

AUG 06 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MI SUK YI, a/k/a Mimi Yi; a/k/a Min
Cho; a/k/a Mik Suk Craven Yi; Mi
Craven; Linda Chu; Kim Jung; Michelle
Lee; Koung Hee Kim,

Defendant - Appellant.

No. 07-50349

D.C. No. CR-03-00406-CAS-01

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted August 4, 2009**
Pasadena, California

Before: CANBY, WARDLAW and CALLAHAN, Circuit Judges.

Mi Suk Yi appeals her convictions, after a jury trial, for conspiracy, in violation of 18 U.S.C. § 371; bank fraud, in violation of 18 U.S.C. § 1344(1);

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

concealment money laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i); and furnishing false information to the Social Security Administration, in violation of 42 U.S.C. § 408(a)(6). On appeal, Yi argues that (1) the district court violated her due process rights by not ordering, on its own motion, a hearing regarding her competency to stand trial; (2) the operative indictment was constructively amended or fatally varied by evidence presented at trial; and (3) the district court erred by denying her motion for acquittal because there was insufficient evidence to support that she had the required intent to commit the crimes of conviction. We affirm.¹

The district court did not commit plain error by not ordering, on its own motion, a competency hearing. *See* 18 U.S.C. § 4241(a). The record does not contain “substantial evidence of incompetence” such that a reasonable judge would be expected to experience a genuine doubt respecting Yi’s competence. *See United States v. Marks*, 530 F.3d 799, 814 (9th Cir. 2008).

In addition, under plain error review, the operative indictment was not constructively amended or fatally varied at trial. First, Yi has not shown that “there is a complex of facts [presented at trial] distinctly different from those set forth in the charging instrument,” or that “the crime charged [in the indictment]

¹ Because the parties are familiar with the facts of this case, we repeat them here only as necessary to the disposition of this case.

was substantially altered at trial, so that it was impossible to know whether the grand jury would have indicted for the crime actually proved.” *United States v. Adamson*, 291 F.3d 606, 615 (9th Cir. 2002) (quotation marks omitted, modifications in original). Second, even assuming there was a variance between the indictment and the evidence presented at trial, Yi has not demonstrated that any variance prejudiced her substantial rights such that the variance could be considered fatal. *See id.*

Finally, the district court did not err by denying Yi’s motion for acquittal. Reviewing Yi’s claim de novo, we uphold Yi’s convictions because the government presented sufficient evidence of Yi’s intent to furnish false information to the Social Security Administration and her requisite intent to commit conspiracy, bank fraud, and concealment money laundering. *See United States v. Bhagat*, 436 F.3d 1140, 1148 (9th Cir. 2006) (“Evidence is sufficient to support a conviction if, considering the evidence in the light most favorable to the prosecution, any reasonable juror could have found the essential elements of the offense beyond a reasonable doubt.”). On the basis of the evidence in the record, we reject Yi’s assertion that she believed the “bust-out” fraud scheme she and her husband perpetrated was a legitimate “loan program.”

AFFIRMED.