IN THE

Indiana Supreme Court

Supreme Court Case No. 22S-CR-7

Zachary Fix,
Appellant (Defendant below)

–v–

State of Indiana,
Appellee (Plaintiff below).

Argued: February 24, 2022 | Decided: May 16, 2022

Appeal from the Madison Circuit Court,
No. 48C03-1803-F2-792
The Honorable Andrew Hopper, Judge

On Petition to Transfer from the Indiana Court of Appeals,
No. 20A-CR-1566

Opinion by Justice Goff

Chief Justice Rush and Justices David and Massa concur.
Justice Slaughter concurs in Part I and in the judgment without separate opinion.

Goff, Justice.

Burglary is the breaking into and entering of a building or structure of another person with the intent to commit a felony. Because the burglar need not actually carry out the underlying intended felony for criminal liability to attach, the offense is complete, for purposes of prosecution, at the moment the building or structure is broken into and entered. But does the offense itself end simply because the State has established criminal liability? We conclude that it does not, and hold that burglary is an ongoing crime that encompasses a defendant's conduct inside the premises, terminating only when the unlawful invasion ends.

So, despite the defendant here having armed himself after the breaking and entering, we affirm his conviction for level-2 felony burglary while armed with a deadly weapon. But because the length of the defendant's aggregate sentence exceeds the consecutive-sentencing cap imposed by Indiana Code section 35-50-1-2, we reverse and remand for resentencing consistent with this opinion.

Facts and Procedural History

During the early morning hours of July 7, 2017, Zachary Fix and his friend, Bobby Yeagy, drove through Anderson, Indiana, in search of a place to rob—the loot from which they intended to eventually trade for drugs. Fruitless in their efforts, the two men—both high on heroin and meth—headed north to Alexandria. Their drive ultimately led them to the home of Robert Mudd, a paraplegic man to whom Yeagy had delivered pizza on several occasions. The medical condition from which Mudd suffered, arteriovenous malformation, resulted in a gradual paralysis of his lower body. Confined to a hospital bed in his living room, Mudd depended on family and healthcare workers for support.

When the perpetrators arrived at their victim's house, Fix cut the power and cable lines and disabled the security system. The two men then entered the residence through the back door, approached the bedridden Mudd, demanded that he direct them to anything of value, and threatened to kill him should he fail to cooperate. As Yeagy ransacked the

home looking for medication, Fix took Mudd's cell phone, wallet, necklace, and life-alert pendant. At some point, Mudd reached for a handgun he kept under his pillow. A struggle ensued. Fix eventually wrested control of the weapon and pistol-whipped his victim, leaving Mudd with a laceration on the side of his head.

After about an hour, Fix and Yeagy left Mudd's home to unload their plundered goods, but not before drugging their victim with tranquilizers and warning him that they'd soon be back to finish the job. True to their word, Fix and Yeagy—pausing only to boost their meth-fueled high—returned about forty-five minutes later for a second round of looting. In the end, the perpetrators made off with an estimated $11,000 worth of Mudd's property, including a dozen firearms, thousands of rounds of ammunition, various tools, medications, a safe, two cell phones, two cameras, a radio, and several debit and credit cards. Careless in covering their tracks, Fix and Yeagy left a trail of evidence that eventually led police to their doorstep.

The State charged Fix with several offenses: one count of level-2 felony burglary while armed with a deadly weapon; two counts of level-3 felony robbery (one based on bodily injury, and one based on the use of a deadly weapon); and one count of level-6 felony theft. *See* Ind. Code §§ 35-43-2-1, 35-42-5-1(a), 35-43-4-2(a) (2017). A jury found him guilty as charged. At the State's request, the trial court withheld judgment of conviction for level-3 felony armed robbery (to avoid double jeopardy) and sentenced Fix for the remaining offenses as follows: thirty years for level-2 felony burglary; six years for level-5 felony robbery as a lesser-included offense of level-3 felony robbery resulting in bodily injury (also to avoid double jeopardy); and two and a half years for level-6 felony theft. The trial court ordered Fix to serve these sentences consecutively, culminating in an aggregate term of thirty-eight and a half years.

