



The Commonwealth of Massachusetts

BERKSHIRE DISTRICT ATTORNEY



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Honorable Paul C. Dawley
Chief Justice of the District Court
Edward W. Brooke Courthouse
24 New Chardon St.
1st Floor
Boston, MA 02114
Paul.Dawley@jud.state.ma.us

Honorable Maureen Walsh
Regional Administrative Judge
Eastern Hampshire District Court
205 State St
Belchertown, MA 01007
Maureen.Walsh@jud.state.ma.us

Honorable Paul Hart Smyth
First Justice, Pittsfield District Court
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Via first class and electronic mail

Re: Honorable Jennifer Tyne

Dear Honorables Dawley, Walsh, and Smyth:

I am writing to alert you to a significant threat to victim and public safety in Berkshire County and to request your assistance. I have profound respect for the separation of powers between the judiciary and the Commonwealth and I bring my concerns to you as a last resort where my office's efforts to seek relief from the appellate courts have proved unsuccessful in remedying a pattern of dangerous rulings and hostile treatment of victims and prosecutors by the Honorable Jennifer Tyne. Judge Tyne's hostility to victims creates a level of risk to the community such that my failure to alert you would make me complicit in the inevitable future results of her disregard for public and victim safety.

Since taking office in 2019, myself and Berkshire District Attorney's Office (BDAO) staff have observed a consistent and troubling pattern of rulings by Judge Tyne pertaining to victims' rights, danger assessments, pretrial detention requests, and dispositions that undermine the efforts of victims to secure protection and justice in our Courts and put people at risk. For example, Judge Tyne routinely fails to fairly impose reasonable measures to ensure victim safety in pretrial detention/release decisions. As a result, her decisions are widely inconsistent with the

other justices who sit in Berkshire County. She ignores the clear directives of G. L. ch. 276, §§ 58, 58A and 58B and unduly burdens victims with unnecessary processes, including often refusing to act in the absence of live testimony from traumatized and vulnerable victims.

Commonwealth v. Lemond E. Grady, Docket No. 2027CR001578 provides a recent tragic example of Judge Tyne's poor judgment and illustrates why I am seeking your assistance. Mr. Grady was charged with two (2) counts of assault with a dangerous weapon that he allegedly committed while on release for similar violent offenses of assault with a dangerous weapon (2027CR1124), assault and battery with a dangerous weapon (1976CR0064), and carrying a dangerous weapon (2027CR1124). The Commonwealth sought revocation of his bail on all open matters as well as detention pursuant to Massachusetts G. L.ch. 276, §§ 58A on the new charges. Judge Tyne inexplicably denied the Commonwealth's requests and simply imposed an order of no contact with the victim. The victim subsequently reported to the Department of Probation that Mr. Grady violated the order of no contact and reiterated his fear for his safety caused by the defendant's continued presence in the community. The Commonwealth moved, once again, to revoke Mr. Grady's bail. Judge Tyne denied our request as she had denied previous requests. ***On April 20th, the victim in Docket No. 2027CR001578 who had repeatedly sought relief in Judge Tyne's Court murdered Mr. Grady.*** In his confession to police, he cited ***his fear of Mr. Grady and the Court's failure to hold him as the motive for the shooting.*** This is a clear demonstration of Judge Tyne's reckless and poor judgement undermines victim and public safety in Berkshire County.

In *Commonwealth v. Scott Smith*, SJC SJC-12955, a prior case concerning pretrial detention, my office took the extraordinary action of seeking relief under G. L. ch. 211, §3 from Judge Tyne's decision to release a defendant facing serious domestic violence charges. After review by the full panel, the Court determined that Judge Tyne abused her discretion and ordered the defendant back into custody pursuant to G. L. ch. 276, §58B. This reversal from the Supreme Judicial Court failed to put Judge Tyne on notice that her rulings are inconsistent with the expectations and orders of the higher courts.

