No. 120797

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	) On Appeal from the Appellate Court of
	) Illinois, Second District,
Plaintiff-Appellee,	) No. 2-15-0456
	)
	) There on Appeal from the Circuit Court
	) of the Eighteenth Judicial Circuit,
v.	) DuPage County, Illinois
	) No. 14-CF-2204
	)
FERNANDO CASAS, JR.,	) The Honorable
	) Liam C. Brennan,
Defendant-Appellant.	) Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE ACTION

Defendant was charged with a Class X felony in the Circuit Court of DuPage County and admitted to bail after posting a cash bond, but he failed to appear at his scheduled court hearing. C3.[1] Over fifteen years later, defendant, who had been using a false identity, was apprehended. Eight months later, the People charged defendant with violation of bail bond. C3, 22. Because it was bound by *People v. Grogan*, 197 Ill. App. 3d 18 (1st Dist. 1990), the circuit court granted defendant's motion to dismiss the indictment on the basis that the charge was brought outside the statute of limitations. C32. The People appealed, and the appellate court reversed, holding that violation of bail bond is a continuing offense. *People v. Casas*, 2016 IL App (2d) 150456, ¶¶ 10-19. Defendant appeals from the appellate court's judgment.

ISSUES PRESENTED FOR REVIEW

1. Whether violation of bail bond is a continuing offense such that the statute of limitations does not begin to run until a fugitive defendant is apprehended.

2. Alternatively, whether the statute of limitations was tolled while defendant was using a false identity and not publicly resident in Illinois.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315, 604(a)(1), and 612(b). On September 28, 2016, this Court granted defendant leave to appeal.

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[1] "C_" denotes the common law record.

STATUTES INVOLVED

720 ILCS 5/3-5 (1998) states, in relevant part:

General Limitations.

* * *

(b) Unless the statute describing the offense provides otherwise, or the period of limitation is extended by Section 3-6, a prosecution for any offense not designated in Subsection (a) must be commenced within 3 years after the commission of the offense if it is a felony.

720 ILCS 5/3-7 (1998) states, in relevant part:

Periods excluded from Limitation.

The period within which a prosecution must be commenced does not include any period in which:
(a) The defendant is not usually and publicly resident within this State.

720 ILCS 5/3-8 (1998) states:

Limitation of Offense Based on Series of Acts. When an offense is based on a series of acts performed at different times, the period of limitation prescribed by this Article starts at the time when the last such act is committed.

725 ILCS 5/110-10 (1998) states, in relevant part:

Conditions of bail bond.

(a) If a person is released prior to conviction, either upon payment of bail security or on his or her own recognizance, the conditions of the bail bond shall be that he or she will:
(1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court;
(2) Submit himself or herself to the orders and process of the court.

720 ILCS 5/32-10 (1998) states, in relevant part:

> Violations of bail bond.
>
> (a) Whoever, having been admitted to bail for appearance before any court of this State, incurs a forfeiture of the bail and willfully fails to surrender himself within 30 days following the date of the forfeiture, commits, if the bail was given in connection with a charge of felony or pending appeal or certiorari after conviction of any offense, a felony of the next lower Class.

STATEMENT OF FACTS

Defendant was charged with a Class X felony in case No. 1996 CF 1920 in the Circuit Court of DuPage County, and in October 1996, he was admitted to bail after posting a cash bond. C3, 22. In June 1998, defendant incurred a forfeiture of his bail and failed to surrender himself within thirty days in violation of 720 ILCS 5/32-10(a). *Id.* In April 2014, defendant, who was using a false identity, was apprehended. In December 2014, defendant was indicted in the Circuit Court of Lee County with violation of bail bond, a Class 1 felony. C3. The matter was transferred to the Circuit Court of DuPage County. C4.

