

# Charges Unlikely for Husband in NY Wrong-Way Crash

By THE ASSOCIATED PRESS

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GARDEN CITY, N.Y. (AP) -- There isn't much chance the husband of [Diane Schuler](#) could face criminal charges for the fiery crash she caused while driving the wrong way on a highway, killing herself and seven others, attorneys agree.

Prosecutors would have to prove Daniel Schuler was aware his wife was intoxicated -- and failed to stop her -- when she packed her two children and three nieces into a minivan at an upstate campground for the ride home to Long Island. A witness who saw her there said she was sober, and state police have said she wasn't impaired an hour after she left.

So what was defense attorney Dominic Barbara doing when he paraded the teary-eyed widower before a mob of reporters this week to dispute autopsy findings that Diane Schuler was high on [marijuana](#) and drunk when she smashed head-on into a sport utility vehicle?

Attorneys suspect it was the first step in trying to soften the hearts of potential jurors for civil litigation that some victims' families intend to pursue.

"For obvious reasons, the family wants to rehabilitate this lady's reputation," said attorney Vincent Trimarco, who is not involved in the case. "She's not the most popular person out there. To most people, she committed a murder."

Beginning with a dramatic, tear-filled press conference Thursday, Daniel Schuler, his family and attorney have argued that the 36-year-old Long Island mother was revered and trusted with children and suggested that separate medical conditions could have affected her driving before the July 26 crash on the Taconic State Parkway, about 35 miles north of New York City.

Tom Ruskin, an investigator working for Barbara, is looking at four calls Diane Schuler made a couple of hours before the crash; most were to her brother, and in one, her 8-year-old niece, Emma Hance, got on the phone and said that her aunt was having trouble seeing and speaking, he said.

Toxicology reports from Schuler's autopsy found her blood-alcohol level was .19 percent, more than double the state's legal limit, and high levels of the key ingredient in marijuana in her system, suggesting she had smoked pot from 15 minutes to an hour before the 1:30 p.m. crash.

Schuler slammed her minivan head-on into an SUV about a half-hour after her last phone call after driving south on the northbound lanes of the highway for nearly two miles. She died along with her 2-year-old daughter, three nieces and three Yonkers men in the SUV. Her 5-year-old son survived.

A couple in a third car were also injured. A lawyer for Michael and Guy Bastardi, a father and son killed on their way to a family dinner, has said someone should be held criminally responsible for the crash and suggested many people around Schuler would have known she had a drinking problem.

"I find it very hard to believe that anybody will be charged with the homicides of these victims," attorney Stephen LaMagna said. He represented Martin Heidgen, who was convicted of murder after driving the wrong way on a Long Island parkway in 2005, killing a limousine driver and a 7-year-old flower girl coming home from a family wedding.

"It's horrible. We want to hold somebody up to the public to be brought to justice," LaMagna said. "But in this case, the responsible party also died in the accident."

J. Herbie DiFonzo, a former federal prosecutor who is a law professor at [Hofstra University](#), said insurance companies are likely to be the ones fighting it out in the coming months and years.

The lawyer for the Bastardis has said victims' families will pursue civil lawsuits.

"She is legally responsible for the deaths of all the individuals," DiFonzo said. "First, they will turn to the insurance companies, and then perhaps go after her estate."

But DiFonzo noted that any assets co-owned by both Daniel and Diane Schuler -- like their home, perhaps -- would not be vulnerable because he can't be held liable for her actions.

Police and investigators are also trying to determine when Schuler began drinking and smoking pot. A broken, extra-large bottle of Absolut vodka was found in the wrecked minivan.

Ruskin has said the family had a bottle of vodka they would take from their Long Island home to the upstate campground for the summer and wasn't sure which car it was in when the couple drove separately home that Sunday morning.

Ann Scott, co-owner of the Hunter Lake campground, said there was no sign Schuler had been drinking when she left at about 9:30 a.m.

Investigators say she stopped at a McDonald's in Liberty, N.Y., where witnesses reported seeing no signs that the woman was suffering any physical ailments.

She left the restaurant at about 10:45 a.m., state police said, and was last heard from when she made a cell phone call to her brother -- the father of Schuler's nieces -- at 1:02 p.m.

Daniel Schuler and attorneys have pointed to medical conditions like gestational diabetes -- which goes away after childbirth -- a stroke or an untreated bump on her leg that could have caused problems for Diane Schuler. And they say she was a loving, responsible mother who never would have driven drunk.

Experts say that now, more than anything, Daniel Schuler may be trying to salvage his family's legacy.

"It's his name," said **Jeremy Saland**, a former prosecutor and defense attorney. "He doesn't want his family, for the next generation, to be known as the family involved with that horrible mother who perpetrated a crime against her children."

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Associated Press writer Colleen Long in New York City contributed to this report.