**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 09-4551**

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UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

RONALD ST. PHARD,

Defendant – Appellant.

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Appeal from the United States District Court for the District of South Carolina, at Florence. R. Bryan Harwell, District Judge. (4:08-cr-00866-RBH-2)

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Submitted: May 27, 2010 Decided: June 17, 2010

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Before WILKINSON, DAVIS, and KEENAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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James T. McBratney, Jr., MCBRATNEY LAW FIRM, P.A., Florence, South Carolina, for Appellant. W. Walter Wilkins, United States Attorney, Carrie A. Fisher, Florence, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ronald St. Phard was indicted, along with three co-defendants, and charged with conspiracy to possess with intent to distribute heroin, in violation of 21 U.S.C. § 846 (2006) ("Count One") and possession with intent to distribute heroin, in violation of 21 U.S.C. § 841 (2006) ("Count Two"). Following a jury trial of St. Phard and co-defendant Kastler Cherisme, the men were convicted of both counts in the indictment. Thereafter, St. Phard filed a Fed. R. Crim. P. 33 motion for a new trial, arguing that the Government had used his post-Miranda* silence against him, in violation of Doyle v. Ohio, 426 U.S. 610 (1975). The district court denied St. Phard's motion and subsequently sentenced St. Phard to forty-one months of imprisonment on Counts One and Two. St. Phard timely noted his appeal.

On appeal, St. Phard argues that the district court erred in denying his Rule 33 motion. We conclude the district court did not abuse its discretion in denying the Rule 33 motion. See United States v. Fulcher, 250 F.3d 244, 249 (4th Cir. 2001) (providing review standard). To the extent the prosecution committed Doyle error, we find that any error was harmless. See Williams v. Zahradnick, 632 F.2d 353, 360-62 (4th

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

Cir. 1980) (stating five-factor test to determine if prosecutor's comments constitute reversible error).

Accordingly, we affirm the judgment of the district court. We dispense with oral argument as the facts and legal contentions are adequately presented in the materials on appeal and argument would not aid the decisional process.

AFFIRMED