Supreme Court confronted the substantive federal firearm offense for which ACCA provides a sentencing enhancement: a defendant charged with violating § 922(g)(1) by possessing a firearm as a felon. *Old Chief*, 519 U.S. at 174–75. To convict the defendant, the government was thus primarily required to prove two things: one, that the defendant was a felon; and two, that he possessed a firearm. The defendant offered to stipulate to his status as a felon, leaving the jury to decide the remaining § 922(g)(1) element whether the defendant possessed a firearm. *Id.* The district court rejected the stipulation and allowed the jury to hear evidence tied to the defendant's felon status. *Id.* at 177. Doing so was improper, the Supreme Court would later explain. In a § 922(g)(1) case, a district court abuses its discretion under Rule 403 whenever it spurns a defendant's offer to stipulate to his status as a felon. *Id.* at 174. Because felon status stands "entirely outside" the story of the firearm-related conduct that gave rise to the current prosecution, *Old Chief* reasoned, a stipulation to that element does little to hamstring the government's presentation. *See id.* at 190–91. At the same time, details about the prior offense that made the defendant a felon create a risk that the jury will "generaliz[e] a defendant's earlier bad act into bad character." *Id.* at 180.

But the holding's reach was expressly limited. *Old Chief* reaffirmed the bedrock principle that the government "is entitled to prove its case by evidence of its own choice." *Id.* at 186. Juries, the Supreme Court emphasized, expect the government to present a narrative vivid enough to convince them "that a guilty verdict would be morally reasonable," and the "gaps of abstraction" created by stipulations upset that expectation. *Id.* at 188–89. On that basis, the Supreme Court cabined *Old Chief* "to cases involving proof of felon status," reminding litigants that Rule 403 leaves "broad discretion" to district courts. *Id.* at 183 n.7. Following that lead, we have "consistently declined invitations to expand" *Old Chief* into new areas. *United States v. Carpenter*, 157 F.4th 841, 851 (6th Cir. 2025); *see, e.g.*, *id.* (terrorism); *United States v. Libbey-Tipton*, 948 F.3d 694, 704 (6th Cir. 2020) (child pornography); *United States v. Luck*, 852 F.3d 615, 624–26 (6th Cir. 2017) (child pornography); *United States v. Odeh*, 815 F.3d 968, 982 (6th Cir. 2016) (plurality opinion) (immigration fraud); *Boyd*, 640 F.3d at 668–69 (carjacking); *United States v. Brown*, No. 21-5716, 2022 WL 3211096, at *3 n.1 (6th Cir. Aug. 9, 2022) (sex offender registration).

Against this backdrop, we are skeptical of Mixon's *Old Chief* argument. To our mind, ACCA's occasions clause differs from § 922(g)(1)'s felon status element in at least two critical respects. One, consider what each inquiry entails. Felon status, as *Old Chief* recognized, is an "abstract proposition" with records alone proving whether it does (or does not) exist in a given case. 519 U.S. at 190 (noting that felon status is a binary determination). Meanwhile, "occasions different," like most other elements in a given criminal statute, is susceptible to various forms of concrete proof, none of which singlehandedly dispose of the inquiry. For instance, although "[t]iming" can often determine the outcome, other factors such as "[p]roximity" and "the character and relationship of the offenses" can inform the analysis. *Wooden v. United States*, 142 S. Ct. 1063, 1071 (2022). As a result, the "occasions different" assessment, unlike felon status, will rise or fall based on the circumstances in play. Two, consider how a stipulation plays out in each setting. Stipulating to felon status is "conclusive" as to that element of the offense. *Old Chief*, 519 U.S. at 186. By contrast, stipulating that one prior conviction out of several happened on a different occasion, as would Mixon, carves off only one part of one element. In that sense, unlike the rule in *Old Chief*, Mixon does not advocate for a categorical rule for stipulations in this setting, and instead presses that some occasions evidence on the 2013 crimes can go to the jury. But allowing defendants to "selectively stipulate" as to how the government can prove the occasions clause invites mischief. A defendant could game out what stipulations might best position him to ultimately prevail before the jury with respect to its ultimate "occasions different" determination, at some cost to the government's presentation. *Boyd*, 640 F.3d at 668.

More fundamentally, *Old Chief* underscored that felon status had no role in the "story" the government presented in attempting to secure a conviction for the underlying § 922(g)(1) offense at issue there. 519 U.S. at 190. The same is not true for "occasions different." Given ACCA's three-strikes-you're-out punishment scheme, a jury instructed on the occasions clause would gather that "ACCA is a recidivist statute that gauges what a defendant's 'history of criminal activity' says about his or her 'culpability and dangerousness.'" *Brown v. United States*, 144 S. Ct. 1195, 1204 (2024) (quoting *McNeill v. United States*, 563 U.S. 816, 823 (2011)). Viewed in that light, a jury expects a complete telling of the story of a defendant who has had at least three chances to renounce a life of crime yet continues to pose a danger to the

public. But a stipulation as to any of the defendant's previous crimes creates a "missing link" in that narrative, undermining the government's ability to explain to the jury why the sentencing enhancement "would be morally reasonable." *Old Chief*, 519 U.S. at 188–89. At day's end, the reasons *Old Chief* gave for denying the government its usual latitude to present its case do not enter the picture when it comes to ACCA's occasions clause.

