

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 02-3045

September Term, 2002

01cr00072-01

Filed On: January 6, 2003 [723634]

United States of America,  
Appellee

v.

Julius Garnette Ellington,  
Appellant

## APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

**BEFORE:** Henderson, Tatel, and Garland, Circuit Judges

### J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 36; D.C. Cir. Rule 36(b). It is

**ORDERED AND ADJUDGED** that the judgment and commitment order be affirmed. Viewing the evidence in the light most favorable to the government, see Jackson v. Virginia, 443 U.S. 307, 319 (1979), and deferring to the jury's right to assess the credibility of witnesses, weigh the evidence presented, and draw justifiable factual inferences, see United States v. Clark, 184 F.3d 858, 863 (D.C. Cir. 1999), a rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. See Jackson, 443 U.S. at 319. Assuming the testimony regarding Barnes-Tutt's out-of-court statement that he had seen appellant throw the weapon was hearsay, its admission was harmless because it was merely cumulative of other evidence that was properly introduced. See United States v. Davis, 181 F.3d 147, 150 (D.C. Cir. 1999).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

**Per Curiam**