VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 1st day of May, 2020.

IN RE: CLARIFICATION ORDER CONCERNING TOLLING OF STATUTORY SPEEDY TRIAL DEADLINES DURING THE JUDICIAL EMERGENCY IN RESPONSE TO COVID-19 CRISIS

On March 16, 2020, the Court declared a "judicial emergency" on several grounds, including the fact that the COVID-19 crisis "substantially endangers or impedes . . . the ability of litigants or others to have access to the court or to meet schedules or time deadlines imposed by court order, rule, or statute," Code § 17.1-330(A). Subsection D of Code § 17.1-330 provides the Court with broad power to suspend various court-related deadlines: "Notwithstanding any other provision of law, such order may suspend, toll, extend, or otherwise grant relief from deadlines, time schedules, or filing requirements imposed by otherwise applicable statutes, rules, or court orders in any court processes and proceedings, including all appellate court time limitations."

The Speedy Trial Act, Code § 19.2-243, imposes statutory time deadlines on criminal prosecutions subject to various exceptions and tolling provisions. One of the statutory tolling provisions states that the Act "shall not apply to such period of time as the failure to try the accused was caused . . . [b]y a natural disaster." Code § 19.2-243(7). There being no adversarial dispute presently before the Court on the question, the Court offers no opinion on whether the statute by its own terms tolls the running of all otherwise applicable statutory time periods as a result of the COVID-19 crisis. *See generally* Code § 44-146.16. Whether it does or not, the statutory deadlines imposed by the Speedy Trial Act are nonetheless "time deadlines" capable of being tolled under Code § 17.1-330(A) & (D).

The Court's March 16 order broadly stated that "all deadlines are hereby tolled and extended, pursuant to Va. Code § 17.1-330(D)." Code § 17.1-330(D) governs time limitations

"imposed by otherwise applicable statutes, rules, or court orders." The March 16 order also directed trial courts to continue all "criminal matters, including jury trials, subject to a defendant's right to a speedy trial." In this context, the "right to a speedy trial" refers to a criminal defendant's constitutional right to a speedy trial. *See generally Howard v. Commonwealth*, 281 Va. 455, 462–63 (2011) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). The earlier tolling provision in the March 16 order tolled all time limitations "pursuant to Va. Code § 17.1-330(D)," which applies only to deadlines and other time limitations imposed by statutes, rules, or court orders.

The Court's March 27 order repeated the broad tolling of deadlines "pursuant to Va. Code § 17.1-330(D)" but also added a provision authorizing courts under certain precautionary circumstances to hear criminal cases if necessary "to avoid violating a defendant's right to a speedy trial." Like the similar provision in the March 16 order, the "right to a speedy trial" provision in the March 27 order refers only to a criminal defendant's constitutional right to a speedy trial. The Court's April 22 order incorporated by reference the prior emergency orders and stated that all "statutes of limitations and case related deadlines are tolled during the Period of Judicial Emergency pursuant to Va. Code § 17.1-330(D)."

This Court unanimously orders that the tolling provisions of the March 16, March 27, and April 22 emergency orders, as clarified herein, toll the running of any statutory speedy trial period applicable to criminal prosecutions in the courts of the Commonwealth of Virginia from March 16 until May 17 or later if further extended by this Court.

It is so ORDERED.

CHIEF JUSTICE DONALD W. LEMONS