

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 98-50087
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARK RODGERS

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-96-CR-344-1

December 7, 1998

Before KING, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Mark Rodgers appeals his conviction of possession with the intent to distribute cocaine base in violation of 21 U.S.C. § 841(a)(1). He argues that the district court erred in denying his motion to suppress evidence. He further argues that the district court abused its discretion in denying his motion for a mistrial because the prosecutor commented on his post-arrest silence during closing argument.

We have reviewed the record and the briefs of the parties and conclude that the district court did not err in denying Rodgers' motion to suppress evidence. See United States v. Reyes, 792 F.2d 536, 539 (5th Cir. 1986). Furthermore, the district court did not err in denying Rodgers' motion for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR R. 47.5.4.

a mistrial because he failed to prove that the prosecutor commented on his post-Miranda** silence.
See Doyle v. Ohio, 462 U.S. 610 (1976). The judgment of the district court is AFFIRMED.

**Miranda v. Arizona, 384 U.S. 436 (1966).