2. Even so, says Mixon, *Old Chief* at least stands for the principle that district courts should account for a proposed stipulation's relative usefulness when weighing the probative value of the government's evidence against its prejudicial effect. *See id.* at 186. And to Mixon's eye, the district court failed to properly weigh those Rule 403 considerations with respect to the evidence introduced concerning his robbery conviction.

Even accepting Mixon's description of a district court's duties in this setting, a number of threshold factors work against his bottom line conclusion. Rule 403 affords a district court discretion to "exclude" otherwise "relevant evidence if its probative value is substantially outweighed" by a risk of "unfair prejudice." Fed. R. Evid. 403. Accordingly, on appeal, we ask only whether the district court abused its discretion in resolving a Rule 403 objection. It follows that in assessing whether the district court abused its discretion in its weighing of the Rule 403 factors, we take "a maximal view of the evidence's probative value and a minimal view of its unfairly prejudicial effect," given our deferential standard of review. *United States v. Brown*, 367 F.3d 549, 554 (6th Cir. 2004) (citation modified). "It is thus no surprise to learn that '[r]eversals on Rule 403 grounds are few and far between.'" *United States v. Williams*, No. 25-5174, 2026 WL 1288258, at *3 (6th Cir. May 11, 2026) (alteration in original) (quoting *United States v. Lang*, 717 F. App'x 523, 538 (6th Cir. 2017)).

To tee up that assessment, consider what the government presented to the jury during the trial's second phase, as compared to the alternative approach preferred by Mixon. The government called as a witness the officer who investigated Mixon's 2000 robbery. She recounted that Mixon hid in the back of the victim's truck while parked outside Dairy Queen. When the victim finished her shift and entered the car, Mixon popped up and pressed something into her neck. Rather than move over to the passenger seat as Mixon demanded, the victim hit the brakes and leaped from the car. The government also introduced documents evidencing

Mixon's arrest and conviction. Mixon, on the other hand, would have had all of this evidence excluded in favor of the jury being provided with a stipulation indicating that Mixon's "robbery conviction in Dallas County, Texas[,] . . . with an offense date of August 7, 2000," happened on a "different occasion" than his other convictions. R. 166, PageID 1692.

Beginning with the probative value inquiry, Mixon contends that the conclusion that his 2000 robbery did not occur on the same occasion as his 2013 burglaries was so apparent that there was no difference in the value of presenting that information either by stipulation or evidence. Given the 13-year gap in time between the robbery and burglaries, Mixon has a fair point. Yet a few observations blunt the point. One is the fact that time is often, but not always, the "decisive[]" consideration in an "occasions different" analysis. *Wooden*, 142 S. Ct. at 1071. Other relevant information includes details about "the character" of Mixon's robbery offense as well as its "location," facts that would have been withheld from the jury had the district court accepted Mixon's stipulation. *Id.* Compare that to *Old Chief*, where the details about the defendant's prior crime had no "legitimately probative" value with respect to felon status apart from the mere fact of conviction. 519 U.S. at 191.

Additionally, accepting Mixon's stipulation may have sent unintended signals to the jury. For instance, the jury might have assumed that the parties reached their understanding based on the years-long separation between the crimes, leading the jury to place disproportionate weight on the timing factor alone when it considered Mixon's 2013 burglaries, which were not the subject of a stipulation. If so, the jury may have been less inclined to side with the government's characterization of the more recent crimes—which were separated by only days—as having occurred on "occasions different." *See id.* at 188 (warning of "negative inference[s]" generated by stipulations (citation modified)). *But see United States v. Campbell*, 122 F.4th 624, 629 (6th Cir. 2024) (noting that "whether the offenses were committed a 'day or more apart' . . . can singularly decide" the occasions different element (quoting *Wooden*, 142 S. Ct. at 1071)). Mixon, to his credit, largely acknowledges as much.

And at a deeper level, Mixon shortchanges the narrative value in discussing his "history of criminal activity." *Brown*, 144 S. Ct. at 1204 (citation modified). As noted, a jury would fairly expect to hear how that history spoke to Mixon's "culpability and dangerousness." *Id.* Yet

Mixon's proposed stipulation risked subverting that expectation. By glossing over the facts of Mixon's 2000 robbery conviction, the stipulation naturally would shift the jury's attention away from that offense and instead focus it on his string of 2013 burglaries. That would help Mixon—and hurt the government—because it would deemphasize the length and severity of Mixon's criminal history, making the sentencing enhancement seem less "morally reasonable." *Old Chief*, 519 U.S. at 188–89. All to say, while Mixon is right that certain realities presumably limited the probative value of the government's evidence, the government nonetheless had legitimate reasons to refuse a stipulation.

