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### FINDLAW DAILY OPINION SUMMARIES U.S. 1ST CIRCUIT COURT OF APPEALS

#### Criminal Law & Procedure

##### **US v. Awer, No. 13-2068**

Conviction of defendant for possession of cocaine base with intent to distribute is affirmed, where: 1) any and all improper statements made at trial were cured by repeated and immediate jury instruction, the jury was sophisticated, and certain misstatements might be construed against the prosecution; 2) the statements made by the driver of the care at the time of defendant's arrest, Johnson, to her attorneys, were confidential and protected by the attorney-client privilege and thus her attorneys' proffered testimony about those statements were inadmissible under Evidence Code Rule 804(b)(3); and 3) the facts gave officers at least a minimal level of objective justification for the belief that criminal activity was afoot, and the use of force to put defendant on the ground on his stomach and to handcuff him did not transform the interaction into a de facto arrest.

#### Criminal Law & Procedure, Sentencing

##### **US v. Etienne, No. 13-1387**

Conviction and sentence of defendant for conspiring to distribute cocaine base is affirmed, where: 1) agent Mercer's overview testimony was not improper, as most of the testimony about defendant's involvement was based on personal knowledge and represented the fruits of first-hand police work, and defendant did not raise a hearsay objection at trial nor develop it on appeal; 2) allowance of the interpretive testimony of agent Mercer and agent Bruce was not error, plain or otherwise; 3) evidence of defendant's guilt was so overwhelming that the erroneous admission of Mercer's identification testimony did not affect defendant's substantial rights; and 4) sentencing was proper as defendant gave up the opportunity to challenge drug weight and composition for the benefits of stipulating to drug quantity.