Judge Tyne's demeanor towards victims and prosecutors is as concerning as her rulings. Her demeanor is often dismissive, and frequently hostile in violation of Code of Judicial Conduct 2.8(B), which requires that a "judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court personnel, and others with whom the judge deals in an official capacity." She chills a victim's right to address the Court at sentencing under Massachusetts General Laws ch. 25B. For example in the matter of *Commonwealth v. Harte*, Docket No. 2027CR00734, she interrupted a victim while making her impact statement stating that she had already read the statement. When the victim asserted her right to be heard, Judge Tyne actively ignored and silenced her. This particular case also provides an example of another problematic practice of Judge Tyne's which is to undercut prior sentencing determinations made by her colleagues. Mr. Harte previously tendered a plea but withdrew when the presiding judge sentenced him to the house of correction just weeks earlier on the same charges. The defendant then resubmitted his tender before Judge Tyne and received a continuance without a finding. Judge Tyne undercutting the prior determinations of her colleagues in victim cases has become

so routine that disruptive judge shopping by the defense bar is widespread. This type of conduct is regularly observed by victim witness advocates in my office and is traumatizing for the victims who are seeking protection from the courts. These victims often convey their frustrations, and dissatisfaction with their treatment by Judge Tyne. This treatment leaves victims discouraged and questioning why they ever sought help and protection from the courts by reporting crimes or applying for restraining orders.

In the matter of *Commonwealth v. Joseph J. Deleon*, 2128CR00161, the Commonwealth sought pretrial detention under both G. L. ch. 276, §58A and 58B on charges of strangulation and assault and battery of a family/household member. The Commonwealth presented evidence that a witness observed the defendant with his hands around the victim's neck strangling her and photos of the victim's injuries taken by police. Judge Tyne refused the Commonwealth's requests based on the victim's failure to apply for a restraining order. BDAO staff reported to me that Judge Tyne stated something to the effect of "the victim is a competent adult who can make her own decisions." It is well-documented that strangulation increases a victim's likelihood of being murdered in the future by nearly 800% and it is also well documented that there are compelling safety reasons for a victim of domestic violence to not seek a restraining order. Judge Tyne's indifference to these realities puts the people that I serve at an unacceptable risk. Berkshire County's Domestic Violence High Risk Team identified the following additional cases where Judge Tyne's judgment imperiled victims: *Commonwealth v. Brett J. Riddle* (numerous dockets); *Conley R. Gadson*, 2027CR0607, 19227CR2003; and *Eamon E. Percy*, 2127CR0139, 2028CR0801, 2027CR1358.

I have been reluctant to raise these concerns with you because I am fearful that Judge Tyne will retaliate against the prosecutors who work in my office, but I am at the point where public safety is so threatened by her decisions and her treatment of victims that I have no other choice. Should you make an inquiry into my concerns, you will find that in addition to mistreating victims, she regularly exhibits hostility towards the prosecutors who appear in her court. BDAO staff members have noted a pattern of Judge Tyne's poor treatment of female prosecutors and/or prosecutors of color to be especially pronounced. An experienced prosecutor who was recently dismayed by Judge Tyne's sentencing determination in a serious domestic violence case confided in me that she regretted not asking one of her male colleagues to handle the plea because she felt Judge Tyne would be more likely to impose a sentence that would ensure the safety of the victim at her male colleague's request. I am worried about my office's ability to retain female district court prosecutors because numerous female assistant district attorneys find practicing in Judge Tyne's court to be demoralizing and discriminatory.

My responsibility to the well-being of the community that I serve and my obligation to ensure fair and equitable treatment of victims and prosecutors require that I notify you of Judge Tyne's problematic judgment and demeanor. I will not be complicit in the inevitable poor results of Judge Tyne's presiding over the district courts in Berkshire County by failing to act.

I request that you order a full inquiry into the concerns that I raise above, that judge Tyne be precluded from presiding over criminal cases in Berkshire County, and that you take the proper steps to ensure that victims and prosecutors in Berkshire County will be treated fairly and equitably in our courts. I thank you for your attention to this matter. I am available to speak with you further at your convenience.

Very truly yours,



Andrea Harrington

cc. Honorable Jennifer Tyne