Defendant moved to dismiss the indictment, asserting that the People failed to file it within the three-year statute of limitations. C17. The People filed a superseding information, asserting that the statute of limitations did not start running until defendant's apprehension on April 5, 2014. C22. The trial court dismissed the information as untimely pursuant to *People v. Grogan*, 197 Ill. App. 3d 18 (1st Dist. 1990), which held that violation of bail bond was not a continuing offense. C23.

The appellate court reversed, holding that violation of bail bond is a continuing offense and, therefore, the superseding information was timely under 720 ILCS 5/3-8. *People v. Casas*, 2016 IL App (2d) 150456, ¶¶ 10-19. The court reasoned that violation of bail bond is a single course of conduct that continues beyond the initial commission of the offense and that poses a threat to the public and to the integrity and authority of the courts. *Id.* ¶¶ 18-19. The court declined to address the People's alternative argument that the statute of limitations had not expired because while defendant was a fugitive he used a false identity and was thus "not usually and publicly resident within this State" under 720 ILCS 5/3-7(a). *Id.* ¶ 9.

STANDARD OF REVIEW

The resolution of this appeal requires statutory interpretation, which this Court reviews *de novo*. *People v. Olsson*, 2016 IL 119659, ¶ 15.

ARGUMENT

After admission to bail, defendants must appear in court "on a day certain and thereafter as ordered by the court until discharged or final order of the court." 725 ILCS 5/110-10. Fugitives who fail to appear violate that duty until apprehended. Under 720 ILCS 5/3-8, the statute of limitations does not begin to run until the last act of violation is committed. Thus, the statute of limitations does not start to run for bail bond violators until they are apprehended.

This interpretation is the only one consistent with the clear legislative intent of punishing violations of bail bond. Defendant's contrary construction would reward those

fugitives who are particularly adept at eluding justice. Moreover, defendant's construction would apply to — and equally hamper the prosecution of — crimes with substantively identical statutory language, including escape, conspiracy, and kidnapping.

Finally, the limitations period did not expire here for an independently sufficient reason: defendant's use of a false identity while a fugitive meant he was not publicly resident in Illinois during that time under 720 ILCS 5/3-7(a).

I. Violating Bail Bond Is a Continuing Offense.

A. The plain meaning and purposes of the statutes demonstrate that violating bail bond is a continuing offense.

The primary objective in construing statutes "is to ascertain and give effect to the intent of the legislature," with the "most reliable indicator of legislative intent" being "the language of the statute, given its plain and ordinary meaning." *People v. Chenoweth*, 2015 IL 116898, ¶ 21. A court views statutes as a whole and may consider the reasons for the laws, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statutes in different ways. *Id.* Here, these considerations uniformly point to one conclusion: violating bail bond is a continuing offense.

Under the bail bond statute, when defendant was released on bail in 1996 he had a duty to appear on the scheduled date and thereafter as ordered by the court and to submit himself to the orders and process of the court. 725 ILCS 5/110-10(a) (1998). That duty did not end on the thirtieth day following his scheduled court date, but continued until discharge or final order in his case. *Id.* The violation of that duty, following a thirty-day grace period, was a felony. 720 ILCS 5/32-10 (1998). And under 720 ILCS 5/3-8, the

limitations period did not start to run until the last act that formed the basis of the offense was performed.

The plain and ordinary meaning of these statutes, viewed together, is clear. Defendant was under a continuing duty to appear — he was not discharged, there had been no final order, and the prosecution was ongoing — and each day he failed to appear, he violated his duty under the statute. As a result, defendant committed the last act in violation of his continuing duty to appear in court the day before he was apprehended in 2014, and the statute of limitations started to run on that date.

This interpretation is the only one consistent with the purposes of the relevant statutes. "A statute of limitations represents a legislative assessment of the relative interests of the State and the defendant in administering and receiving justice." *Chenoweth*, 2015 IL 116898, ¶ 22. A statute of limitations protects individuals from having to defend against charges when the facts have become obscured by time, minimizes the danger of punishment for conduct in the far-distant past, and encourages officials to promptly prosecute criminal activity. *See People v. Strait*, 72 Ill. 2d 503, 506 (1978).