Now turn to the risk of unfair prejudice. As the government's evidence almost always has some prejudicial effect on a criminal defendant, our concern is narrowly with instances that give rise to an "undue tendency to suggest a decision based on improper considerations." *United States v. Hazelwood*, 979 F.3d 398, 412 (6th Cir. 2020) (citation modified). We do not detect that kind of prejudice here.

At the outset, it bears emphasizing that the district court took precautionary measures in Mixon's favor. Recall that in *Erlinger*, the Supreme Court recognized that the sort of evidence needed to satisfy the occasions clause—details of the defendant's past crimes—could influence the jury as to the crimes currently on trial. *See* 144 S. Ct. at 1859. To allay such concerns, *Erlinger* recommended that district courts bifurcate their proceedings, saving the "occasions different" inquiry for a separate phase of trial, should the jury return a guilty verdict on the underlying charges. *Id.* at 1859–60. The district court did exactly that here, which sets this case apart from the facts of *Old Chief*. In that case, remember, the Supreme Court endorsed stipulations to felon status on the premise that a jury would otherwise "generaliz[e] a defendant's earlier bad act into bad character." 519 U.S. at 180. Here, on the other hand, the jury had already found Mixon guilty of his latest carjacking by the time the government introduced his earlier offenses. So the jury had no opportunity to engage in the "bad character reasoning." *Id.* at 185.

Recognizing as much, Mixon gestures toward a more general concern. Somewhat different from *Old Chief*'s fear about propensity evidence prejudicing a defendant's chances for an acquittal, Mixon theorizes that the similarity between his present carjacking offense and the

2000 robbery tended to paint him as a "serial recidivist." Appellant Br. 73. So by presenting the details of that earlier crime, Mixon believes the government primed the jury to convict him on grounds that "a bad person deserves punishment." *Id.* at 60 (quoting *Old Chief*, 519 U.S. at 181).

We are not so convinced. As explained above, highlighting the defendant's history of recidivism is, in large part, baked into the endeavor of proving the ACCA enhancement. *See Brown*, 144 S. Ct. at 1204. Although that state of play does not grant the government carte blanche to introduce all manner of prejudicial evidence, the government did not generate more prejudice than what was already unavoidable in meeting its burden. *See Boyd*, 640 F.3d at 668–69. At trial, the government spent most of its time presenting the jury with details of Mixon's three different burglaries in 2013. Those convictions doubtlessly portrayed Mixon as a repeat offender. So his 2000 robbery, which the government also presented to the jury, likely took a back seat in the jury's eyes with respect to Mixon's status as a recidivist. Equally true, had the government accepted Mixon's stipulation, the jury would still have learned that he had committed an earlier robbery. *See Erlinger*, 144 S. Ct. at 1872 (Kavanaugh, J., dissenting). Taken together, these four convictions could fairly make Mixon look like a "serial recidivist." Appellant Br. 73. It would seem unlikely that the particulars of any one of those crimes had an outsized impact on that perception in the jurors' minds. *See United States v. Gardner*, 887 F.3d 780, 784 (6th Cir. 2018).

Examining the details of the 2000 robbery does not change our conclusion. Granted, that offense, like Mixon's 2023 carjacking, involved him threatening a fast-food worker at gunpoint and carjacking her vehicle. But while Mixon's choice of victim is an intriguing point of comparison, we fail to see how that incidental fact reflects Mixon's tendency to recidivate on its own. If anything, Mixon's more recent offense had different and worse facts. There, Mixon demanded that Beaver "get naked" as he attempted to drive off with her. R. 164, PageID 1310–12. Mixon's apparent attempt at kidnapping and possibly sexual assault had far more incendiary potential than his 2000 robbery. And given how Mixon's most recent carjacking was presented to the jury in phase one, with his earlier offense appearing only in phase two, the prior robbery itself would have been quite unlikely to "easily shock[]" the jury. *Gardner*, 887 F.3d at 784. Equally true, as that robbery occurred nearly 25 years before the jury learned of it, and thus was

"far removed in time" from today's events, the jury had less reason to view that offense as a basis to punish Mixon. *Old Chief*, 519 U.S. at 185 n.8.

Perspective from our earlier decisions shores up our approach. To take one example, in a carjacking case we allowed the government to introduce testimony detailing the victim's "horrific" injuries in lieu of the defendant's offer to stipulate. *Boyd*, 640 F.3d at 668–69. To take another, in a child pornography case we let the government introduce testimony from a victim whom the defendant had sexually molested in the past, despite the defendant's offer to stipulate to the prior conviction. *See Libbey-Tipton*, 948 F.3d at 704–05. Mixon's case sits comfortably among these forebears. The details of his robbery conviction do not rise to the level of unfair prejudice as would warrant reversal on Rule 403 grounds.