The Court of Appeals affirmed in part and reversed in part, holding that insufficient evidence supported Fix's conviction for level-2 felony burglary while armed with a deadly weapon. *Fix v. State*, 177 N.E.3d 837, 847 (Ind. Ct. App. 2021). Because the "criminal transgression of burglary is committed" when the defendant crosses the threshold of the premises in

which he intends to commit a felony, and because Fix acquired the handgun only **after** crossing that threshold, the panel reasoned, the elevated offense had no leg to stand on. *Id.* at 845. Had the legislature intended to expand culpability to include acts committed after the breaking and entering, the panel added, it could have drafted the burglary statute accordingly. *Id.* The panel remanded with instructions for the trial court to enter judgment of conviction for a lesser-included form of burglary. *Id.* at 847.

In Part II of its opinion, the Court of Appeals (A) found no double-jeopardy violation for Fix's burglary and robbery convictions and (B), having vacated the conviction for the elevated burglary offense, instructed the trial court to enter judgment of conviction for level-3 felony armed robbery. *Id.* at 847–49. Finally, in Part III of its opinion, the panel held that, because level-3 felony armed robbery amounted to a "crime of violence," the trial court's sentencing for that offense on remand need not count toward the aggregate statutory cap imposed by Indiana Code section 35-50-1-2. *Id.* at 849–50.

The State petitioned for transfer, which we granted, vacating the Court of Appeals opinion. *See* Ind. Appellate Rule 58(A).

Standards of Review

When reviewing a challenge to the sufficiency of evidence supporting a conviction, we neither reweigh the evidence nor assess the credibility of witnesses. *Jackson v. State*, 50 N.E.3d 767, 770 (Ind. 2016). We consider instead only the probative evidence and the reasonable inferences supporting the trial court's verdict, affirming "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* When, like here, resolution of a sufficiency claim turns on our interpretation of a statute, we're presented with a pure question of law, to which a de novo standard of review applies. *Id.*

Discussion and Decision

We begin our decision by summarily affirming Part II.A of the Court of Appeals opinion. *See* App. R. 58(A)(2). Because we disagree with the panel's holding on the elevated burglary offense, we vacate that portion of its opinion (Part II.B) instructing the trial court to enter judgment of conviction for level-3 felony armed robbery. *See* App. R. 58(A). But because the trial court withheld judgment of conviction for that offense, there's no double-jeopardy issue for us to resolve.

We write, then, to address two issues: (I) whether the State presented sufficient evidence to convict Fix of level-2 felony burglary; and (II) whether the aggregate sentence for Fix's felony convictions (burglary, armed robbery, and theft) exceeds the sentencing cap imposed by Indiana Code section 35-50-1-2.

I. Fix committed the elevated burglary offense by arming himself *after* entering the victim's home.

Indiana Code section 35-43-2-1 defines burglary, a level-5 felony, as the breaking and entering of a "building or structure of another person, with intent to commit a felony or theft in it." The offense becomes a level-2 felony if it "is committed while armed with a deadly weapon." *Id.* The question here centers on the scope of the phrase "committed while armed."

Fix argues that the statute's "plain language" precludes his conviction for the elevated offense "because he was not armed at the time [the] act of burglary was committed." Resp. to Pet. to Trans. at 6. According to his theory, the burglary offense was complete once he crossed the threshold of Mudd's residence, and because he wasn't armed at that precise moment, there was insufficient evidence to sustain his conviction for the elevated offense.

The State, on the other hand, argues that burglary is "an ongoing crime" which doesn't end "until the unlawful invasion ends and the burglar exits the premises." Pet. to Trans. at 10. So, for the statutory enhancement to

apply, the State submits, it makes no difference whether Fix was armed at the threshold of the premises or whether he armed himself after entering the home. In support of its argument, the State cites the language of the statute itself, its underlying goals and policies, "basic principles underlying common-law burglary," and judicial construction of similar enhancing language in other criminal statutes. *Id.* at 7.