None of those concerns is applicable to a bail bond violation. There is little danger of the facts becoming stale because the evidence is straightforward: a defendant is ordered to appear in court as a condition of bail and fails to do so. And the possibility of a bail-bond violation charge does not put an individual under the cloud of possible punishment from far-distant conduct: by definition, the bail-bond violator has already

been charged with another crime. Defendant, for instance, was not using a fake identity because he was concerned about the bail-bond violation charge, but because he had fled from his Class X felony charge. Similarly, law enforcement officials have acted diligently and have already investigated and charged the defendant with the original crime — it is *defendant's* conduct that impedes prompt prosecution. Conversely, because the bail bond violation must be done willfully, *see* 720 ILCS 5/32-10(a) (1998) (or now knowingly, *see id.* (2016)), charging defendants before their apprehension could require law enforcement officials to act without exercising diligence or prosecutorial discretion. *See Guzman v. C.R. Epperson Const., Inc.,* 196 Ill. 2d 391, 400 (2001) ("The purpose behind a statute of limitations is to prevent stale claims, not to preclude claims before they are ripe for adjudication.").

Moreover, "the purpose of a statute of limitations is certainly not to shield a wrongdoer." *Tom Olesker's Exciting World of Fashion, Inc. v. Dun & Bradstreet, Inc.*, 61 Ill. 2d 129, 137 (1975). Indeed, the statute of limitations evinces a legislative intent not to reward defendants for avoiding prosecution or committing a long series of criminal acts. *See* 720 ILCS 5/3-7(a) (tolling time during which law enforcement cannot be expected to easily find defendant); 720 ILCS 5/3-8 (starting statute of limitations at last of series of acts).

And the purpose of the bail bond violation statute is to punish violators and place them in a worse position than they would have been had they complied with their duty to appear for prosecution for their initial crimes. If there were any doubt about this, the

committee comments make that clear. *See People v. Hunter*, 2013 IL 114100, ¶ 17 ("committee comments to the statute are a persuasive aid in ascertaining legislative intent of an ambiguous statute"). The comments twice state that the statute was intended to extend the duties and penalties established by other laws affecting defendants on bail, such as criminal contempt. *See* Committee Comments, 720 ILCS 5/32-10 ("Second 32-10 is intended to extend the duty of the defendant and to expressly prohibit intentional violation of a bail bond."); *id.* ("This is an extension of the provisions in Ill. Rev. Stat. 1959, ch. 38 § 615a, which declares a defendant out on bail to be in contempt of court"). Defendant's interpretation contradicts this plain intent, making it easier to avoid repercussions for violating bail bond.

Contrary to this plain legislative intent, defendant's interpretation of the statutes rewards wrongdoers who successfully evade prosecution long enough for the statute of limitations to expire. By contrast, holding that bail bond violations are continuing offenses — and that the statute of limitations does not run while the defendant continues to violate his duty to appear in court — is the only interpretation that is consistent with both the intent of the criminal statute and the statute of limitations.

B. Defendant's contrary arguments are unpersuasive.

Defendant argues that the appellate court should have followed *People v. Grogan*, 197 Ill. App. 3d 18, 21 (1st Dist. 1990), which held that violation of bail bond is not a continuing offense. Def. Br. 7-11. Citing *Toussie v. United States*, 397 U.S. 112 (1970), *Grogan* noted that "a continuous offense results where the nature of the crime involved is

such that Congress must have assuredly intended it to be a continuing one." 197 Ill. App. 3d at 21. The *Grogan* court acknowledged that *People v. Miller*, 157 Ill. App. 3d 43 (1st Dist. 1987), applied *Toussie* to hold that escape is a continuing offense, reasoning that "because an escaped prisoner poses a continuing threat to society," it can be inferred from the nature of the crime that the legislature must have intended it to be a continuing offense. *Grogan*, 197 Ill. App. 33d at 21. But *Grogan* distinguished *Miller*, finding that "the offense of violation of bail bond is not the kind of offense that poses a continuing threat to society, nor can it be defined as a series of related acts constituting a single cause [*sic*] of conduct, such as conspiracy or embezzlement." *Id.*