All in all, to the extent *Old Chief* has any applicability outside the unique factual setting in which it arose, Mixon's case is not the appropriate vehicle for extending the decision's reach. And on the record presented, the district court did not abuse its wide discretion under Rule 403 in allowing the government to prove the ACCA enhancement with evidence of its choosing. *See id.* at 705.

* * * * *

We affirm.

CONCURRENCE / DISSENT

BLOOMEKATZ, Circuit Judge, concurring in part, dissenting in part, and dissenting from the judgment. Charles Nile Mixon was sentenced to 377 months' imprisonment as an armed career criminal pursuant to the Armed Career Criminal Act. He raises three challenges to his convictions, and I join the majority opinion's rejection of two of the three. I join Part II.A because settled law in this circuit forecloses Mixon's Commerce Clause challenge to his carjacking and firearm possession convictions. I join Part II.C because the district court did not abuse its discretion under Federal Rule of Evidence 403 when it rejected Mixon's proffered stipulation.

But unlike the majority opinion, I agree with Mixon that his prior convictions under the Texas burglary statute are not predicate convictions that support his armed career criminal status. Because I believe the plain language of the Texas burglary statute shows that it is categorically broader than generic burglary, I would reverse the district court's application of ACCA's fifteen-year mandatory-minimum sentence for Mixon's felon-in-possession offense. *See* 18 U.S.C. § 924(e)(1). Therefore, I respectfully dissent.

The majority opinion sets forth the legal framework for analyzing Mixon's challenge to the ACCA enhancement the district court applied in this case, so I review it only briefly. *See* Maj. Op. at 6–8. The ACCA requires a fifteen-year minimum sentence for a defendant convicted of being a felon in possession of a firearm if that defendant has three prior convictions for, as relevant here, a "violent felony" including "burglary." 18 U.S.C. § 924(e)(1); § 924(e)(2)(B)(ii). If a prior conviction for a state crime counts as a "burglary" under the ACCA, it is an ACCA predicate offense. *Quarles v. United States*, 587 U.S. 645, 649–50 (2019). As the majority opinion explains, to determine if a prior state conviction counts as an ACCA predicate for burglary, we use the categorical approach. Maj. Op. at 7. That means we "compare the elements of the [state] statute forming the basis of the defendant's conviction with the elements of the 'generic' crime" of burglary. *Descamps v. United States*, 570 U.S. 254, 257 (2013). If the state statute the defendant was convicted of violating "'substantially corresponds' to or is narrower

than the generic definition of burglary," then the prior conviction counts as an ACCA predicate. *Quarles*, 587 U.S. at 650 (quoting *Taylor v. United States*, 495 U.S. 575, 602 (1990)).

Applying the categorical approach, like the majority opinion, I ask whether Mixon's prior three convictions under the Texas burglary statute "fall within" the generic definition of burglary. Maj. Op. at 7. Start with the generic definition of burglary. In *Taylor v. United States*, the Supreme Court defined generic burglary as "unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime." 495 U.S. at 598. Broken down, generic burglary has three required elements: (1) the act of unlawful entering or remaining in; (2) a building or structure; and (3) doing so with intent to commit a crime.[1]

Compare those elements to Mixon's state convictions for burglary. The Texas burglary statute provides that a person commits burglary when, "without the effective consent of the owner, the person":

> (1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or
>
> (2) remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or
>
> (3) enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.

Tex. Penal Code § 30.02(a). Mixon concedes that § 30.02(a)(1) and (a)(2) qualify as generic burglary because both provisions contain all three elements of the generic offense: unlawful entry or remaining in a building or habitation with intent to commit a crime. But what about

[1]The government advocates for reading generic burglary's intent requirement as "inten[t] to engage in conduct that otherwise constitutes a crime." Appellee Br. at 20 (citation modified). It therefore argues that generic burglary is a general intent crime, which can be committed with purpose, knowledge, or recklessness, rather than a specific intent crime. But that reading is inconsistent with *Taylor*. The Supreme Court said that burglary in ACCA meant the "generic sense in which the term is now used in the criminal codes of most States." 495 U.S. at 598. In 1986, when ACCA was amended in relevant part, "every state's primary burglary statute required a specific intent (or purpose) to commit a crime." Appellant Br. at 43; *see also id.* at Addendum, 1a. As support for the generic definition, the Supreme Court also cited a treatise and the Model Penal Code which both included an intent or purpose to commit a crime requirement for burglary. *Taylor*, 495 U.S. at 598, 598 n.8 (first citing Wayne R. LaFave & Austin Wakeman Scott, *Substantive Criminal Law* § 8.13(e) (1986); and then citing Am. L. Inst., Model Penal Code § 221.1 (1980)). So I reject the government's attempt to expand the definition of intent for generic burglary, and I instead read the intent element to mean what it says: a defendant must have the specific intent to commit a crime. I further note that the majority opinion does not adopt the government's reading of intent, and the government points to no court that has adopted it either.