When asked to interpret a statute, we start with the text of the statute itself. *Study v. State*, 24 N.E.3d 947, 952 (Ind. 2015). When the statute is clear and unambiguous, we avoid judicial construction by interpreting its words in their plain and ordinary meaning. *Id.* But when a statute permits more than one reasonable interpretation, we consider that statute ambiguous. *Mi.D. v. State*, 57 N.E.3d 809, 813 (Ind. 2016). And when a statute is ambiguous, we resort to the rules of statutory construction to determine its meaning. *Id.* In criminal cases, this includes the rule of lenity—a rule that requires us to construe a penal statute strictly against the State while resolving any ambiguities in favor of the defendant. *Meredith v. State*, 906 N.E.2d 867, 872 (Ind. 2009). But even under this rule, we avoid construing a statute so narrowly "as to exclude cases they fairly cover." *Id.* Ultimately, we presume the "legislature intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals." *Nicoson v. State*, 938 N.E.2d 660, 663 (Ind. 2010).

A. Indiana courts have long adhered to the *res gestae* theory of burglary.

On first impression, the language of our burglary statute seems clear enough. Rather than contemplating acts committed **after** the breaking and entering of a premises, the statute elevates the offense only if "committed **while** armed with a deadly weapon." *See* I.C. § 35-43-2-1 (emphasis added). Consistent with this reading of the statute is the view that culpability "is established at the point of entry, with the criminal transgression" complete "at the moment the building or structure is broken into and entered." *Swaynie v. State*, 762 N.E.2d 112, 114 (Ind. 2002). On the other hand, "[t]his Court has long declined to define the phrase 'while committing' in

terms of the chronological completion of the statutory elements of the underlying felony." *Eddy v. State*, 496 N.E.2d 24, 28 (Ind. 1986).

So where does that leave us? Does the "doctrine of completion" apply simply because the State has established the burglar's criminal liability? *See Callahan v. State*, 246 Ind. 65, 69, 201 N.E.2d 338, 340 (1964). Or is burglary an ongoing offense that encompasses a defendant's conduct so long as he remains in the premises?

Courts in several jurisdictions have rejected the theory "that a felony is 'complete' when the definitional elements of an offense have been satisfied." *Yates v. State*, 33 A.3d 1071, 1079 (Md. App. 2011) (citing cases). In Florida, for example, while "a burglary may be complete for purposes of prosecution, it is not complete for all other purposes until the defendant reaches safety, and a defendant's crime may be aggravated and his sentence may be enhanced based upon acts committed up until that point." *Williams v. State*, 502 So. 2d 1307, 1309 (Fla. Dist. Ct. App. 1987), *approved*, 517 So. 2d 681 (Fla. 1988).

Likewise, in felony-murder cases, "the period during which a burglary is deemed to be in progress has ordinarily been extended." 2 J.D. Olin, Wharton's Crim. L. § 21.14 at 204 (16th ed. 2021). Indiana is no exception. In fact, in one of the first cases to address the scope of the felony-murder statute, this Court, in 1876, interpreted the phrase "in the perpetration of" broadly to include acts beyond the elements of the predicate felony.[1]

In *Bissot v. State*, the defendant stood convicted of felony murder after shooting a marshal who confronted him during a break-in of a local pharmacy. 53 Ind. 408, 410–11 (1876). The Court, in what has become a widely cited opinion, upheld the conviction, rejecting the defendant's

[1] The current felony-murder statute defines the offense as the killing of "another human being **while committing** or attempting to commit" one of several enumerated crimes, including burglary. I.C. § 35-42-1-1(2) (emphasis added).

argument that the burglary was "consummated" before the killing.[2] *Id.* at 412. "Although we must construe criminal statutes strictly, adhere closely to the definition of crimes, and interpret technical words according to their fixed meaning," the Court explained, adopting the defendant's theory would render it "quite impracticable to ever convict" for felony murder—whether committed during a burglary, robbery, arson, or rape. *Id.* at 412–13. When "the homicide is committed within the *res gestae* of the felony charged," the Court concluded, "it is committed in the perpetration of, or attempt to perpetrate, the felony within the true intent and fair meaning of the statute."[3] *Id.* at 413. This statutory construction, the Court reasoned, "is safe to the State and the citizen, and the only one by which the intention of the legislature can be practically carried into effect." *Id.* at 414. "It has long been the law in Indiana," we observed more than a century after the decision in *Bissot*, "that the shooting of a person by a robber or burglar while leaving the premises in an attempt to complete the crime is part of the res gestae of the [offense] such that the shooting is, for felony murder purposes, committed in the perpetration of the robbery or burglary." *Seeley v. State*, 544 N.E.2d 153, 157 (Ind. 1989) (citation and quotation marks omitted).