Defendant argues that the Second District was wrong to depart from *Grogan* because (1) "one cannot find that every defendant who violates a bail bond is a threat to the public," Def. Br. 11; (2) the court "was incorrect to find that the legislature intended a violation of bail bond to be a continuing offense," Def. Br. 12; and (3) the court "erred when it found that the defendant 'has breached his lawful custody and obstructed justice,'" because "escape and violation of bail bond are not analogous," Def. Br. 15. These arguments are unpersuasive.

First, defendant argues that not every violation of bail bond creates a threat to the public because a defendant may show that the failure to appear was unintentional. Def. Br. 11 (citing 725 ILCS 5/110-3). As evidence, he presents himself, reasoning that he was not arrested in the seventeen years he eluded the law. Def. Br. 11. But we know nothing about defendant's life — what he did and did not do — while he was living

under a false identity, except that he was successful at eluding justice. Moreover, defendant's argument would invert the General Assembly's directive to presume that defendants in his situation are dangers. The statute defendant cites directs that defendants in felony cases who jump bail are ineligible for further bail once apprehended unless the defendant appeared or was arrested within thirty days of the warrant being issued and demonstrates that the failure to appear was unintentional. 725 ILCS 5/110-3. Thus, the General Assembly has mandated that such defendants are considered sufficiently dangerous that they are to be detained absent special circumstances.

Second, defendant asserts that the legislature did not intend a violation of bail bond to be a continuing offense. Def. Br. 12. Defendant cites federal law and the two-part test in *Toussie*, 397 U.S. at 115, stating that federal crimes would not be considered continuing offenses unless (1) the explicit language of the substantive criminal statute compelled such a conclusion, or (2) the nature of the crime involved is such that the legislature must have intended that it be treated as a continuing one. *See* Def. Br. 12. These authorities do not support defendant's position.

That the violation of bail bond statute does not explicitly "define the offense as a continuing one" is unsurprising — defendant points to *no* Illinois statute criminalizing conduct that does so. Instead, section 3-8 provides that, given the continuous nature of certain crimes, the limitations period does not begin to run until the last act is committed. 720 ILCS 5/3-8. Unlike in Illinois, some federal statutes explicitly provide that the crimes are continuing offenses. *See* 22 U.S.C. § 618(e) (statute criminalizing failure to

register as a foreign agent states that it is a continuing offense); 18 U.S.C. § 3284 ("The concealment of assets of a debtor in a case under title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge."). Meanwhile, there is no federal statute analogous to 720 ILCS 5/3-8, which provides that when an offense is based on a series of acts, the period of limitation starts when the last act is committed.

Moreover, application of *Toussie*'s second prong here makes clear that the legislature did not intend the limitations period to run until a bail bond violator is apprehended. *United States v. Bailey*, 444 U.S. 394 (1980), found it "clear beyond peradventure that escape from federal custody . . . is a continuing offense" because given "the continuing threat to society posed by an escaped prisoner, 'the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one.'" *Id.* at 413 (quoting *Toussie*, 397 U.S. at 115). As discussed below, *see infra* pp 12-13, escape and bail bond violation are highly analogous crimes.[2] The considerations set forth in *Bailey* apply equally in Illinois and, in addition to section 3-8, make it clear that the General Assembly intended to treat the crime as a continuing one.