§ 30.02(a)(3); does it contain all three elements of the generic offense? I agree with the majority opinion that the dispositive question before us is whether § 30.02(a)(3) "substantially corresponds" to or is instead broader than generic burglary.

To answer that question, we must first identify the elements of Texas burglary under § 30.02(a)(3). So I begin with the text. Section 30.02(a)(3) provides that a person commits burglary "if, without the effective consent of the owner, the person . . . enters a building or habitation and commits or attempts to commit a felony, theft, or an assault."

The plain language of the provision contains only two of the three required elements of generic burglary. It (1) requires unlawful entry and (2) it is limited to a building or habitation. But unlike § 30.02(a)(1) and (a)(2), it does not require intent to commit a crime. As the majority opinion concedes, § 30.02(a)(3) "makes no express mention of intent." Maj. Op. at 8. Instead of intent, § 30.02(a)(3) requires commission or attempted commission of a felony, theft, or assault. As Texas's highest court has explained, the attempted or completed offense required under § 30.02(a)(3) "supplants" the intent requirement in § 30(a)(1) and (a)(2). *DeVaughn v. State*, 749 S.W.2d 62 (Tex. Crim. App. 1988) (en banc). Under Texas law, "attempt[ing] to commit a felony, theft, or an assault" itself requires the specific intent to commit a crime. Tex. Penal Code § 15.01(a). But not so for "commit[ting] a felony, theft, or assault." And that mismatch is fatal for the categorical approach.

Under Texas law, a defendant who has unlawfully entered a building can "commit[]" a crime without specifically intending to and still be guilty under § 30.02(a)(3). In legal jargon, we say that the defendant can have a mens rea (mental state) lower than intent. Even if they do not intend to commit a crime, a defendant can commit a felony recklessly, when they are aware of but consciously disregard a substantial and unjustifiable risk that a result will occur. Tex. Penal Code § 6.03(c). They can even commit a crime negligently, if they ought to be aware of a substantial and unjustifiable risk that a result will occur. *Id.* § 6.03(d). For example, assault can be committed recklessly, Tex. Penal Code §§ 22.01(a)(1), 22.02(a)(1), as can manslaughter, *id.* § 19.04(a). Other felonies, like criminally negligent homicide, require only negligence, not intent. *Id.* § 19.05(a). Therefore, the Texas burglary statute permits the conviction of a defendant who did not intend to commit a crime but instead recklessly or negligently committed

"a felony, theft, or assault" after unlawfully entering a building. Tex. Penal Code § 30.02(a)(3). On its face, then, the Texas burglary statute is broader than generic burglary. So Mixon's state burglary convictions cannot serve as ACCA predicates under the categorical approach. *See Mathis v. United States*, 579 U.S. 500, 509 (2016).

Because the plain language of § 30.02(a)(3) demonstrates that Texas would apply it to "a broader swath of conduct than the generic definition of a Guidelines offense," my inquiry can end there. *United States v. Cervenak*, 135 F.4th 311, 326 (6th Cir. 2025) (en banc). When the meaning of a state statute "is plain, the defendant need not provide a case to demonstrate a realistic probability that the statute is broader than the generic offense." *Id.* (quoting *United States v. Camp*, 903 F.3d 594, 602 (6th Cir. 2018)).

Nonetheless, Mixon provides additional evidence that the statute covers conduct broader than generic burglary. *First*, in *State v. Gonzalez*, the defendant was convicted of burglary under § 30.02(a)(3) based on unlawful entry into a building followed by the commission of a reckless assault. No. F23-12554 (Crim. Dist. Ct. No. 4, Dallas County, Tex. Feb. 12, 2024). The defendant pled guilty to "enter[ing] a building without the effective consent of the owner" and "commit[ting] the offense of assault against [the owner] by recklessly causing bodily injury to [him]." *Gonzalez* Guilty Plea Tr., R. 21-1, PageID 89. The Texas trial court accepted his plea as sufficient to sustain a burglary conviction under § 30.02(a)(3), even though there was no evidence or admission at the plea hearing that he had intended to commit a crime. Instead, counsel explained that Gonzalez was "entering this plea to the offense of burglary of a building, with the specific circumstances of having entered into the building without the expressed consent of the owner of the building, and then committing assault by recklessly causing bodily injury." *Gonzalez* Sentencing Tr., R. 21-1, PageID 79. And the written plea agreement, signed by the parties and the court, similarly stated that Gonzalez committed burglary when he "enter[ed] into a building without the effective consent of the owner thereof and there and then committed the offense of assault against [the owner] by recklessly causing bodily injury." Agreed Plea, R. 21-1, PageID 106. *Gonzalez* thus illustrates that the Texas burglary statute criminalizes conduct that does not include intent to commit a crime. Dismissing *Gonzalez*, the majority opinion states that "a few . . . outlier lower court decisions" are not dispositive for whether a state offense is an

ACCA predicate. Maj. Op. at 15 (quoting *Perez v. United States*, 885 F.3d 984, 990 (6th Cir. 2018)). But here, *Gonzalez* merely corroborates the plain language of the statute, which is enough on its own to resolve the inquiry. *Cervenak*, 135 F.4th at 326. *Gonzalez* only confirms that Texas has not abandoned its statute's plain language.

