



CUMMINS & WHITE, LLP

L A W Y E R S

CASE STUDY

Criminal—Hit & Run

Highlights

- Skillful negotiations with the District Attorney led to a guilty plea for a minor infraction (illegal lane change), a small fine, and restitution to the victim to be made through the client's insurance carrier. Importantly, the client avoided a trial with the potential for a misdemeanor conviction for leaving the scene (up to one year in jail) and a \$1,000 fine.
- Believing that the driver was "lucky" to have escaped DUI charges, the prosecution took a hard-line position against the Defendant. Cummins & White's investigation and findings, including a restaurant receipt showing limited alcohol consumption at lunch, convinced the District Attorney to pursue lesser charges.
- Cummins & White's balanced, in-depth understanding of the criminal justice system and relationships with law enforcement personnel, prosecutors, and judges combined to achieve a positive outcome for this driver facing serious misdemeanor charges.

About the Attorney



Charles Spagnola, lead trial counsel, joined Cummins & White, LLP, as a partner in 2006. Mr. Spagnola's practice focuses on complex civil, business and real estate litigation, as well as

sophisticated criminal defense.

SKILLED NEGOTIATIONS SAVE DRIVER FROM SERIOUS CONVICTION & SUBSTANTIAL FINE

Charles Spagnola of Cummins & White, LLP, successfully represented a driver who was charged with hit and run in connection with a freeway accident in San Bernardino County, Calif. The driver allegedly made an illegal lane change and hit a car while returning from lunch. Two witnesses corroborated the alleged victim's story but did not see contact between the vehicles, and Cummins & White's client denied involvement. The case was complicated by the fact that the client had consumed a drink at lunch, and then upon his return to the office, drank several glasses of wine. Despite an initial hard-line stance because it was believed that alcohol was involved in the accident, Mr. Spagnola successfully negotiated with the District Attorney's office, settling on restitution to the victim to be made through the client's insurance carrier, a nominal fine, and a guilty plea to a less serious driving infraction.

Background

After an extended business lunch during which the Defendant consumed an alcoholic beverage, he drove a short distance to his office with his business partner. Approximately 3–4 hours after returning to the office, the California Highway Patrol (CHP) contacted him, claiming that he was involved in a hit and run accident on a nearby freeway. The Defendant and his passenger denied any such accident and submitted to questioning. While the driver did not disclose his consumption of alcohol at lunch, he did admit to drinking several glasses of wine upon his return to his office. The officers also inspected his car and noted left, rear corner panel damage.

According to the alleged victim, the Defendant made an illegal lane change into the path of the victim's vehicle causing him to lose control and slam into the center divider. The victim and passenger were slightly injured, and the car was totaled. Two witnesses interviewed by the CHP confirmed the victim's story. However, neither witness saw contact between the vehicles. One of the witnesses followed the Defendant's car off the freeway and back to his office, eventually notifying the CHP. The Defendant was charged with leaving the scene, and the prosecution's initial plea offer included jail time and a fine.

Legal Strategy

Mr. Spagnola's analysis of the facts revealed that there were contradictory witness statements, which also varied from the alleged victim's version of

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Cummins & White, LLP

Cummins & White, LLP, is recognized as one of California's premier business, insurance, and criminal defense law firms. The Newport Beach-based firm is engaged in general civil litigation and transactional practices, which include insurance coverage, business, estate planning, healthcare, real estate, and liability defense. The firm was founded in 1951 and has 16 partners and associates.

the accident. Through the use of a private investigator, the firm interviewed one of the percipient witnesses, which revealed the conflicting version of the facts. As could be expected, investigating officers failed to include that information in their initial investigation report. It also was discovered that the Defendant's vehicle had been damaged one month earlier (left rear corner panel), and that he had obtained two repair estimates (no repairs were made). After comparing the description of damage outlined in the estimates and the damages that were allegedly caused by the freeway accident, no additional damage could be identified. This evidence rebutted the alleged contact between the vehicles. Therefore the Defendant and passenger had no reason to know that the other vehicle had lost control and hit the center divider.

Mr. Spagnola, representing the driver, relied on these findings as part of the aggressive negotiations with the District Attorney's office. Mr. Spagnola argued that the witness statements—which corroborated the lack of contact—gave credibility to his client's story. He also demonstrated that the damage described in the estimates was not consistent with an impact as described by the victim.

Result/Implication

After several months of investigation and discussion, Mr. Spagnola successfully negotiated a fine totaling \$602, plus restitution to the victim to be made through the client's insurance carrier. Furthermore, once restitution was made, the Court allowed the Defendant to withdraw a guilty plea and enter a not guilty plea to the original charge of leaving the scene (the original charge was subsequently dismissed). The client then was allowed to enter a guilty plea to an illegal lane change—a significantly less serious driving infraction compared to the original misdemeanor charge.

According to Mr. Spagnola, the prosecution's initial evaluation theorized that the Defendant was driving while intoxicated after his business lunch and did not realize he caused the accident. However, because officers did not see him driving and interviewed him several hours later, they were not able to pursue the DUI charges. "From the beginning, the District Attorney's office took a very hard line against our client because they believed he narrowly avoided drunk driving charges," Mr. Spagnola said. "On the other hand, we were able to show through an itemized restaurant receipt that he actually had consumed only one drink and that he was not drunk. We work tenaciously for our clients and realize that every case is resolved on its own unique facts and circumstances." ■