This well-established precedent leads us to conclude that burglary—even if "complete" for purposes of establishing culpability—is an ongoing crime that encompasses a defendant's conduct **after** the breaking and entering, not just at the threshold of the premises.

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[2] To date, Westlaw shows citing references to *Bissot* from appellate courts in nineteen states. *See, e.g.*, *Yates v. State*, 33 A.3d 1071, 1079 (Md. App. 2011) (analyzing *Bissot*'s "detailed discussion" of the *res gestae* theory); *People v. Gillis*, 712 N.W.2d 419, 429 (Mich. 2006) (relying heavily on *Bissot* to "conclude that the term 'perpetration' encompasses acts beyond the definitional elements of the predicate felony, to include those acts committed within the res gestae of that felony").

[3] *Res gestae* refers to the "events at issue, or other events contemporaneous with them." Black's Law Dictionary (11th ed. 2019). *See also McMillian v. State*, 450 N.E.2d 996, 999 (Ind. 1983) ("Evidence of happenings near in time and place which complete the story of a crime are properly admissible under the theory of res gestae.").

To be sure, as the Court of Appeals points out, statutes in other states, unlike in Indiana, expressly contemplate situations in which a burglar arms himself after breaking and entering. *Fix*, 177 N.E.3d at 845. *See, e.g.*, Alaska Stat. Ann. § 11.46.300(a)(2) (elevating burglary to an offense in the first degree when the offender "is armed with a firearm," whether "in effecting entry or while in the building or immediate flight from the building"). But when, like here, "a long line of cases" applies "the same construction" to a specific statutory phrase, "such construction should not then be disregarded or lightly treated." *Study*, 24 N.E.3d at 952 (internal citation and quotation marks omitted). And we find support for this construction in decisions from other states with burglary statutes similar to ours. *See, e.g.*, *Williams*, 502 So. 2d at 1309; *People v. Montoya*, 874 P.2d 903, 913 (Cal. 1994) (holding that burglary is "ongoing during the time the perpetrator remains inside the structure").

B. Principles of common-law burglary support our reading of the statute.

The common law defined burglary as "the breaking and entering in the nighttime of the dwelling house of another with intent to commit a felony therein." *Carrier v. State*, 227 Ind. 726, 730–31, 89 N.E.2d 74, 75–76 (1949) (citing, among other sources, 1 Joel Prentiss Bishop, Criminal Law § 559, at 407–08 (9th ed. 1923)). Of course, "the contemporary understanding of 'burglary' has diverged a long way from its common-law roots." *Taylor v. United States*, 495 U.S. 575, 593 (1990). But the basic principles of common-law burglary provide a foundation on which our statute was built. *See Smith v. State*, 477 N.E.2d 857, 862 (Ind. 1985) (referring to Indiana as one of several jurisdictions "which retain the common law definition of burglary"); *Carrier*, 227 Ind. at 731, 89 N.E.2d at 76 (analyzing common-law definition of "dwelling-house" to aid in the interpretation of Indiana's burglary statute using the same term).

With its inchoate element of intent to commit a felony, burglary **may** have originated "to overcome certain defects in the law of attempt," namely

difficulties in proof and disproportionately low penalties.[4] 3 J.D. Olin, Wharton's Crim. L. § 32.1, at 2 (16th ed. 2021). But the common-law offense evolved principally to protect the "security of the habitation," *Smart v. State*, 244 Ind. 69, 72, 190 N.E.2d 650, 652 (1963) (internal citations omitted), the "gist of the crime being the felonious invasion of a man's dwelling," *Carrier v. State*, 227 Ind. 726, 731, 89 N.E.2d 74, 76 (1949) (internal citations omitted).[5] After all, "it was the circumstance of midnight terror" threatening "the sanctuary of the home" the law sought to punish, "not the fact that the intended felony was successful." *Smart*, 244 Ind. at 72, 190 N.E.2d at 652 (internal citations omitted).