Second, Texas appellate courts routinely support *Gonzalez*'s interpretation of § 30.02(a)(3) by stating that proof of commission of a reckless assault is sufficient to prove burglary under the statute. *See, e.g.*, *Daniel v. State*, No. 07-17-00216-CR, 2018 WL 6581507, at *3 (Tex. App. 2018); *Wingfield v. State*, 282 S.W.3d 102, 105 (Tex. App. 2009); *Alacan v. State*, No. 03-14-00410-CR, 2016 WL 286215, at *3 (Tex. App. 2016); *Crawford v. State*, No. 05-13-01494-CR, 2015 WL 1243408, at *2 (Tex. App. 2015). Regardless of whether the prosecution could have proven intentional assault in each case, they were not required to do so because the courts uniformly understood that proof of a reckless assault is sufficient to support a conviction under § 30.02(a)(3).

Looking outside Texas, the Seventh Circuit's interpretation of the similar Minnesota burglary statute further bolsters my view. *See Van Cannon v. United States*, 890 F.3d 656, 664 (7th Cir. 2018); *Chazen v. Marske*, 938 F.3d 851, 860 (7th Cir. 2019) (reaffirming *Van Cannon*). The Minnesota burglary statute provides: "Whoever . . . enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary." Minn. Stat. § 609.582(2)(a). The Seventh Circuit held that the statute is broader than generic burglary, and it rejected the government's argument that "intent to commit a crime is implicit because the statute requires proof of a completed crime within the trespassed building." *Van Cannon*, 890 F.3d at 664. Since "not all crimes are intentional; some require only recklessness or criminal negligence," the Seventh Circuit reasoned that the Minnesota statute was broader than generic burglary. *Id*. The same logic applies to the Texas burglary statute, which likewise requires only commission of a crime, not a specific intent to commit a crime.

Although § 30.02(a)(3) "makes no express mention of intent," the government and majority opinion contend that it nonetheless contains an "implicit[]" intent requirement that corresponds with generic burglary. Maj. Op. at 8. As support for this atextual element, they look to the Texas Court of Criminal Appeals decision in *DeVaughn v. State*, 749 S.W.2d 62

(Tex. Crim. App. 1988) (en banc). But I disagree that *DeVaughn* contradicts the plain language of the Texas burglary statute and imputes an intent requirement into § 30.02(a)(3) even though it is absent from the statutory text.

In *DeVaughn*, the Texas Court of Criminal Appeals granted review to decide whether an indictment for burglary based on attempted and committed theft "must provide a description of the item or items which were taken and state the name of the owner of those items." *Id.* at 63. In its background discussion of "Burglary Generally," the court described the "three distinct ways in which one may commit the offense of burglary under the present version of the Penal Code." *Id.* at 64–65. The court explained that, for burglary under §§ 30.02(a)(1) and (a)(2), "[p]roof of the intent to commit either theft or a felony was, and is, a necessary element in the State's case." *Id.* at 65. For § 30.02(a)(3), by contrast, "the attempted or completed theft or felony . . . merely supplants the specific intent which accompanies entry in §§ 30.02(a)(1) and (2)." *Id.* I do not read this language as saying that § 30.02(a) itself contains an intent requirement. Rather, the completed or attempted crime "supplants" the specific intent requirement, meaning the commission element of § 30.02(a)(3) takes the place of that requirement.

That does not mean the commission or attempted commission element of § 30.02(a)(3) is equivalent to an intent element or implicitly requires a finding of intent. Quite the opposite, it supports the plain text reading that (a)(3) does not have an intent requirement because the attempt or commission of the offense replaces it. Indeed, *DeVaughn* also has a footnote stating that "[o]f course . . . 'intent to commit a felony or theft' is not an element of the offense proscribed by § 30.02(a)(3)," and therefore "an indictment must allege the general culpable mental state." *Id.* at 65 n.4.[2] Likewise, *DeVaughn*'s holding treats § 30(a)(3)'s commission element as a substitute for but not the equivalent of § 30(a)(1) and (a)(2)'s intent requirement. It states that "intent in a [] prosecution under §§ 30(a)(1) or (2) . . . must be expressly averred,"

[2]The footnote I reference in *DeVaughn* distinguishes between two forms of intent: intent to enter a building or habitation and intent to commit an offense therein. Within the decision, the footnote makes clear that the state must still allege "the general culpable mental state" for § 30.02(a)(3) burglary. *DeVaughn*, 749 S.W.2d at 65, n.4 (citing *Day v. State*, 532 S.W.2d 302, 305 n.1 (Tex. Crim. App. 1984)). As the citation to *Day* explains, demonstrating the general culpable mental state requires "show[ing] that the *entry* was either knowingly or intentionally done." *Day*, 532 S.W.2d at 305 n.1 (emphasis added). But "'intent to commit a felony or theft' is not an element" of § 30.02(a)(3) burglary and thus need not be alleged in the indictment. *DeVaughn*, 749 S.W.2d at 65, n.4.

but for prosecutions under § 30(a)(3), the government must instead describe attributes of the completed offense, such as the property stolen. *Id.* at 71.