Defendant similarly argues that the legislature has never included violation of bail bond as an enumerated offense in 720 ILCS 5/3-6, which lists certain crimes as having extended limitations periods. Def. Br. 14. Again, this is true, but irrelevant. There is a

[2] Additionally, 18 U.S.C. § 3290 states that "[n]o statute of limitations shall extend to any person fleeing from justice," which would apply to bail bond violators.

difference between an extended limitations period (section 3-6) and a limitations period that starts only upon the last of a series of acts (section 3-8). It would make no sense for a continuing offense to appear in a list of crimes with extended limitations periods. That is the entire point of section 3-8 — that the limitations period for continuing offenses remains three years but runs only from the last act.

Defendant likewise asserts that because the People could charge a person on the thirtieth day after incurring a forfeiture of the bail and willfully failing to surrender, that "is when the crime is committed" and it is then a "completed offense." Def. Br. 18. In other words, according to defendant, because the People could have charged him on the thirtieth day after he jumped bail, the statute of limitations ran from that date. But that reading is the exact opposite of what the statute requires for an offense based on a series of acts. It would start the limitations period at the first act of the series, not the last.

Third, defendant argues that the appellate court erred when it found that he obstructed justice because "escape and violation of bail bond are not analogous." Def. Br. 15. This assertion is incorrect. Both crimes involve defendants fleeing the criminal justice system. The legislature has in both instances sought to protect society against those convicted or charged with crimes who later evade custody or prosecution. Thus, both crimes interfere with the administration of the criminal justice system and prevent public officers from punishing crimes and maintaining public safety.

Defendant's attempts to distinguish the two crimes fail. He incorrectly suggests that escape applies only to those convicted of crimes. *See* Def. Br. 9. Not so. Escape

applies to those "charged with the commission of a felony" or "charged with the commission of a misdemeanor." 720 ILCS 5/31-6(a)-(b). Similarly, defendant incorrectly suggests that escape applies only to those in the physical custody of the State. *See* Def. Br. 11, 15-16. Again, this is not so. *See* 720 ILCS 5/31-6(a) (person commits escape when he or she "fails to return from furlough or from work and day release or who knowingly fails to abide by the terms of home confinement"). Escape and violations of bail bond both apply to people who have been released from physical custody under certain conditions, including their return at an appointed time. Under the plain language of the statute, violating bail bond is a continuing offense, and defendant's arguments fail to persuade otherwise.

Defendant raises three additional but equally unavailing contentions. First, defendant argues that under *stare decisis* the Second District should have followed the First District's holding in *Grogan* that violation of bail bond was not a continuing offense. 197 Ill. App. 3d at 21. But this assertion was inapposite in the appellate court and is irrelevant here. "*Stare decisis* requires courts to follow the decisions of higher courts, but does not bind courts to follow decisions of equal or inferior courts." *O'Casek v. Children's Home & Aid Soc. of Ill.*, 229 Ill. 2d 421, 440 (2008) (internal quotation marks and brackets omitted). *Grogan* did not bind the Second District and certainly does not bind this Court. Nor does the principle underlying *stare decisis* — to avoid erratic rulings — apply. *Miller* and *People v. Esparza*, 2014 IL App (2d) 130149, ¶¶ 13-14 (escape is continuing offense), had reached a different conclusion than *Grogan* applying

section 3-8 to a highly analogous crime with substantively identical statutory language; those cases had yielded erratic rulings and resolution of the discrepancies between them was beneficial.

Second, and similarly unavailing, is defendant's assertion that the legislature's decision not to amend the statute of limitations after *Grogan* indicated its assent to its holding. Legislative acquiescence is "a weak reed on which to base a determination of the drafters' intent," *People v. Marker*, 233 Ill. 2d 158, 175 (2009) (internal quotations omitted), and particularly here when there was no decision by the Illinois Supreme Court and only a single appellate court decision. Additionally, as discussed, the statute of limitations had been interpreted differently by *Miller* and *Esparza* in the highly analogous escape context and in numerous other cases in crimes with similar statutory language such as conspiracy and kidnapping. *See also infra* Section II.C.