Burglary, then, "is not so much an offense against the property as it is an offense against the sanctity and security of the habitation." *Howell v. State*, 53 N.E.3d 546, 549 (Ind. Ct. App. 2016). And from the victim's perspective, the threat to this security doesn't end upon the burglar's entry—to the contrary, it's just the beginning. *See People v. Munguia*, 212 Cal. Rptr. 3d 332, 338 (2016) (observing that a person who "becomes aware not only of the entry itself, but of the burglar's continued presence, would not agree the offense was completed once the entry was accomplished").

With these principles in mind, we find it illogical to criminalize the offender's acts **only** at the threshold of the premises.

C. Our interpretation of the burglary statute comports with its underlying policy and purpose.

By subjecting offenders who commit crimes "while armed" with a deadly weapon to higher penalty ranges, several statutes in our criminal code

[4] We emphasize "may" because burglary, as some scholars have concluded, "was a common law offense long before attempts were made generally punishable." Helen A. Anderson, *From the Thief in the Night to the Guest Who Stayed Too Long: The Evolution of Burglary in the Shadow of the Common Law*, 45 Ind. L. Rev. 629, 639 (2012).

[5] *See also* Anderson, *Evolution of Burglary*, 45 Ind. L. Rev. at 631 (characterizing burglary as a "combination of offenses: criminal trespass plus the attempt to commit another offense, or criminal trespass plus a completed offense").

embody a clear policy of public safety. *See, e.g.*, I.C. § 35-42-3-2 (kidnapping); I.C. § 35-42-4-1 (rape); I.C. § 35-42-4-3 (child molesting); I.C. § 35-42-4-8 (sexual battery). Indeed, by imposing "a greater penalty for a 'crime of violence' committed with a weapon," these statutes recognize "the increased danger to human life." *St. Germain v. State*, 267 Ind. 252, 255, 369 N.E.2d 931, 932 (1977).

With its incremental penalty enhancements, Indiana's burglary statute is no exception to this policy of public safety. Whether for possessing a weapon or for injuring another, the offender faces "greater penalties the closer the offense comes to endangering another's life or well-being."[6] *Ferrell v. State*, 565 N.E.2d 1070, 1072 (Ind. 1991). *See, e.g.*, *Whitener v. State*, 982 N.E.2d 439, 446 (Ind. Ct. App. 2013) (finding sufficient evidence to sustain a conviction for burglary resulting in bodily injury where defendant raped the victim after breaking and entering).

It's important, of course, to distinguish between an enhancing event that occurs "while committing" a crime and an enhancing event that "results" from commission of the crime. An enhancing event that "results" from a criminal act implicates proximate causation, which "requires that the injury would not have occurred but for the defendant's conduct." *Patel v. State*, 60 N.E.3d 1041, 1052 (Ind. Ct. App. 2016) (quoting *Paragon Family Rest. v. Bartolini*, 799 N.E.2d 1048, 1054 (Ind. 2003)). Because proximate causation characterizes the injury as "a natural and probable consequence" of the defendant's criminal acts, *Bartolini*, 799 N.E.2d at 1054, the injury need not coincide with those criminal acts to establish culpability. *See, e.g.*, *Reaves v. State*, 586 N.E.2d 847, 855 (Ind. 1992) (finding evidence sufficient to support conviction for felony murder where "the robbery was the mediate or immediate cause of the [victim's blood] clotting" that ultimately led to his death several weeks later).

[6] Burglary becomes a level-4 felony if committed in a "dwelling," a level-3 felony if it results in "bodily injury" to another, a level-2 felony if committed while armed or if it results in "serious bodily injury" to another, and a level-1 felony if committed in a "dwelling" and results in "serious bodily injury" to another. I.C. § 35-43-2-1.

Still, the policy of public safety embodied in the burglary statute persuades us that the legislature intended for the armed enhancement to apply, even if the enhancing event followed the act of breaking and entering. Indeed, whether the offender arrives with a deadly weapon or whether he arms himself once inside the premises, the danger posed is the same. And to terminate culpability at the threshold would circumvent the enhancement for any burglar wise enough to retrieve a deadly weapon (*e.g.*, a standard kitchen knife) once inside the premises, effectively defeating the statutory goal of ensuring public safety. Our construction of our burglary statute, we believe, "is safe to the State and the citizen, and the only one by which the intention of the legislature can be practically carried into effect." *See Bissot*, 53 Ind. at 414.

