

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

---

**No. 03-3132**

**September Term, 2006**

FILED ON: SEPTEMBER 21, 2006

[993023]

UNITED STATES OF AMERICA,  
APPELLEE

v.

CHI FAI CHENG, A/K/A DAVID CHENG,  
APPELLANT

---

Appeal from the United States District Court  
for the District of Columbia  
(No. 02cr00484-01)

---

Before: TATEL and BROWN, *Circuit Judges*, and EDWARDS, *Senior Circuit Judge*.

## **J U D G M E N T**

This case was considered on the record from the United States District Court for the District of Columbia and on the briefs and arguments of the parties. It is

**ORDRED AND ADJUDGED** that the conviction of Chi Fai Cheng, *a/k/a* David Cheng, be affirmed. Appellant claims that he was prejudiced by the testimony of a prosecution witness that she was afraid Appellant would seek revenge against her. Appellant, however, never moved for a mistrial, and the District Court instructed the jury to disregard the testimony. Because Appellant failed to object to the instruction, our review is for plain error. *United States v. Baugham*, 449 F.3d 167, 171 (D.C. Cir. 2006). In his briefs before this Court, Appellant identifies nothing erroneous, much less plainly erroneous, about the instruction. Finding his remaining arguments without merit, we affirm.

At his sentencing, Cheng preserved an objection to the constitutionality of the Sentencing Guidelines. Accordingly, as the government agrees, we remand for resentencing consistent with *United States v. Booker*, 543 U.S. 220 (2005).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.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