I do not read *DeVaughn*'s discussion of the Texas Practice Commentary on § 30.02(a)(3) as establishing an implicit intent requirement either. The court quoted approvingly from the Practice Commentary statement: "Section 30.02(a)(3) includes as burglary the conduct of one who enters without effective consent but, lacking intent to commit any crime upon his entry, subsequently forms that intent and commits or attempts a felony or theft." *Id.* at 65. But this statement too does not establish that intent to commit a crime is required for all § 30.02(a)(3) burglaries. *Id.* The fact that § 30.02(a)(3) "includes" a burglar who "subsequently forms [the] intent" to commit a crime does not limit the statute to defendants who subsequently form that intent or establish intent as an implicit element of the offense itself. As the Texas Pattern Jury Charges illustrate, *DeVaughn* should not be read to require intent for burglary of a "building by entry and commission of an offense." *See* Texas Criminal Pattern Jury Charges § CPJC 30.4 (capitalization omitted). To find a defendant guilty of that offense, jurors "must all agree" on six elements, the last of which is that "the defendant [committed/attempted to commit] a felony, theft, or an assault." *Id.* A jury could find that element satisfied where the prosecution proves the defendant intended to commit a crime and then did so, but it could also find that element satisfied if the prosecution proves only that the defendant recklessly committed assault or otherwise satisfied the mens rea for a felony that requires less than intent. Critically, the jury instructions do not include intent to commit a crime as a necessary element of the burglary conviction under § 30.02(a)(3).

DeVaughn did not even address (let alone reject) the interpretation of § 30.02(a)(3) that includes the commission of crimes of recklessness or criminal negligence. Notably, the court in *DeVaughn* could not consider whether reckless assault satisfied the statute because Texas amended § 30.02(a)(3) to add assault as an enumerated offense years after the decision was issued. Tex. Penal Code Ann. § 30.02(a)(3) (West Supp. 1999). Without addressing reckless or negligent crimes, *DeVaughn* concluded, "The gravamen of the offense of burglary clearly remains entry of a building or habitation without the effective consent of the owner, accompanied by either the required mental state, under §§ 30.02(a)(1) and (2), . . . or the further

requisite acts or omissions, under § 30.02(a)(3)." *Id.* In distinguishing (a)(1) and (a)(2) from (a)(3), the court did not define the "requisite acts or omissions" or state that they required intent.

We of course must accept the view of the Texas Court of Criminal Appeals as to the meaning of Texas statutes. But *DeVaughn* stated that the commission of the offense in (a)(3) "supplants" an intent requirement, not that it is an intent requirement. And I would not read *DeVaughn* so expansively to establish an intent requirement, especially because doing so would conflict with the plain language of the state statute and the decisions of lower Texas courts. *See supra* at 27–29. Our en banc court in *Cervenak* recently rejected reading an Ohio Supreme Court decision so expansively in applying the categorical approach such that it did not "accord[] with the text of Ohio's robbery statute." 135 F.4th at 325 (discussing *State v. Smith*, 117 Ohio St. 3d 447 (2008)). There, we recognized that an Ohio Supreme Court decision could be read as establishing that a theft that involved obtaining something of value was always a lesser included offense of Ohio robbery, thereby rendering Ohio robbery a categorical match with extortion under the Federal Sentencing Guidelines. *Id.* at 324–25; *see also id.* at 362–63 (Thapar, J. dissenting). But we declined to adopt such a broad interpretation because the case did not necessitate such a reading that would conflict with the Ohio robbery statute's plain text. *Id.* at 325. In doing so, this court also considered and rejected the government's attempt to "pivot" and say that Ohio's lower appellate courts had either "explicitly or implicitly" adopted that same overly expansive reading of the Ohio robbery statute. *Id.* *Cervenak* therefore turned on a careful review of state cases construing the statute at issue to determine the scope of their holdings. I would take the same approach with *DeVaughn*.