II. Fix's aggregate sentence exceeds that permitted by Indiana Code section 35-50-1-2.

As noted above, the trial court withheld judgment of conviction for level-3 felony armed robbery (to avoid double jeopardy) and sentenced Fix for the remaining offenses as follows: thirty years for level-2 felony burglary; six years for level-5 felony robbery as a lesser-included offense of level-3 felony robbery resulting in bodily injury (also to avoid double jeopardy); and two and a half years for level-6 felony theft. The trial court ordered Fix to serve these sentences consecutively, culminating in an aggregate term of thirty-eight and a half years.

Fix argues that the length of his aggregate sentence exceeds the maximum aggregate sentence allowed by Indiana Code section 35-50-1-2 (the Sentencing Cap Statute or Statute).

Generally, "it is within the trial court's discretion whether to order sentences be served concurrently or consecutively." *Myers v. State*, 27 N.E.3d 1069, 1082 (Ind. 2015). But because our legislature is responsible for fixing criminal penalties, a trial court's sentencing discretion must not exceed the limits prescribed by statute. *Pritscher v. State*, 675 N.E.2d 727, 729 (Ind. Ct. App. 1996). With exceptions for "crimes of violence," our Sentencing Cap Statute limits the aggregate sentence a trial court may

impose "for felony convictions arising out of an episode of criminal conduct." I.C. §§ 35-50-1-2(c), (d).

Having vacated that portion of the panel's opinion instructing the trial court to enter judgment of conviction for level-3 felony armed robbery, we've left in place Fix's convictions for level-2 felony burglary, level-5 felony robbery, and level-6 felony theft. The Sentencing Cap Statute defines level-2 felony burglary as a "crime of violence." I.C. § 35-50-1-2(a)(13). So, Fix's conviction and sentencing for that offense falls outside the statutory restriction. The Statute, however, does **not** define as crimes of violence either level-5 felony robbery or level-6 felony theft. *See* I.C. § 35-50-1-2(a).

In *Ellis v. State*, we recognized the Statute's "ambiguity as to whether the existence of one crime of violence is sufficient to exempt each of the consecutively sentenced convictions" from the sentencing cap. 736 N.E.2d 731, 737 (Ind. 2000). Adherence to the rule of lenity, we concluded, "requires that we interpret the [S]tatute to exempt from the sentencing limitation (1) consecutive sentencing among crimes of violence, and (2) consecutive sentencing between a crime of violence and those that are not crimes of violence." *Id.* But the sentencing cap, we added, "**should** apply for consecutive sentences between and among those crimes that are not crimes of violence." *Id.* (emphasis added).

Under *Ellis*, then, the Sentencing Cap Statute permits consecutive sentences between Fix's crime of violence (level-2 felony burglary) and those offenses not defined as crimes of violence (level-5 felony robbery and level-6 felony theft). *See id.* The remaining question is whether the sentencing cap applies to the "consecutive sentences between and among" level-5 felony robbery and level-6 felony theft. *See id.* The answer depends on whether these two non-violent offenses arose "out of an episode of criminal conduct." *See* I.C. § 35-50-1-2(d).

An "episode of criminal conduct" refers to "offenses or a connected series of offenses that are closely related in time, place, and circumstance." I.C. § 35-50-1-2(b). "Whether certain offenses constitute a 'single episode of criminal conduct' is a fact-intensive inquiry" determined by the trial court. *Schlichter v. State*, 779 N.E.2d 1155, 1157 (Ind. 2002). While "the

ability to recount each charge without referring to the other" offers "guidance on the question of whether a defendant's conduct constitutes an episode of criminal conduct," we focus our analysis on "the timing of the offenses" and "the simultaneous and contemporaneous nature of the crimes," if any. *Reed v. State*, 856 N.E.2d 1189, 1200 (Ind. 2006) (internal citations and quotation marks omitted).

