

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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**No. 06-3013**

**September Term, 2006**

FILED ON: NOVEMBER 28, 2006

[1006934]

UNITED STATES OF AMERICA,  
APPELLEE

v.

JAMES A. SHORT,  
APPELLANT

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Appeal from the United States District Court  
for the District of Columbia  
(No. 04cr00298-01)

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Before: HENDERSON and TATEL, *Circuit Judges*, and SILBERMAN, *Senior Circuit Judge*.

## **JUDGMENT**

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs and arguments by the parties. The Court has determined that the issues presented occasion no need for an opinion. See D.C. Cir. R. 36(b). It is

**ORDERED AND ADJUDGED** that the judgment of the district court is affirmed. At oral argument, appellant's counsel withdrew the Rule 8(b) argument for improper joinder of defendants. Appellant's counsel also appeared to contest the conviction under 18 U.S.C. § 922(g) at oral argument, but as this challenge was not included in appellant's brief, we consider it waived. Appellant's remaining arguments—i.e., that the district court improperly failed to sever and that the gun charge was not supported by substantial evidence—are not borne out by the record. Appellant never moved for severance under Rule 14, and the district court did not commit plain error in allowing appellant to be tried with his co-defendant, Mr.

Jordan. The gun charge under 18 U.S.C. § 924(c) was supported, in large part, by Mr. Tyree's testimony. Mr. Tyree's credibility was a jury question, and a rational trier of fact, having credited Mr. Tyree's account, could have convicted on the gun charge.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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 resolution of any timely petition for rehearing or rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

PER CURIAM

**FOR THE COURT:**

Mark J. Langer, Clerk

BY:

Michael C. McGrail  
Deputy Clerk