None of the other Texas court decisions addressing the burglary statute that the majority opinion cites prove that state courts have interpreted § 30.02(a)(3) to include an intent element either. Only one of those decisions comes from the Texas Court of Criminal Appeals, the state's highest court on matters of criminal law that provides an authoritative interpretation of state law. *See Cartwright v. United States*, 12 F.4th 572, 576 (6th Cir. 2021). In that case, *Jacob v. State*, the Texas Court of Criminal Appeals remarked that it "may be true" that "commission of an aggravated assault" under § 30.02(a)(3) could demonstrate "an intent to commit the assault" that would satisfy § 30.02(a)(1). 892 S.W.2d 905, 909 (Tex. Crim. App. 1995) (en banc). Outside of

that single inconclusive statement, the court did not address the scope of § 30.02(a)(3) or whether it required intent to commit a crime. The remaining cases come from lower Texas courts. In *Flores v. State*, the court recited *DeVaughn*'s formulation of § 30.02(a)(3) without additional analysis, and the facts involved a defendant who allegedly attempted to commit theft, which the court noted was a specific intent crime. 902 S.W.2d 618, 620 (Tex. App. 1995). The court did not otherwise address the elements of § 30.02(a)(3). *Id.* In *Martinez v. State*, the court concluded that Texas Penal Code § 30.02(a) was a single criminal offense because "[s]ubsection (a)(1)'s specific-intent requirement and subsection (a)(3)'s further-acts requirement function as alternative means of proving what amounts to an aggravating factor that elevates acts constituting trespass to the offense of burglary" and therefore "function as conceptual and moral equivalents." 269 S.W.3d 777, 783 (Tex. App. 2008). But the court in *Martinez* did not state that the two were legal equivalents or that the further-acts element required a showing of intent. *Id.* In sum, none of these cases stand for the proposition that § 30.02(a)(3) requires intent.

I recognize that three of our sister circuits have relied on these state cases to hold that the statute corresponds with generic burglary. But I also note that there are meaningful differences between those cases and the case before us. Some of the decisions in other circuits held that § 30.02(a)(3) did not fall outside generic burglary because the defendant did not provide case examples proving that a defendant could commit burglary by recklessly committing a felony or theft. *See United States v. Herrold*, 941 F.3d 173, 179 (5th Cir. 2019) (en banc) (citing *DeVaughn*); *United States v. Hutchinson*, 27 F.4th 1323, 1327–28 (8th Cir. 2022) (same). *Gonzalez*—which postdates these circuit decisions—resolves that concern. And, as I have mentioned, when the text is clear, our circuit does not require such examples. Other circuit cases relied on a defendant's concession that an intent element exists in § 30.02(a)(3) without analyzing the text of the statute or declined to reach the issue because it was not properly raised. *See United States v. Bonilla*, 687 F.3d 188, 192 (4th Cir. 2012) (defendant "concedes" that § 30.02(a)(3) includes "the requisite intent to commit a felony or other predicate crime"); *United States v. Pena*, 952 F.3d 503, 510–11 (4th Cir. 2020) (declining to reach issue first raised at oral argument).

Our court's decisions interpreting the similar Tennessee and Michigan burglary statutes are not relevant to the analysis of the Texas statute either, in my view. As to Tennessee's near-identical (a)(3) provision, our court has never addressed whether its express omission of an intent element is consistent with generic burglary. *See Gann v. United States*, 142 S. Ct. 1, 2 (2021) (Sotomayor, J., concurring in denial of certiorari) (stating that the "argument has not been addressed by the Sixth Circuit," leaving Supreme Court "without a reasoned decision to review"); *see also United States v. Betts*, No. 22-5006, 2022 WL 3137710, at *1–2 (6th Cir. Aug. 5, 2022) (Donald, J., dissenting). Although our cases state that Tennessee burglary under (a)(3) qualifies as generic burglary, *see United States v. Priddy*, 808 F.3d 676, 684 (6th Cir. 2015), they did not analyze the specific question of whether the provision contains an intent element. And we have held that a prior statement that a statute constitutes generic burglary is not dispositive if the court did not specifically consider and rule upon the intent element issue. *See United States v. Paulk*, 46 F.4th 399, 403 (6th Cir. 2022). Thus, *Priddy* is neither controlling nor persuasive on the question here.

As to Michigan's statute, we did address the defendant's contention that it "sweeps more broadly than generic burglary by criminalizing actions that do not require criminal intent." *Paulk*, 46 F.4th at 403. But we rejected the argument because the defendant did not show "a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime." *Id.* We have since clarified en banc that we need not apply the realistic-probability test where the plain text of the statute is broader than the generic offense, *Cervenak*, 135 F.4th at 326–27, so our holding about Michigan's statute has been abrogated. Therefore, our caselaw about similar statutes does not address the relevant issue of statutory interpretation, and I do not find those cases persuasive here.

In my view, the plain language of the Texas burglary statute shows that it is categorically broader than generic burglary under the ACCA. While we of course defer to how a state high court reads state statutes, Texas caselaw does not establish an implicit intent requirement in the statute or alter the plain text reading of § 30.02(a)(3). So Mixon's prior convictions under the statute should not qualify as ACCA predicate offenses. Without those convictions, Mixon does not have the required predicates for the fifteen-year mandatory-minimum sentence on his felon-

in-possession conviction. I would therefore vacate Mixon's sentence and remand for resentencing.

I respectfully dissent.