



Credit: Stuart Cahill

Michelle Duggan.

A Maynard nurse's claim that she was "sleep driving" when she crashed her car into a wall won't be the first time someone has used the so-called "Ambien defense."

Defendants and their lawyers have used it with varying results for about a decade, most recently last week, when Sister Kimberly A. Miller, a Philadelphia nun, testified she had taken a 5 mg Ambien tablet and a glass of altar wine, and had no memory of the Nov. 7 crash that resulted in her arrest.

On Wednesday, a judge convicted Miller of driving while intoxicated, rejecting defense attorney Jeffrey Lindy's claim that she had been sleep driving under the influence of medication. Judge Martin Whitcraft suspended Miller's license for 90 days, fined her \$257 plus fees and ordered her to take a 12-hour course for DWI offenders.

Lindy said he was surprised by the verdict but was hopeful for Michelle Duggan, the Maynard nurse, who was convicted of drunken driving on July 31, 2013, but whose lawyer, Mark Helwig, has asked Massachusetts' highest court to consider an appeal, the Herald reported yesterday in a front-page story.

Duggan says she had a few drinks while she was out with a friend on June 22, 2012, before she ended up at his place, where she took an Ambien to help her sleep and went to bed. The next thing she remembered, she said, was waking up, half-naked, to police lights after she crashed her car.

"Our client was dressed in a habit; your nurse was half-naked," Lindy said. "To be convicted in Massachusetts, she has to have criminal intent, but her intent was to go to sleep, not to go driving."

David M. Benjamin, a Chestnut Hill clinical pharmacologist who helped win an acquittal for Robert F. Kennedy's daughter, Kerry, by testifying at her 2014 DUI Ambien trial, said Duggan's case is a "very typical scenario."

"People, with or without alcohol, take Ambien and wake up to find themselves in a police station, with no memory of how they got there," Benjamin said.

In 2007, the Food and Drug Administration warned that Ambien can cause rare, "complex, sleep-related behaviors" that may include "sleep-driving, making phone calls and preparing and eating food (while asleep)."

"The prosecution will try to argue that (Duggan) didn't take it as directed," said Richard R. Uslan, a New Jersey attorney credited with winning a 2006 Ambien case, one of the first in the nation. "But nobody ever reads the warnings, and very rarely has a doctor or pharmacist warned of sleep driving."

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Michelle Duggan

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