Moreover, defendant's suggestion that "the legislature keeps abreast of this issue" through its subcommittee on the statute of limitations, *see* Def. Br. 14, is misleading at best. The subcommittee was established only during the recent Ninety-Ninth General Assembly that ended in January 2017, specifically to deal with the issue of the statute of limitation for sex crimes against minors. It appears that the subcommittee considered only four bills, House Bills 1127, 1128, and 1129, and Senate Bill 3402, all of which dealt exclusively with that subject. Accordingly, the subcommittee is irrelevant to this case.

Third, and also inapt, is defendant's citation of the rule of lenity. *See* Def. Br. 12. This Court has made clear that "the rule of lenity is subordinate to our obligation to determine legislative intent, and the rule of lenity will not be construed so rigidly as to defeat legislative intent." *People v. Gutman*, 2011 IL 110338, ¶ 12; *see also People v. Johnson*, 2017 IL 120310, ¶ 30 ("Further, the cardinal principle of statutory construction, to which all other canons and rules are subordinate, is that a court must ascertain and give effect to the intent of the legislature."); *People v. Garcia*, 241 Ill. 2d 416, 427 (2011) ("The rule of lenity does not require this court to construe a statute rigidly and circumvent the legislature's intent. . . . Indeed, the primacy of legislative intent is paramount, and all other rules of statutory construction are subordinate to it."). Nor would the purpose of the rule of lenity, which is to provide notice to those subject to criminal laws, be served in a statute of limitations context, particularly section 3-8. There is no ambiguity over whether the defendant has committed the crime. The only uncertainty is whether his ability to evade the authorities will allow him to avoid the consequences of his crime. Defendant's arguments are unpersuasive.

C. Defendant's construction would diminish the People's ability to prosecute other crimes.

Adopting defendant's rule of construction would affect prosecution of serious crimes with statutory language substantively identical to the violation of bail bond statute. For instance, the escape statute does not explicitly define escape as a continuing offense, but states that a "person convicted of a felony or charged with the commission of a felony . . . who intentionally escapes from any penal institution or from the custody of

an employee of that institution commits a Class 2 felony." 720 ILCS 5/31-6(a). This language tracks the violation of bail bond statute. *Compare* 720 ILCS 5/31-6(a) *with* 720 ILCS 5/32-10(a) ("Whoever . . . incurs a forfeiture of the bail and willfully fails to surrender himself within 30 days following the date of the forfeiture, commits . . . a felony of the next lower Class."). Under defendant's analysis, the offense of escape would not be continuing because it would be "complete" on the day of escape and no statutory language "defines the offense as continuing." But escape is considered a continuing offense, and defendant does not argue otherwise. *See Esparza*, 2014 IL App (2d) 130149, ¶¶ 13-14.

Esparza reaffirmed the holding in *Miller*, which determined that "[c]learly, defendant's . . . escape cannot be viewed as an isolated occurrence in time because such construction would encourage a convicted felon to remain in hiding until the three-year statute of limitations had expired." 157 Ill. App. 3d at 46. Further, "an escaped prisoner poses a continuing threat to society and thus 'the nature of the crime involved is such that [the legislature] must assuredly have intended it to be treated as a continuing one.'" *Id.* at 46 (quoting *Bailey*, 444 U.S. at 414) (further internal quotation marks omitted).

Other crimes that are considered continuing offenses also have statutory language that closely tracks that of violation of bail bond. Conspiracy does not define itself as a continuing offense and often could be charged well before its last act. *See* 720 ILCS 5/8-2(a) ("A person commits the offense of conspiracy when, with intent that an offense be committed, he or she agrees with another to the commission of that offense."). Yet it is

well-established that conspiracy is a continuing offense. *People v. Levinson*, 75 Ill. App. 3d 429, 435 (1st Dist. 1979) ("Offenses such as conspiracy and embezzlement may involve a series of acts. Illinois cases have recognized that these are continuing offenses and are not complete until the last known act in furtherance of the offense has been completed."). Possession crimes, too, which are generally considered prototypical continuing offenses, do not "define" themselves as continuing offenses and can be charged as soon as the item comes into a defendant's possession. *See* 720 ILCS 5/24-1-1.1 (describing unlawful use and possession of weapon crimes). Defendant's interpretation would hamper the prosecution of these similar felonies.