The facts here show that Fix committed level-5 felony robbery when he knowingly or intentionally took property from Mudd by using force (pistol-whipping Mudd) or by putting Mudd in fear (threatening to kill Mudd should he fail to cooperate). *See* I.C. § 35-42-5-1(a). The facts further show that Fix committed level-6 felony theft when he and Yeagy made off with an estimated $11,000 worth of Mudd's property. *See* I.C. § 35-43-4-2(a)(1)(A). Fix committed both offenses on the same night at the same location. And we find it difficult to account for one charge "without referring to details of the other charge." *See O'Connell v. State*, 742 N.E.2d 943, 951 (Ind. 2001) (citation and quotation marks omitted). To be sure, Fix and Yeagy temporarily left Mudd's home before returning a second time. And the State emphasizes this fact, arguing that the "second theft was not contemporaneous in time with the initial burglary of Mudd's residence and robbery of him." Appellee's Br. at 37. But the State's amended charging information belies this argument, as it failed to distinguish the first round of looting from the second round of looting in its level-6 felony theft count. In fact, the charging information lists several items of property (guns, credit and debit cards, tools, and medication) stolen during the first theft. What's more, both Fix and Yeagy left only to unload their plundered goods, promising to return to finish the job, which they did less than an hour later.

In short, the two offenses were clearly connected in both place and circumstance and, "although not precisely 'simultaneous' or 'contemporaneous,'" were sufficiently connected in time. *See Reed*, 856 N.E.2d at 1201. *Cf. Yost v. State*, 150 N.E.3d 610, 615 (Ind. Ct. App. 2020) (holding that multiple acts of criminal recklessness amounted to a single episode of criminal conduct where defendant, during a "period of twenty minutes," fired multiple gunshot rounds "at different people but from the same location and apparently for the same reason"); *Slone v. State*, 11

N.E.3d 969, 972–73 (Ind. Ct. App. 2014) (holding that a string of burglaries that occurred over the course of several months did not amount to a single episode of criminal conduct); *Reynolds v. State*, 657 N.E.2d 438, 441 (Ind. Ct. App. 1995) (holding that three burglaries committed on the same night but at different locations constituted separate episodes of criminal conduct).

Because the two non-violent crimes of level-5 felony robbery and level-6 felony theft amount to a single episode of criminal conduct, "the total of the consecutive terms of imprisonment may not exceed seven (7) years." *See* I.C. § 35-50-1-2(d)(2). Because the trial court sentenced Fix to an aggregate sentence of eight and a half years for these two offenses, we reverse and remand accordingly for resentencing.

Conclusion

For the reasons above, we conclude that burglary is an ongoing crime that encompasses a defendant's conduct inside the premises, terminating only when the unlawful invasion ends. We thus affirm the trial court's conviction of Fix for level-2 felony burglary while armed with a deadly weapon.[7] But because Fix's commission of level-5 felony robbery and level-6 felony theft amounted to a single episode of criminal conduct, we hold that the length of his aggregate sentence exceeds the maximum aggregate sentence permitted by our Sentencing Cap Statute. We thus remand for the trial court to resentence Fix to consecutive terms of imprisonment for those two non-violent offenses "not exceed seven (7)

[7] In addition to challenging the **timing** of the aggravating offense, Fix also calls into question the definition of "armed," insisting that "there must be something" to indicate "the use or involvement of the weapon in the crime," not just its mere possession. Resp. to Trans. at 8 (quoting *State v. McHenry*, 74 N.E.3d 577, 581 (Ind. Ct. App. 2017)). But the evidence here clearly shows that Fix was "armed with a deadly weapon" when, after wresting control of the handgun, he pistol-whipped Mudd on the side of the head. *Cf. Phelps v. State*, 669 N.E.2d 1062, 1064 (Ind. Ct. App. 1996) (finding sufficient evidence to support conviction for battery while armed with a deadly weapon where defendant struck the victim with a pair of brass knuckles). For this reason, and because the issue here is **when** the arming occurred, we need not reach the outer limits of what constitutes "armed."

years," *see* I.C. § 35-50-1-2(d)(2), capping his aggregate term for all offenses at thirty-seven years.

Rush, C.J., and David and Massa, JJ., concur.
Slaughter, J., concurs in Part I and in the judgment without separate opinion.

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