

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-31285  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DARRYL CUMMINGS,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 96-CR-39-B  
- - - - -

August 3, 1998

Before EMILIO M. GARZA, DeMOSS and BENAVIDES, Circuit Judges.

PER CURIAM:\*

A jury convicted Darryl Cummings of conspiracy to possess cocaine with intent to distribute. Cummings argues on appeal that the district court abused its discretion by denying his motion for a mistrial based on a prosecutorial comment on Cummings's failure to take the stand. The Government suggests that this court should review Cummings's argument for plain error on the ground that he failed to lodge a contemporaneous objection to the comment.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Under the circumstances of this case, because the defense did not object to the prosecutor's comment during closing argument on the defendant's failure to testify until after the argument was concluded, we will review for plain error only. United States v. Ward, 481 F.2d 185, 187 (5th Cir. 1973). Having reviewed the record and the briefs of the parties, we hold that the district court did not plainly err in denying Cummings's motion for a mistrial. See United States v. Robinson, 485 U.S. 25, 31-34 (1988); United States v. Rodriguez, 43 F.3d 117, 124 (5th Cir. 1995).

AFFIRMED.