Kidnapping provides a striking illustration of the harm that defendant's interpretation would inflict. A kidnapper who takes a baby "completes" the crime of aggravated kidnapping, and can be charged, the moment he or she secretly confines the baby. *See* 720 ILCS 5/10-2(a)(2); 720 ILCS 5/10-1(a)(1). And the statute does not define the crime as a continuing offense. Under defendant's interpretation, the kidnapper would be insulated from prosecution as long as he or she keeps the crime hidden for three years. And in this illustration, the People would not even know who to charge, so prosecution would be impossible. The legislature cannot have intended such an absurd result. A reading that better reflects the language of section 3-8, the continuing nature of the offense, and legislative intent, starts the limitations period when the kidnapping is discovered. Defendant's statutory interpretation would, contrary to obvious legislative intent, dramatically impair the People's ability to prosecute a number of serious crimes,

many of which have long been considered continuing offenses (despite not having been expressly defined as such).

Defendant's construction is also inconsistent with current jurisprudence in areas as far reaching as compulsory joinder and whether conduct will sustain multiple charges and convictions. *See People v. Quigley*, 183 Ill. 2d 1, 7-11 (1998) (holding that driving under the influence (DUI) was continuing offense and thus misdemeanor and felony DUI counts should have brought together under compulsory joinder statute); *People v. Turner*, 128 Ill. 2d 540, 577 (1989) (holding that conduct was one, continuing event, and did not allow multiple convictions, when defendants pulled over car under pretense of being police officers, took victim into their car, and sexually assaulted her in cornfield). Thus, in addition to potentially hampering the prosecution of a number of serious crimes, defendant's interpretation conflicts with prior decisions of this Court.

D. Other jurisdictions have found bail bond violation and similar offenses to be continuing offenses.

Well-reasoned opinions from other jurisdictions have found violations of bail bond to be continuing offenses. For instance, the Supreme Court of Nevada analogized bail jumping to escape, holding that violation of bail bond is a continuing crime. *Woolsey v. State*, 906 P. 2d 723, 726 (Nev. 1995). *Woolsey* explained that just as a "convicted prisoner is in lawful custody of the State and, by escaping, unlawfully eludes that custody," "an accused person held for prosecution is in lawful custody," and bail "is a privileged release from" but "does not end that custody," "only chang[ing] its

conditions." *Id.* *Woolsey* held that escape and failure to appear are both continually recommitted as long as the offender has not returned to custody. *Id.*

Woolsey further reasoned that the violation-of-bail-bond statute "is intended to punish those on bail who violate the conditions of their bail by failing to appear before the court when commanded." *Id.* Allowing the defendant "to avoid prosecution for failure to appear simply because he eluded arrest long enough to surpass the three year statute of limitations is contrary to the purposes of the [bail statute] in particular and bail in general." *Id.*

The Ninth Circuit Court of Appeals similarly determined that failure to appear for trial is a continuing offense that continues until the defendant's apprehension. *United States v. Alvarez Camacho*, 340 F.3d 794, 797 (9th Cir. 2003). The Ninth Circuit explained that the continuing "failure to appear poses a threat to the integrity of the court." *Id.* (internal quotation marks omitted); *see also United States v. Merino*, 44 F.3d 749, 753-54 (9th Cir. 1994) (failure to appear for trial is a continuing offense).

Other jurisdictions have found similar crimes to be continuing offenses. *United States v. McIntosh*, 702 F.3d 381, 387 (7th Cir. 2012) ("failure to surrender for service of a sentence is a continuing crime"); *United States v. Lopez*, 961 F.2d 1058, 1059-60 (2d Cir. 1992) (same); *United States v. Green*, 305 F.3d 422, 432-33 (6th Cir. 2002) (same); *United States v. Martinez*, 890 F.2d 1088, 1091 (10th Cir. 1989) (same); *United States v. Gray*, 876 F.2d 1411, 1419 (9th Cir. 1989) (same); *Ohio v. Wilkinson*, 896 N.E.2d 1027, 1029 (Ohio Ct. App. 2008) ("defendant's failure to report to his parole officer . . . was a

continuing, recurring offense and a pattern of conduct spanning every day until defendant was finally apprehended").[3]

The reasoning of *Woolsey* and the other cited cases is convincing. Legislative bodies have recognized that when those charged with crimes, especially the most serious offenses like Class X felonies, violate their bail, it endangers the authority of the courts and the safety of the public. Forcing states to charge violators while they are still fugitives would do nothing but eliminate prosecutorial discretion and, most importantly, reward those who elude justice. Such considerations, along with the plain meaning of the statutory language, demonstrate that violating bail bond is, in Illinois too, a continuing offense.

II. Alternatively, the Statute of Limitations Was Tolled Because Defendant Was Not "Publicly Resident" in Illinois.

The limitations period for defendant's bail bond violation was tolled while he was using a false identity to evade apprehension. "The period within which a prosecution must be commenced does not include any period in which: (a) The defendant is not usually and publicly resident within this State." 720 ILCS 5/3-7(a). Here, the superseding information asserted that defendant used a false identity to evade prosecution between the time he failed to appear for his June 1998 court date and the time of his apprehension in April 2014. Defendant was not "publicly resident" within Illinois — to the contrary, he concealed his whereabouts using a false identity. *See People v. Rievia*,

[3] Some jurisdictions have made contrary determinations, although these cases are older and seem to rely on specific aspects of their statutes not relevant here. *See People v. Casas*, 2016 IL App (2d) 150456, ¶ 23 (discussing cases).

307 Ill. App. 3d 846, 855 (1st Dist. 1999) ("Defendant would be hard pressed to argue that he was publicly present in the state (even in custody) if he was hiding his identity."). Thus, the statute of limitations was tolled for the entire period from June 1998 to April 2014, and the charge was timely filed.

Defendant makes no argument on this point. Below, he argued that 720 ILCS 5/3-7(a) applied only to time that a defendant did not actually reside in this State. But that construction improperly reads "publicly" out of the statute. *See People v. McChriston*, 2014 IL 115310, ¶ 22 ("If possible, the court must give effect to every word, clause, and sentence; it must not read a statute so as to render any part inoperative, superfluous, or insignificant") (further quotation marks omitted). While the provision applies when a defendant does not reside at all in the State, it also applies — by its plain language — when a defendant does not "publicly" reside in Illinois even if he physically resides in the State. Because defendant used a false identity, the statute of limitations did not run under 720 ILCS 5/3-7(a) until his apprehension and the charge was timely on this basis, too.

CONCLUSION

For these reasons, the People of the State of Illinois respectfully request this Court to affirm the judgment of the Illinois Appellate Court, Second District, and remand to the trial court for further proceedings.

March 13, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is twenty-two pages.

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STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

PROOF OF FILING AND SERVICE

The undersigned certifies that on March 13, 2017, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was filed with Clerk, Supreme Court of Illinois, Springfield, Illinois 62701, using the Court's electronic filing system, and copies were served upon the following, by placement in the United States mail box at 100 West Randolph Street, Chicago, Illinois 60601, in an envelope bearing sufficient first-class postage:

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Additionally, upon its acceptance by the Court's electronic filing system, the undersigned will mail the original and twelve copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

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Supreme Court Clerk

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